IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

APKUDO, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N25C-12-607 SKR CCLD
	)	
FEDEX SUPPLY CHAIN LOGISTICS & ELECTRONICS, INC.,	)	
	)	
Defendant.	)	

Submitted: June 1, 2026
Decided: September 15, 2026

MEMORANDUM OPINION AND ORDER

Upon Consideration of Defendant's Motion to Dismiss or Stay:
GRANTED

Nicole K. Pedi, Esq., Tyler E. Cragg, Esq., POTTER ANDERSON & CORROON LLP, Wilmington, Delaware, Eliyahu Ness, Esq., NESS PLLC, Dallas, Texas, *Attorneys for Plaintiff Apkudo, Inc.*

Travis S. Hunter, Esq., Andrew L. Rosen, Esq., RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware, *Attorneys for Defendant FedEx Supply Chain Logistics & Electronics, Inc.*

RENNIE, J.

I. INTRODUCTION

This action arises out of non-party T-Mobile USA, Inc.'s decision to transition its logistics services. T-Mobile previously contracted with Defendant FedEx Supply Chain Logistics & Electronics, Inc. to manage its warehousing and cellular devices returns. At T-Mobile's suggestion, FedEx subcontracted with Plaintiff Apkudo, Inc. to provide technological support for data-wiping services. T-Mobile subsequently replaced FedEx with non-party Assurant, Inc. as its logistics provider. FedEx alleges that Apkudo breached a non-compete covenant by providing services to Assurant, and FedEx subsequently sought discovery in Texas.

Thereafter, Apkudo initiated this action, seeking a declaratory judgment that it did not breach the relevant contracts. FedEx now moves to dismiss the operative complaint on the grounds that the declaratory judgment claim is overripe, *forum non conveniens* applies, and Apkudo has failed to state a claim upon which relief can be granted. For the reasons stated below, the Court concludes that this action is overripe and that Plaintiff has failed to state a claim for breach of the implied covenant of good faith and fair dealing. Accordingly, Defendant's motion is granted, and this action is dismissed.

II. BACKGROUND[1]

A. The Parties

Plaintiff Apkudo, Inc. ("Apkudo") is a Delaware corporation with its principal place of business in Maryland.[2] Apkudo is a technology company that designs and operates software and robotic automation systems used to manage the testing, refurbishment, and resale of mobile devices and accessories.[3]

Defendant FedEx Supply Chain Logistics & Electronics, Inc. ("FedEx") is a Delaware corporation with its principal place of business in Pennsylvania.[4] FedEx provides third-party logistics services, including warehousing, labor, and related supply chain management.[5] At all times relevant to this action, FedEx operated a warehouse facility in Coppell, Texas.[6]

Non-party T-Mobile USA, Inc. ("T-Mobile") is a national wireless telecommunications carrier.[7] T-Mobile previously retained FedEx as its third-party logistics provider. T-Mobile began winding down its contractual relationship with FedEx in August 2024, and the contract officially terminated on April 29, 2026.[8]

---

[1] The facts are drawn from the allegations in the complaint and the documents incorporated therein. *See* D.I. No. 23 ("Am. Compl."). When considering overripeness, the Court may also draw facts from the parties' briefing. *See* D.I. No. 27 ("Mot."); D.I. No. 33 ("Opp'n"); D.I. No. 37 ("Reply").
[2] Am. Compl. at ¶ 8.
[3] Am. Compl. at ¶ 13.
[4] Am. Compl. at ¶ 9.
[5] Am. Compl. at ¶ 15.
[6] Am. Compl. at ¶ 16.
[7] Am. Compl. at ¶ 14.
[8] Am. Compl. at ¶¶ 25, 34.

B. The Apkudo/FedEx Relationship Begins

In 2015, Apkudo began providing technology to T-Mobile to manage returned or defective mobile devices.[9] Years later, T-Mobile contracted with FedEx to assist with the receipt, warehousing, and distribution of mobile devices.[10] In connection with that arrangement, and at T-Mobile's suggestion, FedEx entered into a subcontract with Apkudo, effective November 1, 2019 (the "Subcontract").[11] Under the Subcontract, Apkudo provided services at FedEx's warehouse facility in Coppell, Texas.[12]

Over the course of their business relationship, Apkudo and FedEx executed several agreements, including a Master Professional Services Agreement[13] and a Mutual Non-Disclosure Agreement.[14] Central to the present motion, the parties executed Work Order No. 2 ("WO 2") on October 2, 2023, which governed the services that Apkudo provided at the Coppell facility.[15]

By its terms, WO 2 runs for a minimum of sixty months "or such later date that is coterminous with the contract between [FedEx] and T-Mobile . . . subject to

---

[9] Am. Compl. at ¶ 14.
[10] Am. Compl. at ¶ 15.
[11] Am. Compl. at ¶ 16.
[12] *Id.*
[13] Am. Compl. at ¶ 20.
[14] Mot. at 3.
[15] Am. Compl. at ¶ 19. Work Order No. 2 is available, among other places in the record, as exhibit 10 to FedEx's motion to dismiss. Mot., Ex. 10 (hereinafter "WO 2").

earlier termination as set forth in [WO 2].”[16] The agreements provide four mechanisms for early termination:

- **Termination without cause:** Either party could terminate without cause by giving 180 days’ prior written notice.[17]
- **Termination by T-Mobile:** Under Section 9 of the Subcontract, which is incorporated into WO 2, FedEx may cancel the Subcontract and WO 2 if T-Mobile terminates its underlying contract with FedEx.[18]
- **Expiration of Work Orders:** Either party may cancel the Subcontract upon 30 days’ written notice if no work orders remain outstanding.[19]
- **Automatic Termination:** The Subcontract automatically terminates upon the expiration or termination of the final outstanding work order.[20]

C. The Relationship Deteriorates

In August 2024, T-Mobile began winding down its logistics relationship with FedEx in favor of non-party Assurant, Inc. (“Assurant”).[21] T-Mobile initially intended for another vendor, Greystone Data Solutions (“Greystone”), to assume Apkudo’s technology role.[22] At the time, Apkudo was engaged in due diligence to

[16] WO 2 at Term.
[17] *Id.*
[18] WO 2 at Term (“Either Party may terminate this WO #2 . . . for cause pursuant to Section 9 of the Agreement.”); Am. Compl. at ¶ 56.
[19] Am. Compl. at ¶ 56.
[20] *Id.*
[21] Am. Compl. at ¶ 25.
[22] Am. Compl. at ¶ 26.

acquire Greystone.[23] Upon learning of the potential acquisition, T-Mobile requested that Apkudo provide services directly to Assurant, and Apkudo agreed.[24]

In April 2025, FedEx sent a letter to Apkudo invoking various confidentiality and limited exclusivity provisions contained in the parties' agreements.[25] The parties exchanged a series of letters over the ensuing months.[26] In August 2025, FedEx began exploring its legal options regarding the alleged contractual breaches.[27]

D. Initial Procedural History

On August 28, 2025, FedEx petitioned the 162nd Judicial District Court of Dallas County, Texas for authorization to conduct pre-suit discovery pursuant to Texas Rule of Civil Procedure 202.[28] The Texas court scheduled a hearing on the petition for October 23, 2025, which it later rescheduled to January 5, 2026.[29]

While the Rule 202 petition was pending, representatives from Apkudo and FedEx met in an attempt to resolve the dispute as mandated by Section 8(c) of the Subcontract.[30] The meet-and-confer efforts proved unsuccessful.[31]

---

[23] Am. Compl. at ¶ 27.
[24] *Id.*
[25] Am. Compl. at ¶ 36.
[26] Am. Compl. at ¶ 37.
[27] *See* Am. Compl. at ¶ 38.
[28] *Id.*; Mot., Ex. 3.
[29] Mot., Ex. 3; Mot., Ex. 4.
[30] Am. Compl. at ¶ 54.
[31] *Id.*

On December 26, 2025, Apkudo initiated the instant action in this Court.[32] The initial complaint asserted a single count, seeking a declaratory judgment that Apkudo had not breached its contractual obligations to FedEx.[33]

On January 5, 2026, the 162nd Judicial District Court held its rescheduled hearing on the Rule 202 petition.[34] After inquiring into FedEx's actual need for pre-suit discovery, the Texas court ultimately denied the 202 petition on January 6, 2026.[35]

Shortly thereafter, on January 23, 2026, FedEx filed a plenary lawsuit in the 68th Judicial District Court of Dallas County, Texas, asserting two claims for breach of contract against Apkudo and a claim for tortious interference against T-Mobile.[36]

Parallel litigation ensued. On February 9, 2026, FedEx moved to stay this Delaware action,[37] with briefing concluding on April 2, 2026.[38]

Meanwhile, on March 9, 2026, Apkudo moved to stay the Texas action.[39] The Texas trial court denied Apkudo's motion to stay on April 17, 2026.[40] Apkudo immediately filed an emergency petition for a writ of mandamus seeking to stay the

[32] D.I. No. 1.
[33] *Id.* at ¶¶ 55–60.
[34] Mot., Ex. 4.
[35] Mot., Ex. 6; *see* Mot., Ex. 7 at 10:10–14.
[36] Mot. at 5.
[37] D.I. No. 7. The accompanying opening brief is available at D.I. No. 8.
[38] D.I. Nos. 13, 15.
[39] Opp'n at 11. As represented by Apkudo, Texas law requires that Apkudo answer the complaint and file a contemporaneous motion to stay. *Id.*
[40] *Id.*

Texas case in the Texas Court of Appeals, which granted the petition and stayed the Texas proceedings pending further order.[41]

E. Amended Complaint and Subsequent Procedural History

On May 6, 2026, Apkudo filed an amended complaint in this Court expanding its claims to two[42] counts: Declaratory Relief (Count I)[43] and Breach of the Implied Covenant of Good Faith and Fair Dealing regarding Work Order No. 2 (Count II).[44] FedEx subsequently moved to dismiss the amended complaint.[45] This Court heard oral argument on FedEx's motion on June 1, 2026.

While the motion to dismiss was under advisement, the Court of Appeals for the Fifth District of Texas at Dallas issued an opinion on July 22, 2026, conditionally granting Apkudo's petition for a writ of mandamus.[46] The appellate court directed the Texas trial court to vacate its prior order and enter a stay of the Texas action.[47] With the overlapping procedural hurdles resolved, Defendant's motion to dismiss is now ripe for adjudication.

---

[41] *Id.*
[42] While the Amended Complaint pleads three counts, Count III was voluntarily dismissed with prejudice prior to the Court's consideration of this motion. D.I. No. 34.
[43] Am. Compl. at ¶¶ 69–74.
[44] *Id.* at ¶¶ 75–79.
[45] Mot.; Opp'n.
[46] D.I. No. 40, Ex. B at 11.
[47] D.I. No. 40, Ex. B at 11.

III. STANDARDS OF REVIEW

A. Superior Court Civil Rule 12(b)(1)

On a motion to dismiss for lack of subject matter jurisdiction pursuant to Superior Court Civil Rule 12(b)(1), the Court "need not accept [a plaintiff's] factual allegations as true and is free to consider facts not alleged in the complaint."[48] Although the moving party bears the initial burden of challenging the Court's jurisdiction, the burden ultimately rests upon the non-moving party to establish that subject matter jurisdiction exists.[49]

B. Superior Court Civil Rule 12(b)(3)

Delaware Superior Court Civil Rule 12(b)(3) governs a motion to dismiss or stay an action on the basis of *forum non conveniens*.[50] In resolving such a motion, the Court exercises its sound discretion, employing an orderly and logical deductive process to make the necessary findings of fact.[51] To determine the appropriate forum, the Court applies the six *Cryo-Maid* factors:

> (1) the relative ease of access to proof; (2) the availability of a compulsory process for witnesses; (3) the possibility to view the premises, if appropriate; (4) all other practical problems that would make the trial easy, expeditious, and inexpensive; (5) whether the controversy is dependent upon Delaware law, which the courts of this

---

[48] *CRE Niagara Hldgs., LLC v. Resorts Grp., Inc.*, 2023 WL 2625838, at *5 (Del. Super. Mar. 24, 2023) (quoting *Appriva S'holder Litig. Co. v. EV3, Inc.*, 937 A.2d 1275, 1284 n.14 (Del. 2007)).
[49] *Id.*
[50] *Arrowood Indem. Co. v. AmerisourceBergen Corp.*, 2023 WL 2726924, at *8 (Del. Super. Mar. 30, 2023).
[51] *Cresa Glob. Inc. v. Chirisa Cap. Mgmt. (US) LLC*, 2025 WL 53168, at *2 (Del. Super. Jan. 9, 2025) (citing *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *3 (Del. Super. Aug. 12, 2022)).

State should decide rather than those of another jurisdiction; and (6) the pendency or non-pendency of a similar action in another jurisdiction.[52]

The sixth factor dictates which of the three tests applies.[53] Generally, when the Delaware action is the first-filed proceeding, the Court applies the traditional "*Cryo-Maid*" framework.[54] Under this standard, the defendant must overcome a strong presumption in favor of the plaintiff's chosen forum by demonstrating that litigating in Delaware would impose an "overwhelming hardship."[55] Conversely, where competing actions are deemed contemporaneously filed, the Court weighs the *Cryo-Maid* factors neutrally, without giving preference to either action.[56]

C. Superior Court Civil Rule 12(b)(6)

In reviewing a motion to dismiss for failure to state a claim under Superior Court Civil Rule 12(b)(6), the Court "(i) accepts all well-pleaded factual allegations as true, (ii) accepts even vague allegations as well-pleaded if they give the opposing

---

[52] *GXP Cap., LLC v. Argonaut Mfg. Servs., Inc.*, 253 A.3d 93, 101 (Del. 2021) (quoting *Aranda v. Philip Morris USA Inc.*, 183 A.3d 1245, 1251 (Del. 2018)).

[53] *Cresa*, 2025 WL 53168, at *2 ("First, when the Delaware case is the first filed between the parties, the Court applies the '*Cryo-Maid*' test, in which the defendant must overcome a presumption in favor of the plaintiff's choice by showing that litigation in Delaware will cause an 'overwhelming hardship'. Second, when there is a prior pending case in another jurisdiction between the same parties involving the same issues, the Court applies the '*McWane*' test, and presumes that it should grant the defendant's requested relief. Third, when prior litigation between the parties has been dismissed and there is no other prior pending litigation between the parties, the Court applies the "*Gramercy*" test and does not make presumptions in favor of either party." (footnotes omitted)).

[54] *Id.*

[55] *Id.*

[56] *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Crosstex Energy Servs., L.P.*, 2013 WL 6598736 (Del. Super. Dec. 13, 2013) (citation modified).

party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances."[57]

IV. ANALYSIS

The Court begins by addressing the legal doctrine of overripeness as it pertains to Count I, ultimately concluding that the declaratory judgment claim must be dismissed because the parties' contractual dispute should be resolved in the pending Texas plenary action. Second, the Court determines that Count II must be dismissed for failure to state a claim upon which relief can be granted. In light of these rulings, the Court does not address FedEx's alternative argument regarding *forum non conveniens* as an independent ground for dismissal. Instead, because the *forum non conveniens* factors are practically coextensive with the *Burris* factors, the core convenience and efficiency considerations are naturally absorbed and sufficiently addressed directly within the overripeness analysis below.[58]

A. Overripeness

The decision to entertain an action for declaratory judgment relief rests within the sound discretion of the trial court.[59] Under Delaware jurisprudence, a Court may

---

[57] *SARN Energy LLC v. Tatra Def. Vehicle a.s.*, 2018 WL 5794599, at *3 (Del. Super. Nov. 5, 2018).
[58] *Sec. Nat'l Mortgage Co. v. Lehman Bros. Hldgs. Inc.*, 2016 WL 6396343, at *12 (Del. Super. Aug. 24, 2016).
[59] *JanCo FS 2, LLC v. ISS Facility Servs., Inc.*, 2024 WL 4002825, at *28 (Del. Super. Aug. 30, 2024).

decline to exercise jurisdiction under the Declaratory Judgment Act where the claim would fail to advance the litigation and instead waste judicial resources.[60] A declaratory judgment claim is considered "overripe" when the dispute has progressed beyond the stage where a declaration would serve a useful or practical purpose—specifically, where the alleged breach has already occurred and the core issues will be fully resolved through parallel, non-declaratory common law clams.[61] A claim is deemed duplicative and overripe if its central issues will be decisively determined, positively or negatively, in the resolution of an existing or imminent plenary action.[62]

Here, Apkudo requests a declaratory judgment that it did not breach the parties' contracts.[63] FedEx contends that the pending Texas litigation—in which FedEx affirmatively seeks damages for breaches of those identical contracts—has rendered Apkudo's request for declaratory relief "overripe."[64] In response, Apkudo counters that the overripeness doctrine merely requires the Court to evaluate whether a declaratory judgment served a practical purpose at the exact time of filing.[65] Adopting Apkudo's narrow temporal restriction would conflict with established

---

[60] *Id.*
[61] *See Burris v. Cross*, 583 A.2d 1364, 1372 n. 6 (Del. Super. Sept. 27, 1990); *see also Markusic v. Blum*, 2021 WL 2456637, at *5 (Del. Ch. June 16, 2021).
[62] *JanCo FS 2*, 2024 WL 4002825, at *28.
[63] Am. Compl. at ¶¶ 69–74.
[64] Mot. at 9–19.
[65] Opp'n at 23-26.

Delaware doctrine.[66] As this Court has previously recognized, a court may dismiss a declaratory claim if a practical evaluation of the unique facts and circumstances demonstrates that subsequent events have proceeded past the point where a declaratory action continues to serve a meaningful purpose.[67]

To determine the appropriateness of maintaining an accrued declaratory action, Delaware courts evaluate the seven-factor framework articulated in *Burris v. Cross*: (1) whether the defendant is an unwilling litigant; (2) whether the relief sought can be obtained in a single non-declaratory action; (3) whether another remedy is more effective; (4) whether another action is pending in which the plaintiff can raise its claims and defenses; (5) whether the declaratory action seeks tactical advantage or (6) anticipates other proceedings; and (7) whether dismissal would prejudice the plaintiff.[68] Apkudo engages only superficially with these factors, failing to balance them against the procedural reality of the dispute.[69]

The first factor requires the Court to consider whether FedEx is an unwilling litigant as it relates to the underlying causes of action generally, rather than its willingness to litigate within a specific forum.[70] Apkudo emphasizes that when it filed this Delaware action, no other case was pending, and FedEx's corporate

---

[66] *Burris*, 583 A.2d at 1372 n.6 (Del. Super. 1990).
[67] *Id.*
[68] *Id.* at 1372–73.
[69] Opp'n at 26-27.
[70] *Burris*, 583 A.2d at 1372 n.6 (Del. Super. 1990).

representatives had expressed uncertainty regarding the exact scope of their claims during the Rule 202 pre-suit discovery hearing.[71] This argument, however, incorrectly presumes that this Court's evaluation is frozen at the moment of filing. Because the overripeness inquiry remains fluid, FedEx's subsequent initiation of a full plenary action in Texas demonstrates that it is a highly willing litigant regarding the core dispute. FedEx is not avoiding judicial resolution of its substantive claims; rather it is an unwilling defendant only to a mirror-image preemptive declaratory claim in this specific forum. Consequently, because FedEx has actively sought to litigate the underlying causes of action, this factor weighs in favor of finding the declaratory action overripe.

The second, third, and fourth factors heavily favor dismissal. The declaration Apkudo seeks—non-breach of contract—will be fully, efficiently, and conclusively determined within the scope of FedEx's affirmative breach of contract claims in Texas. A single comprehensive breach of contract action provides a significantly more effective and robust remedy than a standalone declaration of non-liability. Because the Texas proceeding is an active, plenary action, Apkudo can fully assert all of its substantive contract-based claims, defenses, and counterclaims in that forum.

[71] Opp'n at 24-26.

Under the fifth and sixth factors, the Court examines whether this action was initiated to secure a tactical advantage or to preemptively anticipate other proceedings.[72] The record demonstrates that Apkudo filed this suit as a tactical counter-maneuver to FedEx's pending Rule 202 petition, seeking to strip FedEx of its preferred forum and disrupt the ongoing Texas discovery process.[73] This action was undeniably filed in anticipation of imminent coercive litigation by FedEx, representing a preemptive procedural strike.

Finally, the seventh factor considers whether dismissal would prejudice the plaintiff.[74] FedEx contends that Apkudo will suffer no cognizable legal prejudice as it can raise every relevant argument in the Texas action. Apkudo offers no substantive counterargument on this point, relying solely on the general proposition that a plaintiff is entitled to its initial choice of forum. A plaintiff's preference, however, cannot override the efficiency-based rationale that animates declaratory judgment jurisdiction.

Weighing the *Burris* factors in their entirety, the Court finds that the events have proceeded past the point where a declaratory judgment would serve a useful purpose. Count I is therefore dismissed as overripe.

---

[72] *Burris*, 583 A.2d at 1372 n.6 (Del. Super. 1990).
[73] *See* Mot., Ex. 3; Mot., Ex. 4; D.I. 1.
[74] *Burris*, 583 A.2d at 1372 n.6 (Del. Super. 1990).

B. The Implied Covenant Claim is Inadequately Pled

It is black-letter law that the implied covenant of good faith and fair dealing inheres in every contract.[75] The implied covenant operates both to prevent parties from exploiting contractual discretion to defeat the underlying purpose of a bargain and to address unforeseen contingencies that threaten the parties' bargained-for expectations.[76] Regardless of the context, the Court must be chary of employing this doctrine, wielding it only surgically.[77]

The invocation of the implied covenant strictly requires that the Court find a gap within the express terms of the contract. Such gaps may only be filled to accommodate factual developments that the parties could not have anticipated, and may not be used as a remedy for developments that the parties simply failed to consider.[78]

Apkudo argues that a contractual gap exists because, while WO 2 states that it was executed "for the benefit of [FedEx's] customer, T-Mobile USA, Inc[,]" it fails to explicitly specify whether the contract terminates if T-Mobile terminates its underlying agreement with FedEx and FedEx subsequently elects to cease operations at its facility.[79] FedEx counters that WO 2 establishes an unambiguous duration,

---

[75] *Johnson & Johnson v. Fortis Advs.*, 352 A.3d 229, 253 (Del. 2026).
[76] *Id.*
[77] *Id.*
[78] *Prosser v. Pharmalogic Hldgs. Corp.*, 2026 WL 1958134, at *15 (Del. Super. Jul. 7, 2026) (quoting *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010)).
[79] Am. Compl. at ¶¶ 76–77.

running for a minimum of 60 months "or *such later date* that is coterminous with the contract between [FedEx] and T-Mobile . . . subject to earlier termination as set forth in this Agreement."[80] The plain language of WO 2 also contemplates various early termination mechanisms, including the right of either party to terminate the agreement without cause upon 180 days' prior written notice.[81]

Having carefully considered the language of WO 2, the Court agrees with FedEx—there is no gap to fill. Had the parties entirely failed to contemplate the contractual impact of a termination between FedEx and T-Mobile, a gap filling analysis might be warranted. However, the record demonstrates that the parties explicitly anticipated a potential termination by T-Mobile and proactively provided alternative methods for determining when and how WO 2 would terminate.[82] Because the contract comprehensively addresses the contingency at issue, the implied covenant cannot be used to rewrite the parties' bargain. Accordingly,

---

[80] Mot. at 31–32; WO 2 at Term (emphasis added).

[81] WO 2 at Term. WO 2 also contemplates termination for cause pursuant to Section 9 of the Subcontract, which is not in the record currently before the Court. However, Apkudo only asks the Court to find a gap in WO 2, not the Subcontract. Accordingly, it is sufficient for the Court to note at this time that methods for cause exist.

[82] This ruling, as addressed in the prior footnote, is limited to whether the failure to explicitly discuss an early termination of the WO 2 constitutes a gap sufficient to state a claim for the implied covenant of good faith and fair dealing. Nothing herein should be considered a ruling on whether Apkudo has stated a claim that FedEx breached the implied covenant of good faith and faith and fair dealing by abusing discretion potentially left to it under the terms of the Subcontract. *See* Am. Compl. at ¶¶ 56–66.

Apkudo has failed to state a claim for breach of the implied covenant of good faith and fair dealing.

V. CONCLUSION

For the foregoing reasons, Defendant's Motion is **GRANTED** and this action is **DISMISSED**.

IT IS SO ORDERED.

____
Sheldon K. Rennie, Judge