

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Dzyne Technologies, LLC v. Spaceflight, Inc.

Dzyne Technologies · No. 2:23-cv-10188-MEMF-ADS · Decided November 18, 2025

OPINION

Dzyne Technologies, LLC v. Spaceflight, Inc.

PER CURIAM.

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5 UNITED STATES DISTRICT COURT

6 CENTRAL DISTRICT OF CALIFORNIA

7 Case No.: 2:23-cv-10188-MEMF-ADS

8 DZYNE TECHNOLOGIES, LLC,

9 Plaintiff, ORDER DENYING DZYNE’S MOTION FOR
SUMMARY JUDGMENT AND GRANTING

10 v. IN PART SPACEFLIGHT’S MOTION FOR
SUMMARY JUDGMENT [DKT NO. 61]

11

12 SPACEFLIGHT, INC.,

Defendant. 13 14 15 16 17 Before the Court is the Joint Motion for Summary Judgment filed by
the parties. Dkt. No. 61. 18 For the reasons stated herein, the Court hereby DENIES Plaintiff’s
Motion and GRANTS in PART 19 Defendant’s Motion. 20 21 22 23 24 25 26 27 28 1 I.
Background 2 A. Factual Background 3 Plaintiff DZYNE Technologies, LLC entered into a
contract with the Air Force Research 4 Laboratory to procure launch vehicles for a military
weather satellite project known as WeatherSAT. 5 To meet its obligations under the Prime
Contract, DZYNE executed a Launch Services Agreement 6 with Spaceflight, Inc. to provide
launch service capabilities for WeatherSAT. After AFRL canceled 7 WeatherSAT, DZYNE sought
to terminate the Amended LSA. Spaceflight contests the validity of 8 DZYNE’s attempted
termination under the Amended LSA. 9 B. Procedural History 10 On December 4, 2023, DZYNE
filed its Complaint alleging claims for: (1) breach of 11 contract; (2) unjust enrichment; and (3)
declaratory judgment. Dkt. No. 1 (“Compl.”). On January 12 26, 2024, Spaceflight filed its
Answer and Counterclaim. Dkt. No. 22. In its Counterclaim, 13 Spaceflight alleges counterclaims
for: (1) anticipatory breach; (2) breach of implied covenant of 14 good faith and fair dealing; (3)
breach of contract; and (4) declaratory judgment. Id. at 31-34. On
15 February 16, 2024, DZYNE filed its Answer to Spaceflight’s Counterclaim. Dkt. No. 28.
16 On April 18, 2025, the parties filed the instant Joint Motion for Summary Judgment. Dkt. No.

17 61 (“MSJ”). For each party’s MSJ, the nonmoving party included its opposition, and the
moving 18 party included its reply. See *id.* The parties also filed a Supplement Joint Statement of
19 Uncontroverted Facts and Genuine Disputes and a Joint Appendix of Evidence. Dkt. No. 61-2
20 (“SUF”); 61-3 (“Appendix”). 21 II. Applicable Law 22 Summary judgment should be granted
if “the movant shows that there is no genuine dispute 23 as to any material fact and the movant is
entitled to judgment as a matter of law.” Fed. R. Civ. P. 24 56(a). Material facts are those that may
affect the outcome of the case. *Nat’l Ass’n of Optometrists & 25 Opticians v. Harris*, 682 F.3d
1144, 1147 (9th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 26 477 U.S. 242, 248 (1986)).
A dispute is genuine “if the evidence is such that a reasonable jury could 27 return a verdict for
the nonmoving party.” *Anderson*, 477 U.S. at 248. 28 1 A court must view the facts and draw
inferences in the manner most favorable to the non- 2 moving party. *United States v. Diebold, Inc.*,
369 U.S. 654, 655 (1962); *Chevron Corp. v. Pennzoil 3 Co.*, 974 F.2d 1156, 1161 (9th Cir. 1992).
“A moving party without the ultimate burden of 4 persuasion at trial—usually, but not always, a
defendant—has both the initial burden of production 5 and the ultimate burden of persuasion on a
motion for summary judgment.” *Nissan Fire & Marine 6 Ins. Co. v. Fritz Cos.*, 210 F.3d 1099,
1102 (9th Cir. 2000). To carry its burden of production, the 7 moving party must either: (1)
produce evidence negating an essential element of the nonmoving 8 party’s claim or defense; or
(2) show that there is an absence of evidence to support the nonmoving 9 party’s case. *Id.* 10
Where a moving party fails to carry its initial burden of production, the nonmoving party has 11
no obligation to produce anything, even if the nonmoving party would have the ultimate burden of
12 persuasion at trial. *Id.* at 1102–03. In such cases, the nonmoving party may defeat the motion
for 13 summary judgment without producing anything. *Id.* at 1103. However, if a moving party
carries its 14 burden of production, the burden shifts to the nonmoving party to produce evidence
showing a 15 genuine dispute of material fact for trial. *Anderson*, 477 U.S. at 248–49. Under these
circumstances, 16 the nonmoving party must “go beyond the pleadings and by [its] own affidavits,
or by the 17 depositions, answers to interrogatories, and admissions on file, designate specific
facts showing that 18 there is no genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
324 (1986) (internal 19 quotation marks omitted). If the nonmoving party fails to produce enough
evidence to create a 20 genuine issue of material fact, the motion for summary judgment shall be
granted. *Id.* at 322 (“Rule 21 56(c) mandates the entry of summary judgment, after adequate time
for discovery and upon motion, 22 against a party who fails to make a showing sufficient to
establish the existence of an element 23 essential to that party’s case, and on which that party will
bear the burden of proof at trial.”). 24 A party cannot create a genuine issue of material fact simply
by making assertions in its legal 25 papers. *S.A. Empresa de Viacao Aerea Rio Grandense v.*
Walter Kidde & Co., 690 F.2d 1235, 1238 26 (9th Cir. 1982). Rather, there must be specific,
admissible evidence identifying the basis for the 27 dispute. See *id.* “If a party fails to properly
support an assertion of fact or fails to properly address 28 another party’s assertion of fact . . . the
court may . . . consider the fact undisputed.” Fed. R. Civ. P. 1 56(e)(2). The Court need not “comb

the record” looking for other evidence; it is only required to 2 consider evidence set forth in the moving and opposing papers and the portions of the record cited 3 therein. *Id.* 56(c)(3); *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001). The 4 Supreme Court has held that “[t]he mere existence of a scintilla of evidence . . . will be insufficient; 5 there must be evidence on which the jury could reasonably find for [the opposing party].” *Anderson*, 6 477 U.S. at 252. To carry its ultimate burden of persuasion on the motion, the moving party must 7 demonstrate that there is no genuine issue of material fact for trial. *Nissan Fire*, 210 F.3d at 1102; 8 *Celotex Corp.*, 477 U.S. at 323. 9 Where parties file cross motions for summary judgment on the same issue, the court must 10 consider both motions and all evidence submitted by both parties. *Fair Hous. Council of Riverside 11 Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001). “[E]ach motion must be 12 considered on its own merits.” *Id.* Even if both parties assert that no genuine disputes of material fact 13 exist, the court must still review the record and determine that there are no disputes of material fact 14 before granting summary judgment to either party. See *id.* 15 III. Findings of Fact 16 A. The Prime Contract 17 On March 25, 2019, Air Force Research Laboratory (“AFRL”) entered into a government 18 contract (“Prime Contract”) with DZYNE to procure a space launch vehicle for an experimental 19 military weather satellite project, WeatherSAT. SUF ¶ 1. The Prime Contract incorporated Federal 20 Acquisition Rules (“FAR”)2, including FAR 52.249-2 which states: “The Government may 21 terminate performance of work under this contract in whole or, from time to time, in part, if [t]he 22 Contracting Officer determines that a termination is in the Government’s interest.” SUF ¶ 3. As part 23 of the Prime Contract, DZYNE was to engage a launch service provider. SUF ¶ 2. 24 25 1 The facts set forth below are taken from the SUF and the evidence on the record. To the extent that any statements of fact are omitted, the Court concludes they are not material to the disposition of this Motion. To the extent that any of the 26 facts below were allegedly disputed, the Court concludes that no actual dispute exists or that the adopted language resolves the dispute. Pursuant to Rule 56(g), the Court finds that these facts are “established in the case.” See Fed. R. 27 Civ. P. 56(g). 28 2 Federal Acquisition Rules are a primary set of rules that governs United States Government purchases and services 1 B. The LSA 2 DZYNE subsequently entered into the Launch Services Agreement (“LSA”) with 3 Spaceflight.3 SUF ¶ 4. Under the LSA, Spaceflight would provide launch services while DZYNE 4 produces the launch vehicle. Dkt. No. 61-7 at 1. The price payable to Spaceflight under the 5 Amended LSA was \$10,015,000.00. SUF ¶ 42. During the project, DZYNE advanced \$7,839,989.00 6 to Spaceflight. SUF ¶ 29. 7 The LSA preamble refers to DZYNE as “Customer” and to Spaceflight as “Spaceflight.” 8 SUF ¶ 5. The LSA incorporates a series of exhibits, including Exhibit G, entitled “FAR and DFARS 9 Flow Down Clauses.” SUF ¶ 6; Dkt. Nos. 61-7 at 34, 61-26 at 5-6. The preamble to Exhibit G states: 10 “The clauses in Section 52 of the [FAR] and Part 252 of the Defense Federal Acquisition Regulation 11 Supplement (‘DFARS’) set forth below are each incorporated herein by reference or in full text and 12 made a part of the [LSA]. Unless the context of the clause requires otherwise, the term ‘Contractor’ 13 shall mean

Subcontractor, the term ‘Contract’ shall mean the [LSA], and the terms ‘Government,’ 14
‘Contracting Officer,’ and equivalent phrases shall mean DZYNE and the DZYNE Subcontracts
15 Manager, respectively.” SUF ¶ 9. Exhibit G specifically incorporates the clause at FAR 52.249-
2, 16 “Termination for Convenience of the Government (FixedPrice).” SUF ¶ 11.

17 Section 12(E) of the LSA states: “Customer may terminate this Agreement for the
18 Government’s convenience in accordance with FAR 52.249-2.” SUF ¶ 12. Section 12(F) of the
19 Amended LSA contains identical language. Section 5 of the Amended LSA provides DZYNE
with 20 the right to “request a delay of the Launch at any time up until the Launch Date.” Dkt. No.
61-26 at 21 3. Section 9(I) of the Amended LSA states that if DZYNE “fails to deliver its
Spacecraft for 22 Launch” by the launch window “without exercising its right to delay under
Section 5,” DZYNE will 23 be liable for “any remaining payments of the full Price and
Spaceflight may opt in its sole discretion 24 to delay the Launch or terminate” the Amended LSA.
Dkt. No. 61-26 at 5. Section 13 of the 25 26 27 3 The parties’ motions reference sections from the
LSA and Amended LSA. References to “LSA” are to the initial contract entered into between
DZYNE and Spaceflight regarding the WeatherSAT project. Dkt. No. 61-7. References to 28
section 12(F) are to the executed Amended LSA. Dkt. No. 61-26. The parties do not contest the
validity of either 1 Amended LSA indicates that Spaceflight is “entitled to retain and/or be paid all
payments made and 2 owed to date” if DZYNE “materially defaults in the performance of any of
its duties or obligations 3 under” the Amended LSA. Dkt. No. 61-26 at 6. 4 As part of the
Amended LSA, the parties agreed to a launch window of December 15, 2022 5 to April 30, 2023.
SUF ¶ 45. On April 27, 2023 and May 4, 2023, DZYNE discussed termination of 6 the LSA with
AFRL. See SUF ¶ 54-55; Dkt. Nos. 61-32 (including an email discussing DZYNE’s 7 “legal
counsel’s recommendation that AFRL terminate [the Prime Contract] for convenience”), 61- 8 46
(including an email from DZYNE to AFRL recommending AFLR “use the language Termination
9 by Convenience”). 10 C. Issues with WeatherSAT 11 DZYNE and Spaceflight faced delays on
the project, including the cessation of operations by 12 the launch provider. See SUF ¶ 46, 48-50.
Under section 12(C) of the Amended LSA, Spaceflight 13 had the right to remanifest the satellite
spacecraft with an alternate launch provider before DZYNE 14 had the right to terminate. SUF ¶
51. Section 5 of the Amended LSA also provided DZYNE with a 15 right to delay the launch.
DZYNE never sought to delay the launch pursuant to section 5. SUF ¶¶ 49, 16 52. 17 On May 23,
2023, DZYNE and Spaceflight executed a transfer agreement wherein 18 Spaceflight notified
DZYNE that Firefly Aerospace, Inc. intended to acquire all of Spaceflight’s 19 outstanding equity
and DZYNE consented to “any Transfer as to which consent or waiver may be 20 required under
the [LSA]” as a result of the transaction. SUF ¶ 14. The Transfer Agreement states 21 that, “in the
event that [DZYNE] terminate[s] the [LSA] for any reason other than as a result of the 22
Transfer, and such termination occurs within forty-five days of the date of this letter agreement, 23
[Spaceflight] (a) shall provide a termination settlement proposal to [DZYNE] with respect to such
24 termination of the [LSA] no later than thirty days after notice of termination by [DZYNE], 25

notwithstanding any longer time provided for by the [LSA] or any regulations incorporated therein.” 26 SUF ¶ 15. The Transfer Agreement did not modify the permitted grounds for termination under the 27 Amended LSA. SUF ¶ 53. 28 1 D. AFRL Directives 2 On May 31, 2023, AFRL emailed DZYNE a draft memo “directing WeatherSAT activities” 3 “be discontinued.” SUF ¶ 58. On June 5, 2023, AFRL issued a Government Directive to DZYNE 4 stating that AFRL “determined it no longer wishes to pursue further research and development under 5 [the WeatherSAT] project” and directing DZYNE “to cease any and all effort related to the 6 WeatherSAT Project Launch, to include any effort being performed by Subcontractors and/or 7 vendors.” SUF ¶ 16. On June 7, 2023, DZYNE notified Spaceflight of AFRL’s directive, notified 8 Spaceflight that DZYNE was terminating the LSA for convenience, and requested Spaceflight 9 provide a detailed accounting of expenses incurred and expected. See SUF ¶¶ 17, 59-60. In response, 10 Spaceflight requested a meeting with DZYNE to discuss the AFRL’s Directive. SUF ¶ 20. 11 Following the parties’ meeting, DZYNE issued an updated LSA termination notice to Spaceflight on

12 June 12, 2023. SUF ¶ 21.

13 Spaceflight then asserted that DZYNE “only has the right to invoke FAR 52.249-2” if AFRL 14 terminates the Prime Contract for its convenience. SUF ¶ 22. On June 30, 2023, DZYNE sent 15 Spaceflight a letter reiterating the AFRL’s Directive to Spaceflight and requested Spaceflight 16 “immediately to stop work for all efforts under [the LSA].” SUF ¶ 23. Spaceflight did not produce a 17 termination settlement proposal before or on July 8, 2023. SUF ¶ 24. 18 On July 13, 2023, Spaceflight notified DZYNE that the remanifest provisions of the 19 Amended LSA controlled the circumstances and that Spaceflight was prepared to work with 20 DZYNE to provide remanifest opportunities with alternative launch vehicle providers. SUF ¶ 66. 21 DZYNE refused a remanifest opportunity, stating: “There is no remanifest opportunity. The Air 22 Force does not have a satellite to launch, nor do they plan to provide one.” Id. 23 On October 16, 2023, AFRL issued a second Directive to DZYNE, directing DZYNE to 24 “cease any and all effort related to the WeatherSAT Project Launch,” and stated that no 25 “WeatherSAT Project Launch or any other spacecraft launch activities will continue under the 26 subject contract.” SUF ¶ 25. The October AFRL Directive further directed DZYNE to provide 27 AFRL with “[c]onfirmation that all work has stopped related to the WeatherSAT Project Launch,” 28 including “all subcontracted efforts.” SUF ¶ 26. On October 20, 2023, DZYNE forwarded the 1 October AFRL Directive to Spaceflight. SUF ¶ 27. A launch vehicle was never delivered by 2 DZYNE. See SUF ¶ 66 (indicating DZYNE did not intend to provide a launch vehicle following 3 AFRL’s directives). 4 E. Damages 5 During the project, DZYNE sent \$7,839,989 to Spaceflight. SUF ¶ 29. Spaceflight paid 6 \$800,000 to Virgin Orbit. SUF ¶ 30. Spaceflight also delivered a motorized lightband system to 7 DZYNE valued at \$165,000. SUF ¶ 31. On November 10, 2023, Spaceflight invoiced DZYNE for 8 the remaining outstanding balance of the Amended LSA in the amount of \$2,175,102. SUF ¶ 69. On

9 March 25, 2025, six days after DZYNE transmitted its motion for summary judgment, Spaceflight

10 transmitted to DZYNE an accounting of direct and indirect costs incurred related to the Amended 11 LSA totaling \$2,335,682.36. ^{SUF ¶ 32.}

12 DZYNE’S MOTION FOR SUMMARY JUDGMENT

13 I. Discussion 14 DZYNE moves for summary judgment in its favor on the following claims: (1) breach of 15 contract; (2) unjust enrichment; and (3) declaratory judgment. Dkt. No. 61-1 at 11. DZYNE’s motion 16 is based upon its contentions that (1) the AFRL terminated the Prime Contract for AFRL’s 17 convenience; (2) the Amended LSA provides DZYNE with the unconditional right to terminate the 18 LSA for DZYNE’s convenience; and (3) DZYNE is entitled to a damages award of \$6,874,898 for 19 the balance of the amount paid to Spaceflight. For the reasons discussed below, the Court finds that 20 AFRL did not “terminate for convenience” and DZYNE did not have the right to terminate for 21 convenience. 22 A. DZYNE is Not Entitled to Summary Judgment In Its Favor On Its Declaratory 23 Judgment Claim as It Was Not Entitled to Terminate Based Upon the AFRL 24 Directives Or Its Own Convenience 25 In its third cause of action DZYNE seeks declaratory judgment regarding the meaning of the 26 LSA. In particular, DZYNE seeks the following: “this Court declare the express terms of the LSA 27 provided DZYNE the unilateral right to terminate the LSA for its convenience; or, in the alternative, 28 the express terms of the LSA provided DZYNE the right to terminate the LSA based upon the 1 express direction received from AFRL following cancellation of the [WeatherSAT].” Dkt. No. 1 at 2 15. 3 To obtain declaratory relief, there must be a “substantial controversy between parties having 4 adverse legal interests, of sufficient immediacy and reality to warrant the issuance of declaratory 5 judgement.” *S. Cal. Painters & Allied Trades, Dist. Council No. 36 v. Rodin & Co.*, 558 F.3d 1028, 6 1035 (9th Cir. 2009); *Bayer v. Neiman Marcus Gr., Inc.*, 861 F.3d 853, 867 (9th Cir. 2017). Here, 7 DZYNE and Spaceflight seek declaratory relief with respect to the LSA. Dkt. Nos. 61-1 at 11, 61-22 8 at 35. The parties dispute a contractual right: DZYNE’s right to terminate the LSA, which has 9 significant implications as to the causes of actions alleged and damages sought. Given this, the Court 10 finds the instant matter appropriate for declaratory relief. 11 Having determined that a real controversy exists, the Court proceeds to examine the 12 undisputed facts and the legal questions presented by this claim. 13 i. Even Reading All the Undisputed Facts in DZYNE’s Favor, AFRL Did 14 Not Terminate the Prime Contract For Convenience Under the FAR 15 DZYNE argues that it is entitled to summary judgment because the AFRL explicitly or 16 constructively terminated the Prime Contract for the AFRL’s convenience pursuant to FAR 52.249- 17

2. MSJ at 27. Thus, DZYNE has the burden of establishing there is no genuine dispute of fact that 18 the AFRL terminated the Prime Contract for AFRL’s convenience. *Nissan Fire*, 210 F.3d at 1102. 19 The Court applies standard rules of contract interpretation to determine whether the AFRL 20 terminated the Prime Contract for the AFRL’s convenience. “A written contract must be

read as a whole and every part interpreted with reference to the whole, with reasonable preference given to reasonable interpretations.” *Klamath Water Users Protective Ass’n v. Patterson*, 204 F.3d 1206 (9th Cir. 1999, opinion amended on denial of reh’g, 203 F.3d 1175, 1210 (9th Cir. 2000); *Kennewick Irr. Dist. v. United States*, 880 F.2d 1018, 1032 (9th Cir. 1989). “Whenever possible, the plain language of the contract should be considered first.” *Id.* “Contract terms are to be given their ordinary meaning, and when the terms of a contract are clear, the intent of the parties must be ascertained from the contract itself.” *Id.* “A contract is ambiguous if reasonable people could find its terms susceptible to more than one interpretation.” *Kennewick*, 880 F.2d at 1032; *Castaneda v. Dura-Vent 2 Corp.*, 648 F.2d 612, 619 (9th Cir. 1981). It is undisputed that FAR 52.249-2(a) permits AFRL to terminate performance of work under the Prime Contract “if the Contracting Officer determines that a termination is in the Government’s interest.” *SUF* ¶ 12. This is referred to as a “termination for convenience,” and there is a considerable body of law that has grown up around this right of the government to terminate a contract for its convenience. See *VHC, Inc. v. Peters*, 179 F.3d, 1363, 1364-65 (Fed. Cir. 1999) (involving clear termination by the government); *Rumsfeld v. Applied Cos.*, 325 F.3d 1328, 1333 (9th Cir. 2003) (same). Not only does FAR 52.249-2(a) permit termination for convenience, it specifies how the Government may exercise this right. In fact, FAR 52.249-2(a) requires that to terminate for convenience, the Government must issue a Notice of Termination that contains certain proscribed information: “The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.” 48 C.F.R. § 52.249-2(a). Another section of the FAR sets forth additional requirements on the Notice of Termination when the Government seeks to exercise its right to terminate for convenience: FAR 49.102. According to FAR 49.102, [T]he contracting officer shall terminate contracts for convenience . . . only by a written notice to the contractor (see 49.601). . . . The notice shall state — . . .

(1) That the contract is being terminated for the convenience of the Government . . . under the contract clause authorizing the termination.

48 C.F.R. § 49.102

It is also undisputed that the LSA provided DZYNE with certain “Customer Termination Rights.” Dkt. No. 61-26 at 5-6. Among them was the following: “Customer may terminate this Agreement for the Government's convenience in accordance with FAR 52.249-2.” *Id.* Finally, it is undisputed that AFRL never transmitted to DZYNE any document described as a “Notice of Termination,” and that at no point did it provide notice “that the contract is being terminated for the convenience of the Government . . . under the contract clause authorizing the termination” pursuant to FAR 49.102. In fact, it is undisputed that DZYNE requested that AFRL provide such a notice, and AFRL did not do so. Dkt. No. 61-46. Accordingly, given these undisputed facts, the question before this Court is whether AFRL’s Directives permitted DZYNE to terminate the Prime Contract pursuant to Paragraph 12(F). The Court finds that they do not.

As a preliminary matter, the plain language of the Prime Contract is that any right DZYNE 5 had to terminate the contract for the Government’s convenience had to be “in accordance with FAR 6 52.249-2.” 7 Given that, this Court must determine whether the Government ever terminated the work 8 under the Prime Contract “in accordance with FAR 52.249-2.” It did not. Terminating for 9 convenience in accordance with FAR 52.249-2 required that the Government transmit a notice to 10 DZYNE explicitly stating that the Government was “terminating for convenience.” AFRL never 11 transmitted any such notice, even when asked. Dkt. No. 61-46. And this cannot be treated as a mere 12 oversight or a technical requirement that this Court can overlook. As stated above, there is a large 13 body of law regarding terminations for convenience, and the FAR is explicit about the requirements, 14 given the breadth of the right and the important implications that flow from a termination being 15 considered a termination for convenience as opposed to some other termination. *VHC, Inc.*, 179 F.3d 16 at 1364-65 (involving clear termination by the government); *Rumsfeld*, 325 F.3d at 1333 (same); 17 *Coll. Point Boat Corp v. United States*, 267 U.S. 12, 15 (1925) (determining there was no finding of 18 fact the contract was cancelled because the Navy failed to give the notice requisite to terminate the 19 contract). 20 AFRL never terminated the contract for convenience under the FAR and therefore DZYNE 21 never had the power to terminate the LSA under 12(F). 22 DZYNE argues in the alternative that AFRL “constructively terminated” the contract, which 23 then permitted DZYNE to invoke 12(F). MSJ at 29-30 (citing *Praecomm, Inc. v. United States*, 78 24 Fed. Cl. 5, 11 (2007)). DZYNE cites to the AFRL’s Contracting Officer’s June 5, 2023 AFRL 25 directive (Dkt. No. 61-11) and the October 16, 2023 AFRL directive (Dkt. No. 61-16) discussing the 26 cancellation of WeatherSAT. DZYNE claims that the directives constitute a termination for the 27 AFRL’s convenience under FAR 52.249-2. The June 5, 2023 AFRL directive to DZYNE stated that 28 AFRL “no longer wishes to pursue further research and development” under WeatherSAT and 1 instructed DZYNE to “cease any and all effort related to the WeatherSAT Project Launch, to include 2 any effort being performed by Subcontractors and/or vendors.” Dkt. No. 61-11; SUF ¶ 16. The

3 October 16, 2023 AFRL directive to DZYNE referred DZYNE to the June directive reiterating that

4 no WeatherSAT related activity will continue, and requested confirmation that WeatherSAT related 5 work, including subcontracted efforts, had ceased. Dkt. No. 61-16; SUF ¶ 25. DZYNE asserts that 6 because the AFRL directives instruct DZYNE to “cease all activity” on WeatherSAT and provide 7 AFRL with “confirmation that all work has stopped,” the directives constitute AFRL’s unequivocal 8 termination for AFRL’s convenience. MSJ at 28. 9 But, as Spaceflight points out, and as the case law makes clear, constructive termination is a 10 judge made doctrine which has developed to save the Government from the alternative – a finding of 11 breach. *Maxima Corp. v. United States*, 847 F.2d 1549, 1552-54 (9th Cir. 1988). There is no 12 authority for reading the phrase “in accordance with FAR 52.249-2” to mean “in accordance with 13 FAR 52.249-2 or under the judge-made doctrine of constructive termination for convenience.” Even 14

those cases which address constructive termination make clear that it is a means of retroactively
15 justifying what would otherwise be a government breach.⁴ This Court declines to read the
contract to 16 also incorporate this principle because to do so would introduce uncertainty into the
contract. There 17 is nothing which suggests that the parties intended to introduce this level of
uncertainty into the 18 contract, and as a practical matter, enforcement of this reading of the
contract would be extremely 19 difficult, if not impossible. Contracts are intended to provide clear
expectations to the parties, and 20 this one did. DZYNE's reading would do the opposite and there
is no reason to find that this was the 21 parties' intent. 22 Viewing the evidence in the light most
favorable to Spaceflight, the Court finds DZYNE has 23 failed to establish that AFRL terminated
performance for convenience "in accordance with FAR 24 52.249-2" and therefore has failed to
establish that it was permitted to terminate the LSA under 25 26 27 4 The Court also notes that in
Praecom, the Government directly invoked the termination for convenience clause. *Id.* Here, as
argued by Spaceflight, the AFRL directives did not invoke the termination for convenience clause
at all and the 28 1 paragraph 12(F). DZYNE is therefore not entitled to summary judgment on this
ground on its 2 declaratory judgment claim. 3 ii. The Amended LSA Does Not Provide DZYNE
an Unconditional Right to 4 Terminate the Amended LSA for DZYNE's Convenience 5 DZYNE
next argues that, even if the Court finds that the AFRL did not terminate the Prime 6 Contract for
AFRL's convenience, it is undisputed that the Amended LSA provides DZYNE an 7 unconditional
right to terminate the Amended LSA for DZYNE's convenience. 8 DZYNE bases its argument on
section 12(F) of the Amended LSA and Exhibit G of the LSA, 9 in which numerous FAR
provisions including FAR 52.249-2 are incorporated by reference. MSJ at 10 16; Dkt. Nos. 61-7 at
34, 61-26. DZYNE emphasizes that the FAR provisions are "flow-down 11 clauses," meaning that
the rights and responsibilities transfer from the contractor (AFRL) to the 12 subcontractor
(DZYNE). MSJ at 16. Exhibit G contains a substitution clause whereby the terms 13
'Government,' 'Contracting Officer,' and equivalent phrases shall mean DZYNE and DZYNE's
14 Subcontracts manager. *Id.*; SUF ¶ 9. DZYNE posits that because of the substitution clause, the
15 Amended LSA shall be read to include the following provision: "DZYNE may terminate 16
performance of work under this contract in whole or, from time to time, in part if DZYNE
determines 17 that a termination is in DZYNE's best interest." MSJ at 17 (emphasis added). Thus,
DZYNE submits 18 that there is no genuine dispute of fact that the Amended LSA provides
DZYNE a right to terminate 19 the Amended LSA for DZYNE's convenience. 20 Spaceflight,
however, contends that DZYNE's reading, and application of the flow-down 21 clause would
contradict the purpose of FAR 52.249-2 as it would "take a clause intended to 22 accommodate
the Government and convert it into a clause to accommodate" DZYNE. MSJ at 21. 23 Spaceflight
also points to DZYNE's request to the AFRL Contracting Officer to include 24 "Termination for
Convenience" language in an updated directive as an implicit admission by 25 DZYNE that the
substitution clause alone does not provide DZYNE with an unconditional right to 26 terminate for
its convenience. *Id.*; Dkt. No. 61-48. Spaceflight, thus, contends that there is nothing in 27 the

Amended LSA expressly authorizing DZYNE to terminate the Amended LSA for DZYNE's 28 convenience and the parties did not intend DZYNE to possess a right to terminate the Amended LSA 1 for DZYNE's convenience.⁵ Given this, Spaceflight argues that a reasonable interpretation of section 2 12(F) is that the right to terminate the Amended LSA is limited to the AFRL. MSJ at 21. 3 Here, the Court finds that given the plain language of section 12(F) and Exhibit G of the 4 Amended LSA, DZYNE does not have an unconditional right to terminate the Amended LSA for 5 DZYNE's convenience. 6 First, the preamble to Exhibit G stating "unless the context of the clause requires otherwise" 7 qualifies the substitution clause. Dkt. No. 61-7 at 34. The Court finds that, through the qualifying 8 language, the contract can be read harmoniously.⁶ The flow-down clauses, including the substitution 9 clause discussed by the parties regarding section 12(F) and Exhibit G are not innately in conflict as 10 their application is dependent on the "context of the clause." MSJ at 24-25; Dkt. No. 61-7 at 34. For 11 instance, a reasonable person could find that the context of section 12(F) does not warrant Exhibit G 12 taking effect. A reasonable interpretation of section 12(F) is that the right to terminate the Amended 13 LSA is limited to the AFRL and the context renders Exhibit G's substitution effect inapplicable. This 14 understanding aligns the Court's preference to give effect to the parties' shared intent when they 15 entered into the agreement. Cal. Civ. Code §§ 1636, 1652 ("Repugnancy in a contract must be 16 reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, 17 subordinate to the general intent and purpose of the whole contract."). Because the express terms of 18 the contract and the parties' conduct do not explicitly set forth the application of the flow-down 19 clauses pertaining to section 12(F) and Exhibit G, there is a genuine dispute of fact as to whether the 20 21 5 Spaceflight's opposition contains citations to Chierchella declaration, the SUF, and exhibits contained in the MSJ. DZYNE argues that the Chierchella declaration should not be considered because it is "inadmissible expert opinion on 22 legal conclusions and unfounded speculation" regarding DZYNE's state of mind. MSJ at 23-24; see *United States v. Tamman*, 782 F.3d 543, 552-53 (9th Cir. 2015) ("An expert cannot testify to a matter of law amounting to a legal 23 conclusion."). Spaceflight does not directly address this contention. Because the underlying facts regarding the timeline of events as to the Prime Contract and Amended LSA in Chierchella's declaration can be provided in admissible form at 24 trial, the Court determines that the factual contents contained in Chierchella's declaration are proper for summary judgment. *Fraser v. Goodale*, 342 F.3d 1032, 1036-37 (9th Cir. 2003) ("At the summary judgment stage, we do not 25 focus on the admissibility of the evidence's form. We instead focus on the admissibility of its contents."); *Block v. City of L.A.*, 253 F.3d 410, 418-19 (9th Cir. 2001) ("To survive summary judgment, a party does not necessarily have to 26 produce evidence in a form that would be admissible at trial, as long as the party satisfies the requirements of Federal Rule of Civil Procedure 56."); *Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 846 (9th Cir. 2004) (finding 27 "declarations that ... contain[ed] hearsay [were] admissible for summary judgment purposes because they could be presented in an admissible form at trial" (internal

quotation marks omitted)). 28 6 Spaceflight states that section 12(F) and Exhibit G are “most certainly” in conflict and cannot be read harmoniously. 1 Amended LSA permits DZYNE to ‘substitute’ itself for the AFRL and terminate the Amended LSA 2 for DZYNE’s convenience. 3 Second, DZYNE fails to provide binding on point authority as to the effect of flow-down 4 clauses. DZYNE relies on *Aspic Engineering and Construction Co. v. ECC Centcom Constructors LLC*, 913 F.3d 1162, 1168-69 (9th Cir. 2019) where FAR 52.249-2 is implicated, to argue that the 6 flow-down clauses “imposed the same termination for convenience procedures onto the parties to the 7 subcontract.” MSJ at 18. *Aspic* is distinguishable. There, the Government explicitly terminated the 8 prime contract “for convenience,” which allowed the contractor to subsequently terminate the 9 subcontracts. *Aspic*, 913 F.3d at 1164. Unlike *Aspic*, the AFRL directives do not explicitly state that 10 the AFRL terminated the Prime Contract for AFRL’s convenience or refer to FAR 52.249-2. See 11 Dkt. Nos. 61-11, 61-16. Thus, the Court does not find *Aspic* to be persuasive in this matter. 12 Third, DZYNE’s reading of Exhibit G would render 12(F)—and, indeed, all of 12— 13 superfluous. If DZYNE, pursuant to Exhibit G, could terminate the LSA at any time for its 14 convenience, why would the contract contain a clause permitting DZYNE to terminate the LSA for 15 the Government’s convenience? In fact, why would the contract contain any clauses outlining 16 DZYNE’s “Customer Termination Rights.” There is nothing in the record which supports the idea 17 that the parties’ intent in Exhibit G was to obliterate paragraph 12 altogether and the Court declines 18 to read it that way. 19 Accordingly, viewing the evidence in the light most favorably as to Spaceflight, the Court 20 finds that DZYNE has failed to establish that it had an unconditional right to terminate the Amended 21 LSA for DZYNE’s convenience. It is therefore not entitled to summary judgment in its favor on this 22 ground on its declaratory judgment claim. 23 B. DZYNE is Not Entitled to Summary Judgment In Its Favor On Its Breach of 24 Contract Claim as Spaceflight Did Not Materially Breach the Transfer 25 Agreement. 26 In its first cause of action DZYNE seeks the Court to determine that Spaceflight breached the 27 Amended LSA by failing to provide a termination settlement proposal within 30 days of DZYNE’s 28 termination of the Amended LSA for DZYNE’s convenience. Dkt. No. 1 at 13. In particular, 1 DZYNE seeks the following: “this Court declare the express terms of the LSA provided DZYNE the 2 unilateral right to terminate the LSA for its convenience; or, in the alternative, the express terms of 3 the LSA provided DZYNE the right to terminate the LSA based upon the express direction received 4 from AFRL following cancellation of the [WeatherSAT].” Dkt. No. 1 at 15. 5 The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff’s 6 performance of the contract; (3) defendant’s material breach of the contract; and (4) damages to 7 plaintiff resulting from the breach. *Abdelhamid v Fire Ins. Exchange*, 106 Cal. Rptr. 3d 26, 32 (Cal. 8 Ct. App. 2010). 9 i. There is a valid and enforceable contract 10 It is undisputed that the parties entered in a valid and enforceable contract: the LSA, and 11 subsequently the Amended LSA. *SUF* ¶ 4. It is further undisputed that the parties executed a transfer 12 agreement on May 23, 2023 wherein Firefly “acquired all of Spaceflight’s

outstanding equity,” and 13 the agreement provided that “in the event that [DZYNE] terminate[s] the [LSA] for any reason other 14 than as a result of the Transfer, and such termination occurs within forty-five days of the date of this 15 letter agreement, [Spaceflight] (a) shall provide a termination settlement proposal to [DZYNE] with 16 respect to such termination of the [LSA] no later than thirty days after notice of termination by 17 [DZYNE], notwithstanding any longer time provided for by the [LSA] or any regulations 18 incorporated therein.” SUF ¶¶ 14-15. The parties do not dispute that Spaceflight has not provided a 19 termination settlement proposal to DZYNE. SUF ¶ 24. Therefore, the Court finds the existence of a 20 valid and enforceable contract. 21 ii. Spaceflight did not breach the Amended LSA 22 DZYNE argues that following AFRL’s directive on June 5, 2023, the Prime Contract was 23 terminated for the AFRL’s convenience and thus, DZYNE had the right to terminate the Amended 24 LSA. MSJ at 5-6. Acting on this belief, DZYNE, on June 7, 2023, notified Spaceflight that it was 25 terminating the Amended LSA. See SUF ¶¶ 17, 59-60. Because DZYNE terminated the Amended 26 LSA within 45 days of the transfer agreement, DZYNE asserts that it met its contractual duties under 27 the transfer agreement and Spaceflight was obligated to “provide a termination settlement proposal” 28 within 30 days. MSJ at 9. As Spaceflight never produced a termination settlement proposal, DZYNE 1 contends that Spaceflight breached the transfer agreement and “DZYNE is entitled to an entry of a 2 damages award of \$6,874,898.” MSJ at 15. 3 In response, Spaceflight reiterates that because AFRL did not terminate the Prime Contract 4 for AFRL’s convenience and DZYNE had no unconditional right to terminate the Amended LSA, 5 Spaceflight was not required to provide a termination settlement proposal to DZYNE. MSJ at 34. 6 According to Spaceflight, a termination settlement proposal is implicated upon the proper 7 termination of the Amended LSA. MSJ at 34-35. As DZYNE had no right to terminate the Amended 8 LSA, Spaceflight claims that it did not breach the Amended LSA by failing to produce a termination 9 settlement proposal. Id. 10 It is undisputed that DZYNE terminated the Amended LSA on June 7, 2023, following the 11 AFRL’s June 5, 2023 directive. See SUF ¶¶ 17, 59-60. Thus, if the Court found that DZYNE was 12 entitled to terminate the Amended LSA, and because Spaceflight never submitted a termination 13 settlement proposal (SUF ¶ 24), then Spaceflight would have breached the Amended LSA. 14 Abdelhamid, 106 Cal. Rptr. 3d at 32. However, as discussed, the AFRL never provided DZYNE 15 with any document stating that the Prime Contract was terminated for AFRL’s convenience per FAR 16 52.249-2. In fact, the AFRL never sent DZYNE a “Notice of Termination” under FAR 49.102, even 17 after DZYNE requested one. Dkt. No. 61-46. Additionally, the plain language of the Amended LSA 18 does not entitle DZYNE to terminate the Amended LSA for DZYNE’s convenience. The parties’ 19 conduct does not support an intent to provide DZYNE with an unconditional right to terminate the 20 Amended LSA, and DZYNE has not provided any authority substantiating such a right through 21 Exhibit G and section 12(F). As the Court does not find that DZYNE was entitled to terminate the 22 Amended LSA, Spaceflight’s termination settlement proposal obligation under the transfer 23 agreement was not triggered. Therefore,

Spaceflight did not materially breach the Amended LSA by 24 failing to provide a termination settlement proposal to DZYNE. Abdelhamid, 106 Cal. Rptr. 3d at 32. 25 iii. The Court does not need to reach the issue of damages 26 Because the Court finds the DZYNE failed to establish that the AFRL terminated the Prime 27 Contract for its Convenience or DZYNE had an unconditional right to terminate for its convenience, 28 the Court finds there is a genuine dispute of fact as to whether Spaceflight breached the Amended 1 LSA. As such, the Court need not reach the issue of “damages resulting from [a] breach.” 2 Abdelhamid, 106 Cal. Rptr. 3d at 32. Further, as the Court concludes there was not termination for 3 convenience, the Court need not reach the issue of what costs are permitted under a termination for 4 convenience. 5 Accordingly, viewing the evidence in the light most favorably as to Spaceflight, the Court 6 finds that DZYNE has failed to establish that Spaceflight breached the Amended LSA. 7 C. DZYNE is Not Entitled to Summary Judgment In Its Favor On Its Unjust 8 Enrichment Claim as Spaceflight Did Not Improperly Retain Funds. 9 In its second cause of action DZYNE seeks the Court to conclude that Spaceflight has 10 unjustly enriched itself by retaining funds which DZYNE advanced to Spaceflight that “were not 11 spent on activities related to” the Amended LSA prior to DZYNE’s termination. Dkt. No. 1 at 14. 12 Under California law, “[t]he elements of a cause of action for unjust enrichment are simply 13 stated as receipt of a benefit and unjust retention of the benefit at the expense of another.” Tufeld 14 Corp. v. Beverly Hills Gateway, L.P., 302 Cal. Rptr. 3d 203, 216 (Cal. Ct. App. 2022). However, 15 California courts have held that there is no standalone unjust enrichment claim in California. See 16 Melchior v. New Line Prods, Inc., 131 Cal. Rptr. 2d 347, 357 (Cal. Ct. App. 2003) (“[T]here is no 17 cause of action in California for unjust enrichment.”). “As a matter of law, an unjust enrichment 18 claim does not lie where parties have an enforceable express contract.” Durell v. Sharp Healthcare, 19 108 Cal. Rptr. 3d 682, 699 (Cal. Ct. App. 2010)). 20 It is undisputed that DZYNE transferred \$7,839,898 to Spaceflight under the LSA for 21 WeatherSAT related work. SUF ¶¶ 6, 29. The parties further agree that Spaceflight incurred costs of 22 at least \$965,000. SUF ¶ 30-31. DZYNE claims there is no evidence of any other cost incurred by 23 Spaceflight and thus, DZYNE is owed \$6,874,898 in damages.7 MSJ at 34. Because Spaceflight 24 continues to retain \$6,874,898, DZYNE contends that Spaceflight has been unjustly enriched. Id. 25 26 27 28 7 DZYNE calculates its damages by taking the initial transfer amount (\$7,839,898), th en subtracting Spaceflight’s 1 Spaceflight, however, contends: (1) DZYNE is not entitled to damages because AFRL never 2 submitted a notice of termination for its convenience as required by FAR 52.249-2(e); and (2) even 3 if damages can be proven (i.e. AFRL terminated the Prime Contract for its convenience), Spaceflight 4 produced evidence amounting to \$2,335,682.36 in incurred costs (Dkt. No. 61-30). MSJ at 34-35. 5 DZYNE counters that Spaceflight’s accounting constituted a late disclosure as they were not 6 previewed to the accounting prior to their MSJ. MSJ at 37. As DZYNE improperly terminated the 7 Amended LSA, never delivered the AFRL satellite, and rebuffed Spaceflight’s offer to remanifest 8 under section 12(C) of the Amended LSA, Spaceflight argues that DZYNE breached the Amended 9 LSA, and it

has not unjustly retained \$6,874,898. MSJ at 38. 10 Given that the Court has found that DZYNE failed to establish entitlement to terminate the 11 Amended LSA, the Court determines that Spaceflight has not breached the Amended LSA and not 12 unjustly retained benefits at the expense of DZYNE. *Tufeld Corp.*, 302 Cal. Rptr. 3d at 216. In 13 addition, because the Court finds there is a valid and enforceable contract, an unjust enrichment 14 claim cannot stand. *Durell*, 108 Cal. Rptr. 3d at 699. 15 Accordingly, viewing the evidence most favorable to Spaceflight, DZYNE is not entitled to 16 summary judgment as to DZYNE's unjust enrichment claim.

17 SPACEFLIGHT'S MOTION FOR SUMMARY JUDGMENT

18 I. Discussion 19 Spaceflight seeks summary judgment, or in the alternative, partial summary judgment, in its 20 favor on the following counterclaims: (1) anticipatory breach; (2) breach of implied covenant of 21 good faith and fair dealing; (3) breach of contract; and (4) declaratory judgment. Dkt. No. 28 at 31- 22 34. For the reasons set forth below, the Court GRANTS in PART Spaceflight's motion for summary 23 judgment. 24 A. Spaceflight is Entitled to Summary Judgment In Its Favor On Its Declaratory 25 Judgment Claim as DZYNE Was Not Entitled to Terminate Based Upon the 26 AFRL's Directives Or Its Own Convenience. 27 In its fourth cause of action Spaceflight seeks declaratory judgment regarding the meaning of 28 the LSA. In particular, Spaceflight seeks the following: "this Court declare the Amended LSA does 1 not provide DZYNE the unilateral right to terminate the Amended LSA for DZYNE's convenience; 2 and, declare that the Amended LSA does not provide DZYNE the right to terminate the Amended 3 LSA under Section 12(F) for anything less than the Government's actual termination of DZYNE's 4 prime contract (in whole or in part)." Dkt. No. 28 at 34. 5 To obtain declaratory relief, there must be a "substantial controversy between parties having 6 adverse legal interests, of sufficient immediacy and reality to warrant the issuance of declaratory 7 judgement." *Rodin*, 558 F.3d at 1035; *Bayer*, 861 F.3d at 867. 8 To reiterate, Spaceflight disputes DZYNE's termination of the Amended LSA, arguing that: 9 (1) AFRL did not terminate the Prime Contract for AFRL's convenience pursuant to FAR 52.249-2, 10 and (2) the Amended LSA does not provide DZYNE with an unconditional right to terminate the 11 Amended LSA for DZYNE's convenience. MSJ at 19-21, 30. Spaceflight explains that the AFRL's 12 directives should not be regarded as a "termination for convenience" as they "do[]" not comply with 13 FAR Termination for Convenience requirements" under FAR 49.102. MSJ at 31. Spaceflight further 14 details that the "evidence proves that despite multiple urgings by DZYNE, AFRL adamantly avoided 15 terminating the Prime Contract for convenience." MSJ at 30. Additionally, Spaceflight discusses 16 how reading section 12(F) and Exhibit G as authorizing DZYNE to terminate the Amended LSA for 17 its convenience would contravene the plain language of the contract. MSJ at 19-20; *Klamath*, 203 18 F.3d at 1210. 19 As explained, DZYNE did not have right to terminate the Amended LSA for its convenience. 20 Although DZYNE asserts that the AFRL either explicitly or constructively terminated the Prime 21 Contract for the AFRL's convenience through the AFRL's directives, the Court, applying standard 22 rules for contract interpretation, finds no record of the

AFRL providing DZYNE with any Notice of 23 Termination or document complying with FAR 49.102 or invoking FAR 52.249-2. In fact, evidence 24 supports the AFRL failing to do so when requested by DZYNE. Dkt. No. 61-46. Also, DZYNE's 25 arguments that it had an unconditional right to terminate the Amended LSA through section 12(F) 26 and Exhibit G are unfounded. DZYNE's reading of section 12(F) and Exhibit G as providing 27 DZYNE the right to substitute itself for the Government is unsupported by precedent, fails to 28 consider the qualifying language contained in the preamble to Exhibit G, and would render the 1 Amended LSA superfluous. Therefore, the Court concludes that DZYNE did not have the right to 2 terminate the Amended LSA. 3 Accordingly, viewing the evidence most favorably as to DZYNE, the Court finds that 4 Spaceflight established that DZYNE did not have an unconditional right to terminate the Amended 5 LSA for DZYNE's convenience. It is therefore entitled to summary judgment in its favor on this 6 ground on its declaratory judgment claim. 7 B. Spaceflight is Entitled to Summary Judgment In Its Favor On Its Breach of 8 Contract and Anticipatory Breach Claims as DZYNE Wrongfully Terminated 9 the Amended LSA. 10 In its first and third cause of action Spaceflight seeks the Court to hold that DZYNE 11 anticipatorily breached and breached the Amended LSA. Dkt. No. 28 at 31, 33. 12 The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's 13 performance of the contract; (3) defendant's material breach of the contract; and (4) damages to 14 plaintiff resulting from the breach. Abdelhamid, 106 Cal. Rptr. 3d at 32. An "[a]nticipatory breach 15 occurs when one of the parties to a bilateral contract repudiates the contract. The repudiation may be 16 express or implied. An express repudiation is a clear, positive, unequivocal refusal to perform." 17 Taylor v. Johnston, 123 Cal. Rptr. 641, 646 (Cal. 1975). 18 Spaceflight alleges breach of contract claims against DZYNE. First, Spaceflight claims 19 DZYNE anticipatorily breached the Amended LSA by terminating the Amended LSA on June 7, 20 2023 without providing Spaceflight the opportunity to remanifest the spacecraft pursuant to section 21 12(C) of the Amended LSA. MSJ at 38; SUF ¶ 66. And second, Spaceflight asserts DZYNE 22 breached the Amended LSA because it is undisputed that DZYNE did not exercise its right to delay 23 under section 5 of the Amended LSA, did not deliver the satellite spacecraft, and denied 24 Spaceflight's attempts to remanifest under section 12. MSJ at 38-39; Dkt. No. 61-26 at 5; SUF ¶¶ 45 25 ("[T]he [] LSA provided a launch window of December 15, 2022 to April 30, 2023."), 49 ("DZYNE 26 does not dispute that it did not invoke the delay provision of the [] LSA."), 66. 27 DZYNE argues that it is entitled to terminate the Amended LSA under section 12(F) and 28 Exhibit G and thus, DZYNE was not required to provide Spaceflight an opportunity to remanifest or 1 deliver the satellite. MSJ at 16, 27. As such, whether DZYNE breached the Amended LSA is a 2 matter of contract interpretation regarding whether DZYNE had a right to terminate the Amended 3 LSA. 4 i. The Amended LSA is valid and enforceable 5 First, as held, the Amended LSA constitutes a valid and enforceable contract between 6 DZYNE and Spaceflight. Abdelhamid, 106 Cal. Rptr. 3d at 32. This is undisputed. SUF ¶ 4. 7 ii. Spaceflight was ready to perform its duties under the Amended

Second, Spaceflight states that it “was ready to perform under the Amended LSA, and time 9 for performance had not yet arrived” because the right to delay as well as the right to remanifest 10 were still available when DZYNE terminated the Amended LSA on June 7, 2023. MSJ at 38; SUF 11 ¶¶ 45, 49, 66; see Abdelhamid, 106 Cal. Rptr. 3d at 32. 12 iii. DZYNE materially breached the Amended LSA 13 Third, Spaceflight argues that DZYNE materially breached the Amended LSA by failing to 14 exercise its right to delay and then subsequently failing to deliver the satellite spacecraft, and by 15 rebuffing Spaceflight’s attempt to remanifest. MSJ at 38-39. 16 Here, the Court determines that the record demonstrates that the AFRL never terminated the 17 Prime Contract for its convenience and DZYNE is not entitled to terminate the Amended LSA for its 18 convenience. Thus, DZYNE improperly terminated the Amended LSA on June 7, 2023, and the 19 terms set forth in the Amended LSA bind the parties’ obligations. Because it is undisputed that 20 DZYNE did not deliver the satellite spacecraft by the end of the launch window, did not exercise its 21 right to delay under section 5, and rejected Spaceflight’s attempt to remanifest under section 12(C), 22 DZYNE failed to comply with its contractual duties under the Amended LSA. SUF ¶¶ 45, 49, 66. 23 Therefore, DZYNE materially breached the Amended LSA and Spaceflight is entitled to damages 24 under Section 9(I) and Section 13 of the Amended LSA. 25 26 27 28 1 iv. Spaceflight is entitled to damages 2 Fourth, due to DZYNE’s breach of the Amended LSA, Spaceflight asserts that it is “entitled 3 to the unpaid amount remaining under the Amended LSA in the amount of \$2,175,102, for which 4 Spaceflight invoiced DZYNE on November 10, 2023.” MSJ at 39. 5 It is undisputed that the price payable to Spaceflight under the Amended LSA was 6 \$10,015,000 and that DZYNE had paid Spaceflight \$7,839,898 during the project. SUF ¶¶ 42, 44. 7 As such, the remaining amount payable to Spaceflight is \$2,175,102. Because the Court concludes 8 that DZYNE materially breached the Amended LSA, the Court finds that sections 9(I) and 13 govern 9 the damages Spaceflight is entitled to. Under section 9(I), DZYNE is liable to Spaceflight for the full 10 price of the Amended LSA if DZYNE fails to deliver a spacecraft by the end of the launch window 11 without exercising its right to delay under section 5. Dkt. No. 61-26 at 5. Section 13 reinforces 12 section 9(I), stating that Spaceflight is entitled to “retain and/or be paid all payments made and 13 owed” in the event DZYNE materially defaults in its performance of the Amended LSA. Dkt. No. 14 61-26 at 7. Therefore, the plain language of the Amended LSA establishes that Spaceflight is entitled 15 to the remaining \$2,175,102 unpaid by DZYNE. 16 v. Spaceflight did not waive its breach of contract claim 17 “To establish waiver under generally applicable contract law, the party opposing enforcement 18 of a contractual agreement must prove by clear and convincing evidence that the waiving party knew 19 of the contractual right and intentionally relinquished or abandoned it.” Quach v. Cal. Commerce 20 Club, Inc., 323 Cal. Rptr. 3d 126, 143 (Cal. 2024). “The waiver inquiry is exclusively focused on the 21 waiving party’s words or conduct; neither the effect of that conduct on the party seeking to avoid 22 enforcement of the contractual right nor that party’s subjective evaluation of the waiving

party's intent is relevant." Id. DZYNE claims that "Spaceflight waived its claim that DZYNE breached the LSA" because "Spaceflight 'intentionally relinquished' its breach claim by executing the Transfer Agreement in 26 May 2023." MSJ at 40.

Under the transfer agreement, Firefly was to "acquire all of the outstanding equity of" Spaceflight. *SUF* ¶ 14; see *SUF* ¶ 53 ("The Transfer Agreement did not modify the permitted grounds for termination under the Amended LSA."). The transfer agreement also provides that Spaceflight "will remain a party to the Agreement and any and all obligations arising under the Agreement will remain an obligation of" Spaceflight. Dkt. No. 61-3 at 5. Nothing in the transfer agreement indicates that Spaceflight relinquished its rights or obligations under the Amended LSA. *Quach*, 323 Cal. Rptr. 3d at 143; Dkt. No. 61-3 at 5. In fact, it explicitly provides that Spaceflight will remain a party to the Amended LSA. Id. DZYNE has not pointed to any other evidence showcasing, by clear and convincing evidence, that Spaceflight knew it would or intended to relinquish its breach claim by entering into the transfer agreement. Thus, the Court does not find that DZYNE has set forth sufficient evidence to find that Spaceflight waived its breach claim. Accordingly, viewing the evidence most favorably as to DZYNE, the Court GRANTS summary judgment on Spaceflight's anticipatory breach and breach of contract claims. C. Spaceflight is Not Entitled to Summary Judgment In Its Favor On Its Breach of Implied Covenant of Good Faith and Fair Dealing as There is No Indication of Bad Faith. Under California law, "there is an implied covenant of good faith and fair dealing in every contract." *3500 Sepulveda, LLC v. Macy's W. Stores, Inc.* 980 F.3d 1317, 1324 (9th Cir. 2020) (citing *Foley v. Interactive Data Corp.*, 254 Cal. Rptr. 2d 211, 228 (Cal. 1988)). "A party can breach the covenant without 'breach of a specific provision of the contract.'" Id. (citing *Carma Dev. (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 6 Cal. Rptr. 2d 467, 484 (Cal. 1992)). The "question is whether the party's conduct, 'while not technically transgressing the express covenants . . . frustrates the other party's rights to the benefits of the contract.'" Id. (citing *Racine & Laramie, Ltd. v. Dep't of Parks & Rec.*, 14 Cal. Rptr. 2d 335, 339 (Cal. Ct. App. 1992)). Spaceflight argues that DZYNE acted in bad faith by willfully attempting to evade its contractual obligations when it attempted to terminate the Amended LSA. MSJ at 38-39. Spaceflight points to DZYNE's conduct before and after the June 5, 2023 AFRL directive as proof. MSJ at 38; Dkt No. 61-46. Spaceflight contends that DZYNE knew AFRL had not terminated the Prime Contract for its convenience yet purported to terminate the Amended LSA under section 12(F). MSJ I ¶ at 38; *3500 Sepulveda*, 980 F.3d at 1324. DZYNE reiterates that its attempt to terminate the LSA is based on a genuine belief that the WeatherSAT cancellation entitled DZYNE to terminate the contract under section 12(F). MSJ at 39. The Court finds that Spaceflight alleges but does not provide factual evidence as to DZYNE's purported intention to evade its obligations under the Amended LSA. Therefore, there is a genuine dispute of material fact as to whether DZYNE acted in bad faith. Accordingly, viewing the evidence most

favorably as to DZYNE, the Court DENIES 8 || summary judgment on Spaceflight's implied good faith and fair dealing claim.

9 CONCLUSION

10 For the reasons stated herein, the Court ORDERS as follows: 1] 1. DZYNE's Motion for Summary Judgment is DENIED: 12 2. Spaceflight's Motion for Summary Judgment is GRANTED in PART: 13 a. The Court GRANTS summary judgment on its declaratory relief claim; 14 b. The Court GRANTS summary judgment on its anticipatory breach claim; 15 c. The Court GRANTS summary judgment on its breach of contract claim; and 16 d. The Court DENIES summary judgment on its implied good faith and fair dealing 17 claim. 18 19 IT IS SO ORDERED. 20 Mf 21 Dated: November 18, 2025

22 MAAME EWUSI-MENSAH FRIMPONG

23 United States District Judge 24 25 26 27 28