

2026 Tex. Bus. 71



THE BUSINESS COURT OF TEXAS
EIGHTH DIVISION

EXETER DENTON LAND, L.P.,

§

Plaintiff/Counter-Defendant,

§

§

v.

§

§

Cause No. 25-BC08B-0019

ARIAT INTERNATIONAL, INC.,

§

§

Defendant/Counter-Plaintiff.

§

§

**MEMORANDUM OPINION AND ORDER ON EXETER DENTON LAND, L.P.’S
TRADITIONAL MOTION FOR SUMMARY JUDGMENT ON ARIAT
INTERNATIONAL, INC.’S COUNTERCLAIMS**

INTRODUCTION

¶ 1. Before the Court is Plaintiff Exeter Denton Land, L.P.’s (“Exeter”) Traditional Motion for Summary Judgment on Defendant Ariat International, Inc.’s (“Ariat”) Counterclaims, filed August 3, 2026. The Motion seeks summary judgment against all of Ariat’s counterclaims on three independent theories: an “as-is” clause, the economic loss rule, and a contractual limitation on damages. The underlying dispute centers on whether movement in a warehouse floor justified

Ariat's departure from the premises and, if so, which losses Ariat is permitted to recover under the Lease and Texas law.

¶ 2. Having considered the briefing, evidence, arguments of counsel on September 15, 2026, and applicable law, the Court concludes the Motion should be **GRANTED IN PART** and **DENIED IN PART** as described below. No counterclaim is dismissed in its entirety, but several components of Ariat's requested damages are excluded. The Court does not determine at this time whether Exeter breached the Lease or whether Ariat was entitled to stop paying rent.

BACKGROUND

A. Exeter leases commercial property to Ariat.

¶ 3. On May 20, 2023, Exeter and Ariat executed a lease (the "Lease") by which Exeter agreed to rent 609,127 square feet of a commercial property known as Westpark (the "Premises") to Ariat, a footwear and apparel business, to serve as a distribution center.¹ The initial term was 50 months.² The Lease provides that the Premises would be used as a "[g]eneral warehouse, storage and distribution" facility with appurtenant offices.³

¶ 4. The Lease recites that Ariat accepted the Premises "AS IS, without relying on any representation, covenant or warranty by [Exeter] other than as

¹ Def.'s Countercl. ¶ 18.

² *Id.*; Pl.'s Mot. Ex. A-1 (Lease) § 1(c) (Pl.'s App. 38).

³ Lease § 1(i) (Pl.'s App. 39).

expressly set forth in this Lease.”⁴ Elsewhere in the Lease, Exeter made express commitments to Ariat that: (1) Exeter would maintain the building footings and foundations in good condition and repair, at Exeter’s sole expense;⁵ (2) the Premises would, on the Commencement Date, comply with all applicable “Laws,” as defined in the Lease, relating to general warehouse, distribution, or storage use;⁶ and (3) Ariat would have quiet and peaceful possession of the Premises.⁷ The Lease assigns Ariat responsibility, at its sole expense, for the interior, nonstructural portions of the Premises, including floors, “[e]xcept as provided in subsection (a) above or elsewhere in this Lease.”⁸

¶ 5. On July 20, 2023, the parties executed an amendment to the Lease (the “First Amendment”) establishing a pricing schedule.⁹ In it, Ariat confirmed that, as of the Effective Date, Exeter had performed all of its obligations and that Ariat had no claims for offset against Exeter.¹⁰ The First Amendment confirmed that the remainder of the Lease stayed in full force and effect.¹¹

¶ 6. On November 6, 2023, the parties executed a Commencement Date Memorandum (the “Memorandum”) establishing a Commencement Date for the

⁴ *Id.* § 2(a) (Pl.’s App. 39–40) (cleaned up).

⁵ *Id.* § 9(a) (Pl.’s App. 48).

⁶ *Id.* § 10(f) (Pl.’s App. 50).

⁷ *Id.* § 17 (Pl.’s App. 53).

⁸ *Id.* § 9(b) (Pl.’s App. 49).

⁹ Def.’s Countercl. ¶ 23.

¹⁰ Pl.’s Mot. Ex. A-2 (First Amendment) § 3 (Pl.’s App. 95).

¹¹ Def.’s Countercl. ¶ 23; First Amendment § 5 (Pl.’s App. 95).

Lease of September 1, 2023 and an expiration date of October 31, 2027.¹² Ariat acknowledged in the Memorandum that it had no existing defenses or offsets against enforcement of the Lease, that it had accepted possession of the Premises, and that Exeter had “substantially completed” all required improvements.¹³ The Memorandum also recognized that tenant improvements remained ongoing. By its own terms, nothing in the Memorandum was intended to modify the Lease.¹⁴

B. Ariat reports defects in the flooring.

¶ 7. In early 2024, Ariat observed moisture accumulation on the floor of the Premises and movement in the concrete slabs. In March, a floor consultant retained by Ariat reported that the slab had “curled.”¹⁵ By May, Ariat employees had observed significant heaving and shifting in the slab.¹⁶ Ariat was concerned that an unlevel and unstable floor would impair its automated material-handling equipment and distribution operations.¹⁷

¶ 8. Ariat reported the condition to Exeter. According to Ariat, Exeter responded that the moisture and slab movement were a function of ambient temperature and humidity at the Premises.¹⁸

¹² Def.’s Countercl. ¶ 24; Pl.’s Mot. Ex. A-3 (Memorandum) § 2 (Pl.’s App. 100).

¹³ Memorandum §§ 5–7 (Pl.’s App. 100–01).

¹⁴ Def.’s Countercl. ¶ 24; Memorandum § 7 (Pl.’s App. 101).

¹⁵ Pl.’s Mot. Ex. B (Bramer Report) ¶ 18 (Pl.’s App. 119).

¹⁶ Def.’s Resp. ¶ 17.

¹⁷ Def.’s Countercl. ¶ 25.

¹⁸ *Id.* ¶ 26.

C. Expert investigation follows.

¶ 9. Ariat retained Reed Engineering to investigate the floor and soil beneath it.¹⁹ Through boring sampling and other testing, Reed reported that the remaining swell potential beneath the slab ranged from one to six-and-one-half inches, compared to a design criterion of one inch.²⁰ Those calculations described potential movement if a moisture source was introduced, not movement certain to occur. Exeter’s own consultant also reported swell potential exceeding the design criteria and recommended remediation.²¹

¶ 10. The parties’ experts disagree about what follows from those findings. Exeter’s expert opines that the interior floor slab is a “floating slab” bearing on near-surface soils and is not part of the building’s drilled-pier foundation, and he disputes the movement anticipated in the area Ariat intended to automate.²² Ariat’s experts insist that continued movement made the facility unsuitable for its intended use.²³

D. Ariat announces constructive eviction and vacates the Premises.

¶ 11. Ariat alleges that Exeter did not take its concerns seriously and never offered a workable solution.²⁴ In December 2024, Ariat signed a lease for a

¹⁹ *Id.* ¶ 27.

²⁰ *Id.*; Def.’s Resp. Ex. L (Reed Geotechnical Investigation) (Def.’s App. 335–37).

²¹ Def.’s Resp. Ex. S (Read Concrete Slab Evaluation) (Def.’s App. 686).

²² *Id.* (Def.’s App. 681, 689–90).

²³ *See* Reed Geotechnical Investigation (Def.’s App. 321).

²⁴ Def.’s Countercl. ¶¶ 26, 28.

replacement facility in Fort Worth, referred to in the damages materials as PR Crow or ACE.²⁵

¶ 12. On February 26, 2025, Ariat sent a Notice of Constructive Eviction, asserting an incurable default under the Lease.²⁶ Ariat announced it would vacate the Premises by June 30, 2025.²⁷

¶ 13. On April 7, Exeter responded by denying that the Premises were unsuitable for Ariat's use and that it would seek all available relief if Ariat vacated and stopped paying rent.²⁸ Ariat nevertheless vacated on June 30, 2025.²⁹

¶ 14. On July 7, Exeter sent a Notice of Tenant Default, advising that it would hold Ariat's security deposit against unpaid rent, operating expenses, and other sums due under the Lease.³⁰

¶ 15. On July 22, Ariat responded that it was not in default because the constructive eviction relieved it of those obligations, and demanded return of its \$256,340 security deposit.³¹ The deposit has not been returned.

²⁵ Bramer Report ¶ 25 (Pl.'s App. 123).

²⁶ Def.'s Countercl. ¶ 29; Pl.'s Mot. Ex. A-4 (Notice of Constructive Eviction) (Pl.'s App. 105-06).

²⁷ Def.'s Countercl. ¶ 30; Notice of Constructive Eviction (Pl.'s App. 106).

²⁸ Def.'s Countercl. ¶ 31.

²⁹ *Id.* ¶ 32.

³⁰ *Id.* ¶ 33.

³¹ *Id.* ¶ 34.

E. Exeter initiates litigation.

¶ 16. Exeter filed this case on July 11, 2025, alleging that Ariat breached the Lease by failing to pay monthly rent, operating expenses, and other sums. Ariat answered and asserted counterclaims for constructive eviction, breach of contract, breach of the implied warranty of suitability, and breach of the warranty of quiet enjoyment.

¶ 17. Ariat's damages expert, Erica Bramer, calculates a range of damages from \$53.29 million to \$61.37 million spread across five categories: (1) costs of improvements, upgrades, and installation; (2) costs to assess and investigate structural defects; (3) costs to remove, store, and transport assets; (4) incremental costs to fulfill customer orders; and (5) incremental costs of the replacement PR Crow (ACE) lease. Ariat separately seeks its security deposit.

¶ 18. Exeter moves for summary judgment on all four counterclaims. Its affirmative claims for unpaid rent and other amounts due under the Lease are not the subject of this Motion.

SUMMARY-JUDGMENT STANDARD

¶ 19. Summary judgment is governed by Texas Rule of Civil Procedure 166a. A movant "bears the burden to show that no genuine issue of material fact exists and

that it is entitled to judgment as a matter of law.”³² The nature of that burden varies by posture. A plaintiff must conclusively establish all essential elements of its claim.³³ A defendant must either conclusively negate at least one element of the plaintiff’s claim or prove all elements of an affirmative defense.³⁴

¶ 20. In evaluating whether a fact issue exists, a court takes as true all evidence favorable to the nonmovant, indulges every reasonable inference in the nonmovant’s favor, and resolves any doubts against the movant.³⁵ The court may not weigh the evidence or resolve credibility determinations at this stage; its role is limited to deciding whether a genuine fact issue exists for trial.³⁶

¶ 21. Questions of contract interpretation are especially well suited for summary judgment.³⁷ In construing a contract, the Court’s objective is to ascertain and give effect to the parties’ intent as expressed in the agreement itself.³⁸ To do so,

³² *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 865 (Tex. 2018).

³³ *See MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986).

³⁴ *Stanfield v. Neubaum*, 494 S.W.3d 90, 96 (Tex. 2016).

³⁵ *ConocoPhillips*, 547 S.W.3d at 865.

³⁶ *Huckabee v. Time Warner Ent. Co. L.P.*, 19 S.W.3d 413, 422–23 (Tex. 2000); *see also Ortega v. Pean*, No. 01-18-00249-CV, 2019 WL 1560859, at *10 (Tex. App.—Houston [1st Dist.] Apr. 11, 2019, pet. denied) (“[I]f a summary judgment motion involves the credibility of affiants, or the weight to be given to evidence, the motion should not be granted.” (internal quotation marks omitted)).

³⁷ *See Hallmark v. Port/Cooper-T. Smith Stevedoring Co.*, 907 S.W.2d 586, 590 (Tex. App.—Corpus Christi-Edinburg 1995, no writ); *Tellepsen Builders, L.P. v. Kendall/Heaton Assocs., Inc.*, 325 S.W.3d 692, 696 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

³⁸ *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011); *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003).

the Court considers the contract as a whole, harmonizing and giving effect to all provisions so that none are rendered meaningless.³⁹

¶ 22. This analysis begins—and, if possible, ends—with the contract’s plain language.⁴⁰ If the language is susceptible to a definite or certain legal interpretation, it is unambiguous and must be enforced as written.⁴¹ If, on the other hand, the contract is susceptible to more than one reasonable interpretation, it is ambiguous.⁴² Only in that circumstance may the court consider extraneous evidence “to determine the true meaning of the instrument.”⁴³

EXETER’S OBJECTIONS TO ARIAT’S SUMMARY-JUDGMENT EVIDENCE

¶ 23. The Court starts by addressing Exeter’s objections to Ariat’s summary-judgment evidence, which are directed to portions of the Declaration of Pankaj Gupta (Ariat’s Exhibit 1) and to Exhibits C, D, E, F, G, H, I, J, L, U, and Z. The objections are **SUSTAINED IN PART** and **OVERRULED IN PART**.

A. Personal knowledge and conclusory statements.

¶ 24. Exeter objects that portions of Gupta’s declaration lack personal knowledge and are factually and legally conclusory.

³⁹ *Italian Cowboy*, 341 S.W.3d at 333.

⁴⁰ *Id.* (citing *Progressive Cnty Mut. Ins. Co. v. Kelley*, 284 S.W.3d 805, 807 (Tex. 2009)).

⁴¹ *J.M. Davidson*, 128 S.W.3d at 229; *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

⁴² *Italian Cowboy*, 341 S.W.3d at 333 (citing *J.M. Davidson*, 128 S.W.3d at 229).

⁴³ *Id.* at 333–34 (quoting *David J. Sacks, P.C. v. Haden*, 266 S.W.3d 447, 450–51 (Tex. 2008)).

¶ 25. To constitute competent summary-judgment evidence, a declaration must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the declarant is competent to testify to the matters stated.⁴⁴ The declaration must also disclose the basis on which the declarant has personal knowledge.⁴⁵ Identifying where that knowledge comes from satisfies this requirement, rather than undercutting it.⁴⁶

¶ 26. Gupta states that he has personal knowledge of the facts recited in his declaration and that he serves as Ariat's Chief Financial Officer and Chief Operating Officer.⁴⁷ He also describes his participation in the lease negotiations and discussions with Exeter about the floor conditions and proposed repairs. Together, those statements sufficiently explain how he knows about Ariat's plans to expand its operations, the pre-Lease negotiations, the Lease terms, Ariat's work at the Premises, the alleged defect, the parties' communications, the engineering consultations, Ariat's departure, and Exeter's response.⁴⁸ Exeter's personal-knowledge objections to paragraphs 10, 11, 15, 16, 21, 22, 26, and 31 are therefore

OVERRULED.

⁴⁴ See *Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008) (applying rule to affidavits); TEX. R. EVID. 602; TEX. CIV. PRAC. & REM. CODE § 132.001(a) (stating that unsworn declaration may be used in lieu of affidavit).

⁴⁵ See *Kerlin*, 274 S.W.3d at 668.

⁴⁶ See *In re E.I. DuPont de Nemours & Co.*, 136 S.W.3d 218, 224 (Tex. 2004).

⁴⁷ Def.'s Resp. Ex. 1 (Gupta Decl.) ¶¶ 1–3 & p. 7 (Def.'s App. 37, 43).

⁴⁸ See *Cooper v. Circle Ten Council Boy Scouts of Am.*, 254 S.W.3d 689, 698 (Tex. App.—Dallas 2008, no pet.) (finding that affiant's statement that he was an executive and CEO, and therefore had knowledge of organization's operations, was sufficient to satisfy personal-knowledge requirement).

¶ 27. Gupta’s engineering assertions in paragraphs 25 and 30 are more problematic. While it is permissible for Gupta to describe his understanding of Reed’s report and what Exeter communicated about proposed repairs, his position and participation do not supply a foundation for an independent technical prediction that the floor was highly likely to continue shifting, or for the categorical assertion that none of the proposed solutions had ever been successfully applied to a facility of this size. The personal-knowledge objections are **SUSTAINED** to those assertions when offered as proof of those technical propositions.

¶ 28. Exeter’s objection to paragraph 33 is likewise **SUSTAINED**. It is not enough for a fact to be within a declarant’s “best knowledge.”⁴⁹ Such a statement does not positively and unqualifiedly represent the facts to be true and within the declarant’s personal knowledge.⁵⁰ Gupta cannot attest that, “[t]o the best of Ariat’s knowledge,” the building was still under repair as of August 2026, nor offer an opinion resting on that qualified statement. Everything in paragraph 33 following the first sentence is **STRICKEN**.

¶ 29. Exeter separately objects that the same challenged testimony is conclusory. A statement that announces a conclusion without supporting facts is not

⁴⁹ See *Price v. Am. Nat. Ins. Co.*, 113 S.W.3d 424, 429–30 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

⁵⁰ See *Humphreys v. Caldwell*, 888 S.W.2d 469, 470 (Tex. 1994).

competent summary-judgment evidence.⁵¹ Those objections to paragraphs 10, 11, 15, 16, 21, 22, 26, and 31 are **OVERRULED**. Those statements are tied to facts elsewhere in the declaration or to documents that the declaration identifies. Exeter's disagreement with the inferences that Ariat draws from those facts is not a basis to strike the testimony. The Court need not address the conclusory objections to testimony already excluded, including the excluded portion of paragraph 33.

B. Parol evidence.

¶ 30. Exeter next objects to Exhibits C, D, E, F, G, H, I, and Z insofar as Ariat uses them to interpret the Lease or establish an intent different from its terms. Those materials include negotiations, draft exchanges, and deposition testimony regarding the contemplated operations and building specifications.

¶ 31. Extrinsic evidence cannot be used to create an ambiguity or vary the terms of an unambiguous contract.⁵² It may, however, be used to explain the surrounding circumstances in which the parties chose their particular words.⁵³ The critical distinction is between explaining those words and attempting to change the

⁵¹ See *Schumacher v. Trois*, 705 S.W.3d 854, 870 (Tex. App.—San Antonio 2024, pet. denied) (“A conclusory statement is one that does not provide the underlying facts to support the conclusion.”); *Cooper*, 254 S.W.3d at 699 (explaining that statement in affidavit was supported by underlying facts in affidavit and was therefore not legally conclusory); *Rodriguez v. Citibank, N.A.*, No. 04-12-00777-CV, 2013 WL 4682194, at *3 (Tex. App.—San Antonio Aug. 30, 2013, no pet.) (explaining that statements that are logical conclusions based on facts within an affidavit and documents attached to the affidavit are not conclusory).

⁵² *David J. Sacks, P.C.*, 266 S.W.3d at 450.

⁵³ *Hou. Expl. Co. v. Wellington Underwriting Agencies, Ltd.*, 352 S.W.3d 462, 469 (Tex. 2011).

bargain.⁵⁴ Evidence of a party’s unexpressed intent, or a witness’s opinion about who bears a legal obligation, cannot substitute for the Lease’s plain language.⁵⁵

¶ 32. Exeter’s threshold argument is that Ariat never pleaded ambiguity. That is not dispositive. A court may conclude that a contract is ambiguous “even in the absence of such a pleading by either party.”⁵⁶

¶ 33. Regardless, the Court does not find the Use provision ambiguous on this record. It permits in straightforward terms “[g]eneral warehouse, storage and distribution with appurtenant offices.”⁵⁷ The provision is no less clear because it does not list the exact equipment Ariat might use in its warehouse. And permission to use the building for distribution does not amount to a promise that Ariat’s particular automation system will work there. The parties’ discussions about automation may help explain what Ariat planned to do at the Premises and what Exeter knew about those plans, but those discussions cannot supply a performance guarantee the parties did not include in the Lease or change the repair obligations they agreed to.

⁵⁴ See *First Bank v. Brumitt*, 519 S.W.3d 95, 110 (Tex. 2017) (“Extrinsic evidence cannot be used to show that the parties probably meant, or could have meant, something other than what their agreement stated.”).

⁵⁵ *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 765–69 (Tex. 2018); *David J. Sacks, P.C.*, 266 S.W.3d at 450–51.

⁵⁶ *Sage St. Assocs. v. Northdale Constr. Co.*, 863 S.W.2d 438, 445 (Tex. 1993).

⁵⁷ See Lease § 1(i) (Pl.’s App. 39).

¶ 34. The objections are therefore **SUSTAINED** insofar as the exhibits are offered to add to, contradict, or vary the Lease, and **OVERRULED** insofar as they concern otherwise relevant matters such as the operations communicated to Exeter, notice, or the parties' subsequent conduct.

C. Authentication and Hearsay.

¶ 35. Exeter's remaining objections concern the floor-flatness surveys in Exhibit J and the Reed Engineering reports in Exhibits L and U. Exeter contends those materials are hearsay and have not been sufficiently authenticated. Exhibit J consists of a June 5, 2024 internal Ariat email forwarding the surveys; Exhibit L includes a later email transmitting Reed's draft geotechnical report.

¶ 36. Authentication and hearsay are separate inquiries. A declaration identifying a document as a true copy may establish what the document is without establishing that its contents are admissible for the truth of the matter asserted. Likewise, the absence of a business-records declaration does not rule out authentication by other means. A proper business-records foundation can establish both self-authentication and an exception to the hearsay rule.⁵⁸

⁵⁸ TEX. R. EVID. 803(6) (business-records exception), 902(10) (self-authenticated evidence); *Savoy v. Nat'l Collegiate Student Loan Tr.* 2005-3, 557 S.W.3d 825, 831-32 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (providing that documents created by third party can constitute business records of another business); *Kyle v. Countrywide Home Loans, Inc.*, 232 S.W.3d 355, 360-61 (Tex. App.—Dallas 2007, pet. denied) (explaining that only substantial compliance with Rule 902(10) is required).

¶ 37. Paragraph 5.A of the Gupta Declaration supplies the business-records predicate for Exhibits G, K, L, and M, reciting that those exhibits were prepared by or on behalf of Ariat and kept in the ordinary course of its business, that it was Ariat's regular practice to make or receive such records, that the records were made at or near the time of the events recorded, and that the exhibits are originals or exact duplicates.⁵⁹ Gupta also describes Ariat's retention of Reed and its use of the investigation in addressing the warehouse conditions. Taken together, those statements support admission of Exhibit L as a record received and relied upon in Ariat's business. The objection to Exhibit L is **OVERRULED**

¶ 38. Exhibit J is more complicated. Although Gupta's identification of the exhibit and the transmitting email sufficiently authenticate it, the surveys are not among the records identified in paragraph 5.A, and Ariat supplies no other hearsay exception for their use as proof of floor flatness and levelness. Ariat, however, cites Exhibit J for a single proposition—that Reed commenced floor flatness and levelness testing in 2024. That use does not depend on the truth of the measurements the surveys report, and the objection is **OVERRULED** as to it. To the extent the surveys are offered as proof of the flatness and levelness values they record, the hearsay objection is **SUSTAINED**.⁶⁰

⁵⁹ Gupta Decl. ¶ 5.A (Def.'s App. 38).

⁶⁰ The measurements reported in the surveys appear elsewhere in the record through the parties' engineering reports and deposition testimony.

¶ 39. Ariat has represented that Exhibit U was included inadvertently and is not being offered at this time.⁶¹ Exhibit U is therefore **STRICKEN** by agreement.

ANALYSIS

¶ 40. Turning to the merits, Exeter argues that the Lease’s “as-is” provision and the economic-loss rule defeat all four of Ariat’s counterclaims. It also contends that the Lease bars recovery of the damages Ariat seeks. The Court begins with the principles governing commercial leases in Texas, then addresses each of Exeter’s grounds for summary judgment.

A. Texas commercial landlord-tenant law.

¶ 41. Several principles of Texas commercial landlord-tenant law guide the Court’s analysis, particularly the protections implied by law and the parties’ ability to modify those protections by agreement.

¶ 42. First, absent express language to the contrary, every lease of land includes an implied covenant of quiet and peaceful enjoyment.⁶² Breach of this covenant can support a claim for constructive eviction. The elements of constructive eviction—which are also the elements of a claim for breach of the warranty of quiet enjoyment—are:

- (1) the landlord’s intention that the tenant shall no longer enjoy the premises;
- (2) a material act by the landlord that substantially interferes

⁶¹ Def.’s Resp. 14 & n.1.

⁶² *L-M-S Inc. v. Blackwell*, 233 S.W.2d 286, 289 (Tex. 1950).

with the tenant’s intended use and enjoyment of the premises; (3) an act that permanently deprives the tenant of the use and enjoyment of the premises; and (4) abandonment of the premises by the tenant within a reasonable time after the commission of the act.⁶³

¶ 43. A tenant who as been constructively evicted is relieved of its obligation to pay rent and may recover losses that are a foreseeable consequence of the eviction, subject to any enforceable limits in the lease.⁶⁴ The implied covenant of quiet enjoyment may be waived or disclaimed by the tenant, but the lease must expressly provide for that result.⁶⁵ The parties may also include an *express* covenant of quiet enjoyment, in which event the Court must give effect to the terms they chose.⁶⁶

¶ 44. Second, Texas law implies in commercial leases a warranty that the premises are suitable for their intended purposes.⁶⁷ To establish a breach of the implied warranty of suitability, a tenant must prove that “a latent defect in the facilities existed at the inception of the lease, that the facilities were vital to the use of the premises for the intended purposes, and that the lessor failed to repair the defect.”⁶⁸ If, however, a tenant expressly agrees to repair certain defects itself, the

⁶³ *Bagby 3015, LLC v. Bagby House, LLC*, 674 S.W.3d 609, 620 (Tex. App.—Houston [1st Dist.] 2023, no pet.).

⁶⁴ *Lazell v. Stone*, 123 S.W.3d 6, 12 (Tex. App.—Houston [1st Dist.] 2003, pet. denied).

⁶⁵ *See L-M-S*, 233 S.W.2d at 289 (implied covenant of quiet enjoyment exists unless there is express language to the contrary in the lease); *Dall. Power & Light Co. v. Cleghorn*, 623 S.W.2d 310, 311 (Tex. 1981) (“There is no implied covenant when the agreement expressly negates the covenant.”).

⁶⁶ *Goldman v. Alkek*, 850 S.W.2d 568, 572 (Tex. App.—Corpus Christi-Edinburg 1993, no writ).

⁶⁷ *Italian Cowboy*, 341 S.W.3d at 340.

⁶⁸ *Id.*

lease controls as to those defects.⁶⁹ Whether the warranty has been breached is ordinarily a question of fact.⁷⁰

¶ 45. Finally, the implied warranty of suitability may be waived in a commercial lease.⁷¹ Two provisions can accomplish that, though they work differently. An express disclaimer waives the warranty itself.⁷² An as-is clause, on the other hand, operates on causation instead; a tenant who accepts the premises as-is agrees to rely on its own appraisal of their condition, so the landlord's conduct cannot be shown to have caused the tenant's injury.⁷³ The effect of either provision depends on its language and scope.⁷⁴ An as-is clause limited to physical conditions, for example, does not reach a defect of a different character.⁷⁵ And where the landlord expressly retains responsibility for repairing a component of the property, the as-is clause must be read together with that undertaking to determine whether the warranty remains available for defects in that component.⁷⁶

⁶⁹ *Id.*

⁷⁰ *Id.* at 341.

⁷¹ *Gym-N-I Playgrounds, Inc. v. Snider*, 220 S.W.3d 905, 912 (Tex. 2007); *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 482 (Tex. 2019).

⁷² *Gym-N-I Playgrounds*, 220 S.W.3d at 912–14.

⁷³ *Id.* at 914; *see also Prudential Ins. Co. of Am. v. Jefferson Assocs., Ltd.*, 896 S.W.2d 156, 161 (Tex. 1995) (“He has agreed to take the full risk of determining the value of the purchase. . . . In making this choice, he removes the possibility that the seller's conduct will cause him damage.”).

⁷⁴ *See Marinecorp Int'l, Ltd. v. Chopper Grp., LLC*, No. 01-14-00707-CV, 2016 WL 1382168, at *5–7 (Tex. App.—Houston [1st Dist.] Apr. 7, 2016, pet. denied).

⁷⁵ *See Gym-N-I Playgrounds*, 220 S.W.3d at 911 n.9.

⁷⁶ *Marinecorp Int'l*, 2016 WL 1382168, at *6.

B. The as-is provision does not bar Ariat's counterclaims.

¶ 46. Section 2(a) of the Lease contains the as-is provision at issue: “Tenant accepts the Premises, Building and Common Areas ‘AS IS’, without relying on any representation, covenant or warranty by Landlord *other than as expressly set forth in this Lease.*”⁷⁷

¶ 47. The closing phrase controls the analysis. By its own terms, the clause preserves every representation, covenant, and warranty that Exeter made elsewhere in the Lease. Several bear directly on Ariat's use of the Premises: Exeter's promise to maintain the footings and foundation in good condition and repair; Exeter's covenant that the Premises would comply with applicable “Laws” on the Commencement Date; and Exeter's covenant of quiet and peaceful possession. Read in the context of those provisions, the as-is clause cannot categorically bar Ariat's contract counterclaim. To hold otherwise would be to read the exception out of the sentence and render Exeter's express obligations meaningless.

¶ 48. The same reasoning applies to Ariat's quiet-enjoyment and constructive-eviction theories. Although a covenant of quiet enjoyment is ordinarily implied in a commercial lease, this Lease includes an express covenant in Section

⁷⁷ Lease § 2(a) (Pl.'s App. 39–40) (emphasis added).

17.⁷⁸ That covenant is precisely what Section 2(a) preserves. And because a breach of the covenant may also support constructive eviction, the as-is provision does not defeat that theory either.

¶ 49. The implied-warranty-of-suitability claim requires a more nuanced analysis. By definition, an implied warranty is not an *express* promise preserved by Section 2(a)'s exception. The question, then, is whether the as-is language, read together with the Lease's allocation of responsibilities, disclaims that warranty as to the conditions or defects at issue.

¶ 50. Exeter relies on *Gym-N-I* for the proposition that Ariat's agreement to accept the Premises as-is waived the implied warranty of suitability. But *Gym-N-I* did not hold that an as-is provision, standing alone, accomplishes that result. The lease there expressly disclaimed warranties of commercial suitability and excluded all implied warranties.⁷⁹ In enforcing that language, the Supreme Court reserved the question presented by a clause—like the one here—without an express disclaimer: “whether an ‘as is’ clause lacking express disclaimer language would effectively waive the implied warranty of suitability.”⁸⁰ Exeter's reliance on *Gym-N-I* therefore does not resolve the effect of Section 2(a).

⁷⁸ Lease § 17 (Pl.'s App. 53).

⁷⁹ *Gym-N-I Playgrounds*, 220 S.W.3d at 907 n.1.

⁸⁰ *Id.* at 910 n.7.

¶ 51. More instructive is the *Gym-N-I* Court’s treatment of two earlier decisions involving leases more analogous to this one: *Parts Industries Corp. v. A.V.A. Services, Inc.*⁸¹ and *Gober v. Wright*.⁸² The Court identified two relevant features that distinguished those cases from *Gym-N-I*: neither lease contained an express disclaimer of the implied warranty of suitability, and both assigned the landlord responsibility for repairing the defect at issue. In each case, that defect concerned a roof the landlord had agreed to maintain.⁸³ Both courts held that the implied warranty remained applicable to the roof because the landlord had retained responsibility for its repair.⁸⁴ And in *Parts Industries*, the court specifically held that the tenant’s acceptance of the premises as-is did not change that result.⁸⁵

¶ 52. This Lease more closely resembles those in *Parts Industries* and *Gober*. Section 2(a) does not include a blanket exclusion of implied warranties and expressly preserves the covenants stated elsewhere in the Lease. Section 9(a), in turn, assigns Exeter continuing responsibility to maintain the building’s footings and foundations in good condition and repair. The issue is thus not whether the words “as is” can ever waive the implied warranty of suitability, but whether they

⁸¹ *Parts Indus. Corp. v. A.V.A. Servs., Inc.*, 104 S.W.3d 671, 680 (Tex. App.—Corpus Christi 2003, no pet.).

⁸² *Gober v. Wright*, 838 S.W.2d 794, 798 (Tex. App.—Houston [1st Dist.] 1992, writ denied), *abrogated on other grounds by State Farm Fire & Cas. Co. v. Morua*, 979 S.W.2d 616 (Tex. 1998).

⁸³ *Gym-N-I Playgrounds*, 220 S.W.3d at 911 (discussing *Parts Indus.* and *Gober*).

⁸⁴ *Parts Indus.*, 104 S.W.3d at 680–81; *Gober*, 838 S.W.2d at 798.

⁸⁵ *Parts Indus.*, 104 S.W.3d at 680–81.

do so here as to a condition within Exeter’s retained responsibilities. Read together, Sections 2(a) and 9(a) do not establish such a waiver. Exeter has not shown that Ariat agreed to bear the risk of those defects in light of Exeter’s express undertaking to maintain those components.⁸⁶

¶ 53. Whether the conditions that Ariat identifies actually fall within Exeter’s repair obligations remains a separate question. Section 9(b) assigns Ariat the interior, nonstructural portions of the Premises, expressly including floors, except as provided in Section 9(a) or elsewhere in the Lease. Exeter’s expert describes the interior slab as a floating slab bearing on near-surface soils, separate from the drilled-pier foundation, while the alleged deficiency lies in the ground-modification zone beneath it. Which party bore responsibility for that zone, and for the slab it supports, is a disputed question this record does not settle. The Court rules only that the as-is clause does not resolve it.

¶ 54. Nor do the First Amendment and the Memorandum establish an independent basis for judgment on all four counterclaims. Each speaks as of its own effective date—July 20, 2023 and November 6, 2023—and addresses Ariat’s then-existing claims, defenses, or offsets. Neither purport to release Exeter from later failures to perform continuing obligations, and the conditions at issue were first

⁸⁶ See *Marinecorp Int’l*, 2016 WL 1382168, at *5–7 (examining the scope of the acceptance provisions and the obligations retained by the landlords).

reported months afterward. Exeter therefore has not established that these date-specific statements released all claims based on future (non)performance.

¶ 55. Accordingly, the Court **DENIES** summary judgment on this ground.

C. Ariat’s claims are not barred by the economic-loss rule.

¶ 56. Exeter separately argues that Ariat’s claims for constructive eviction, breach of the warranty of quiet enjoyment, and breach of the implied warranty of suitability arise solely from the Lease and are therefore barred by the economic-loss rule. The Court disagrees.

¶ 57. The economic-loss rule governs the boundary between contract and tort liability. As a general rule, when an alleged duty arises solely from the parties’ agreement and the injury consists of the lost contractual benefit, the remedy is said to lie in contract.⁸⁷ This rule, however, does not automatically bar all tort claims whenever the parties have a contractual relationship.⁸⁸ The relevant inquiry is whether “the duty allegedly breached is independent of the contractual undertaking and the harm suffered is not merely the economic loss of a contractual benefit.”⁸⁹

¶ 58. The suitability counterclaim demonstrates why Exeter’s argument reaches too far. Texas law implies the warranty into every commercial lease, binding

⁸⁷ See *Sw. Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991); *Bell v. Bay Area RV Parks, L.L.C.*, 722 S.W.3d 176, 213 (Tex. App.—Houston [1st Dist.] 2025, no pet.).

⁸⁸ *Chapman Custom Homes, Inc. v. Dall. Plumbing Co.*, 445 S.W.3d 716, 718 (Tex. 2014).

⁸⁹ *Id.*

even landlords who made no express promise about condition at all.⁹⁰ Consistent with this, the Texas Supreme Court has said that the warranty “exists separately and apart from any obligation the landlord may have under the lease.”⁹¹ The appellate court in *Marinecorp* applied the same understanding when it rejected the argument that a tenant’s warranty claims were merely contract claims in disguise, though it did so in addressing liability under the Deceptive Trade Practices Act.⁹² These decisions confirm that a suitability claim is not subject to dismissal merely because the tenant also seeks to enforce an express covenant addressing the same condition.

¶ 59. Constructive eviction likewise survives. Texas courts of appeals have long allowed tenants to recover when a landlord’s substantial interference with their use of the premises forces them to leave.⁹³ And while the Texas Supreme Court itself has reserved the broader questions of whether to recognize constructive eviction as an affirmative claim and how that claim relates to wrongful eviction and breach of quiet enjoyment,⁹⁴ the Court need not resolve those questions here. Exeter’s

⁹⁰ *Davidow v. Inwood N. Pro. Grp.—Phase I*, 747 S.W.2d 373, 377 (Tex. 1988).

⁹¹ *Rohrmoos Venture*, 578 S.W.3d at 482.

⁹² *See Marinecorp Int’l*, 2016 WL 1382168, at *7.

⁹³ *See, e.g., Lazell*, 123 S.W.3d at 11–13 (affirming tenant’s damage award for claims for constructive eviction, breach of lease, breach of express warranty, and breach of the implied warranty of suitability); *Downtown Realty, Inc. v. 509 Tremont Bldg., Inc.*, 748 S.W.2d 309, 312–13 (Tex. App.—Houston [14th Dist.] 1988, no writ) (affirming trial court’s verdict in favor of tenant for breach-of-contract and constructive-evictions claims).

⁹⁴ *Westwood Motorcars, LLC v. Virtuolotry, LLC*, 689 S.W.3d 879, 882 n.1 (Tex. 2024) (“Our Court has not expressly recognized constructive eviction as an affirmative claim for relief, nor have we addressed this claim’s relationship, if any, with claims for wrongful eviction or breach of the covenant of quiet enjoyment. . . . Because it is not necessary to do so, we express no opinion on these issues today.”).

asserted ground—that the claims arise from a lease and seek economic losses—does not preclude recovery as a matter of law. Every constructive-eviction claim arises from a lease; if that alone sufficed, the claim could never survive.

¶ 60. Exeter comes closer on quiet enjoyment. Ariat pleads that counterclaim under Section 17, an express covenant, so its claim sounds in contract. But that characterization limits the remedy; it does not defeat the claim. It does mean, however, that this counterclaim will not support tort remedies, including exemplary damages. And because the elements of that claim and constructive eviction overlap, Ariat may not recover twice for the same injury.⁹⁵

¶ 61. Exeter’s request for summary judgment dismissing the counterclaims under the economic-loss rule is **DENIED**, subject to the qualifications just stated.

D. Section 24 bars some of Ariat’s claimed losses, but not its entire damages model.

1. Section 24 excludes specified losses regardless of the theory of recovery.

¶ 62. Exeter’s final argument concerns the damages Ariat seeks. Exeter contends that the Lease’s limitation-of-liability clause bars “the entirety of Ariat’s damage model.” Section 24 states: “In no event shall Landlord be liable to Tenant

⁹⁵ *Lazell*, 123 S.W.3d at 12 n.1 (holding that the elements of breach of the warranty of quiet enjoyment are the same as constructive eviction).

for any loss of business or profits of Tenant or for consequential, punitive or special damages of any kind.”

¶ 63. Limitation-of-liability clauses are generally enforceable in Texas, consistent with the state’s policy favoring freedom of contract.⁹⁶ Ariat does not challenge Section 24 as illegal or contrary to public policy. It argues only that the clause does not reach its losses. The dispute is therefore over the clause’s scope. By its terms, Section 24 excludes specified kinds of losses without regard to the claim under which they are sought.

¶ 64. Section 24 operates in two ways. First, it excludes all damages for loss of business or loss of profits, whether characterized as direct or consequential. Second, it excludes all forms of consequential, punitive, and special damages. At the same time, Section 24 stops short of excluding all damages. Exeter emphasizes the ending phrase “of any kind,” but that language merely modifies the listed categories that precede it; it does not confer blanket immunity from damages.⁹⁷ Indeed, Section 24 itself provides for reimbursement of qualifying repair expenses, confirming that

⁹⁶ *Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213, 230 (Tex. 2019); *SAVA gumarska in kemijska industrija d.d. v. Advanced Polymer Scis., Inc.*, 128 S.W.3d 304, 317 (Tex. App.—Dallas 2004, no pet.) (“In general, parties to a contract are free to limit or modify the remedies available for breach of their agreement.”).

⁹⁷ Even if the Court found the phrase created ambiguity (it does not), the doctrine of ejusdem generis would still be limiting. *See City of Beaumont v. Int’l Ass’n of Firefighters, Loc. Union No. 399*, 241 S.W.3d 208, 213 (Tex. App.—Beaumont 2007, no pet.) (“[W]hen words of a general nature are used in connection with the designation of particular objects or classes of persons or things, the meaning of the general words will be restricted to the particular designation.”).

direct damages remain available as long as they fall outside the enumerated exclusions.

¶ 65. The distinction between direct and consequential damages is well documented. Direct (general) damages “are the necessary and usual result of the defendant’s wrongful act; they flow naturally and necessarily from the wrong.”⁹⁸ In this way, they compensate a plaintiff for a “loss that is conclusively presumed to have been foreseen by the defendant from his wrongful act.”⁹⁹ Consequential (special) damages, by comparison, are a natural and foreseeable result of a party’s wrongful act but do not *necessarily* flow from it.¹⁰⁰ They instead arise from the injured party’s particular circumstances.¹⁰¹ Thus, a loss does not become direct simply because it was foreseeable, was actually incurred, or would not have occurred but for the breach.¹⁰² To classify Ariat’s losses, the Court must consider what each item represents and how it relates to the parties’ bargain.

¶ 66. Ariat argues at the outset that this inquiry should await trial and is not appropriate for summary-judgment. The Court disagrees. The meaning of an

⁹⁸ *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 816 (Tex. 1997).

⁹⁹ *Id.*

¹⁰⁰ *Id.*; *DaimlerChrysler Motors Co., LLC v. Manuel*, 362 S.W.3d 160, 180 (Tex. App.—Fort Worth 2012, no pet.).

¹⁰¹ *Arthur Andersen*, 945 S.W.2d at 816.

¹⁰² *See id.* (explaining that foreseeability is a requirement for recovery of both direct and consequential damages); *J & D Towing, LLC v. Am. Alt. Ins. Corp.*, 478 S.W.3d 649, 655 (Tex. 2016) (explaining that consequential damages also compensate for losses incurred and that the appropriate test for recovery of direct damages is whether the loss is the necessary and usual result of the breach).

unambiguous damages limitation is a question of law, and courts regularly decide on summary judgment whether such a provision excludes a particular category of loss.¹⁰³ This is not an unusual exercise.

¶ 67. Ariat also argues that evidence of some recoverable loss is enough to defeat the Motion. This is a non sequitur. While it is true that evidence of some damages is ordinarily sufficient to overcome a no-evidence challenge, Exeter's second ground is not an evidentiary challenge. Exeter does not contend that Ariat lacks proof of what it spent. It contends that the Lease bars recovery of these losses whatever the proof shows.

¶ 68. Ariat's expert, Erica Bramer, groups the claimed losses into five categories: (1) costs of improvements, upgrades, and installation; (2) costs to assess and investigate structural defects; (3) costs to remove, store, and transport assets; (4) incremental costs to fulfill customer orders; and (5) incremental costs of PR Crow (ACE) lease.¹⁰⁴ The Court addresses each category below.

2. *Exeter has not established that all improvements and installation costs are excluded.*

¹⁰³ See, e.g., *Cont'l Holdings, Ltd. v. Leahy*, 132 S.W.3d 471, 475–77 (Tex. App.—Eastland 2003, no pet.) (affirming summary judgment on limitation-of-liability clause barring direct and indirect lost profits); *Fox Elec. Co. v. Tone Guard Sec., Inc.*, 861 S.W.2d 79, 80–83 (Tex. App.—Fort Worth 1993, no writ) (affirming summary judgment on limitation-of-liability clause limiting consequential and incidental damages); *Ganda, Inc. v. All Plastics Molding, Inc.*, 521 S.W.2d 940, 942–43 (Tex. App.—Waco 1975, writ ref'd n.r.e.) (affirming summary judgment on limitation-of-liability clause barring special or consequential damages).

¹⁰⁴ Bramer Report (Pl.'s App. 150).

¶ 69. Ariat seeks \$9,881,107 in costs incurred to improve and upgrade the Premises for use as an automated distribution center.¹⁰⁵ This category includes roughly \$5,467,653 in contributions toward tenant improvements, installation and field-wiring costs, \$176,500 in floor-remediation charges, and other electrical and information-technology amounts. Ariat contends the alleged defects forced it to vacate the Premises before it could realize the benefit of these expenditures.

¶ 70. Although grouped together, these items do not all present the same question, and Exeter has not conclusively established that the category as a whole is excluded. Money spent on improvements contemplated by the Lease may support a claim for direct damages tied to the value of the leasehold Exeter promised to provide. Section 2(d), on which Exeter relies, does not preclude that possibility. It merely limits what Exeter agreed to contribute toward the improvements, not what it may owe for a later breach of the Lease. Those are not one and the same.

¶ 71. Whether Ariat can recover any particular expense remains to be determined. Investments specific to its automation system, for example, may prove to be consequential, while recovery of its floor-remediation costs depends on who was responsible under the Lease for the condition being repaired. Any recovery must also account for benefits Ariat received, property it retained, and any overlap with

¹⁰⁵ *Id.* (Pl.'s App. 126).

other claimed damages. This ruling does not approve any particular measure or amount.

¶ 72. Because Exeter has not conclusively established that Section 24 excludes this category, summary judgment on that basis is **DENIED**.

3. *Assessment and investigation costs are not barred, but staff-retention charges are excluded.*

¶ 73. Next, Ariat seeks \$669,479 for what it describes as costs to assess and investigate the alleged structural defects. Characterized in that manner, the category presents a straightforward question. The schedule supporting the category, however, also includes substantial charges that vary from its caption.

¶ 74. Seven line items, totaling \$105,619, reflect what the caption describes: floor flatness surveys, geotechnical investigation, construction material testing, a foundation inspection, and structural engineering. The other six line items are Hy-Tek invoices totaling \$563,860.¹⁰⁶ Bramer describes those charges as “Labor Retention of Maintenance Crews at Denton Westpark.” Her supporting note explains that Ariat renewed a six-month commitment to retain Hy-Tek’s skilled maintenance crews because construction at the facility had been delayed.

¹⁰⁶ The invoices are labeled as “INV307107,” “INV307109,” “INV307110,” “INV307285,” “INV307650,” and “INV308213.” Ex. 5 to Bramer Report (Pl.’s App. 159).

¶ 75. Those six charges are not assessment or investigation costs. They represent the costs of keeping an idle maintenance crew under contract while Ariat's automation project was delayed. Even if the defects caused the delay, the resulting retention expenses arose from Ariat's separate staffing arrangements with Hy-Tek, rather than anything related to the landlord-tenant agreement. They are consequential damages excluded by Section 24. Summary judgment is therefore **GRANTED** as to those six charges, totaling \$563,860.

¶ 76. The balance of the category survives. The reasonable cost of identifying a condition the landlord was obligated to repair may constitute a direct loss, particularly where the Lease requires the tenant to notify the landlord of conditions needing repair. Exeter's opposing argument is that no Texas court has recognized investigation costs as a standalone category. But the absence of a decision using that label does not establish that these particular expenses are consequential. Their recoverability depends on what work was performed, why it was needed, and whether it concerned a condition that Exeter was obligated to repair. Those questions remain open. Summary judgment as to the remaining items is **DENIED**.

4. *Section 24 excludes the identified relocation and storage expenses.*

¶ 77. Ariat also seeks \$4,347,800 for uninstalling, removing, storing, transporting, and reinstalling equipment, furniture, and machinery. Bramer groups these expenses under the heading "Costs to Remove, Store, and Transport Assets."

Some entries expressly concern relocation, while others describe work at Westpark without clearly identifying its purpose.

¶ 78. Texas law distinguishes moving expenses from general (direct) damages that measure the value of a lost leasehold.¹⁰⁷ In *Briargrove*, for example, the court classified the “expense of removal from the premises” as special (consequential) damages.¹⁰⁸ Later courts have likewise treated relocation expenses as outside a tenant’s general damages.¹⁰⁹ Such expenses depend on a tenant’s particular circumstances: what it owns, where it goes, and what it costs to get there. Section 24 excludes those losses.

¶ 79. Summary judgment is therefore **GRANTED** as to the identified charges for packing, transporting, relocating, or storing Ariat’s property, as specified in the accompanying footnote.¹¹⁰ However, the ruling does not extend to the entire \$4,347,800 category merely because Bramer chose to group the charges together. Several entries describe work undertaken to clear space for investigation and to work

¹⁰⁷ *Briargrove Shopping Ctr. Joint Venture v. Vilar, Inc.*, 647 S.W.2d 329, 336 (Tex. App.—Houston [1st Dist.] 1982, no writ) (holding that relocation or moving expenses are special damages for lease violation).

¹⁰⁸ *Id.*

¹⁰⁹ See *First Cash, Ltd. v. JQ-Parkdale, LLC*, 538 S.W.3d 189, 202, 204 (Tex. App.—Corpus Christi-Edinburg 2018, no pet.) (citing *Briargrove* and permitting recovery of relocation and buildout costs where the lease contained no exclusion for consequential damages).

¹¹⁰ Ex. 6 to Bramer Report & nn. 7, 9–17 (Pl.’s App. 160–61). The excluded charges are Hy-Tek invoice INV306198; Malin Systems invoices SY2510027, SY2510036, 0125040786-1, 0125050483-1, and 0125051031-1; Politon invoice 7445; and the Olam Agri Americas equipment-storage, Indoff furniture teardown and storage, and It’s Logistics shuttle-transfer charges. Malin invoice SY2510105 contains mixed charges and is not excluded in its entirety.

around the alleged floor defects.¹¹¹ Those items, too, may ultimately prove to be consequential damages, but Exeter has not yet established that they are. Summary judgment as to the balance of the category is **DENIED**.

5. *The additional costs of fulfilling customer orders are barred consequential damages.*

¶ 80. Ariat seeks \$22,466,010 in additional costs incurred to fill customer orders from other higher-cost facilities.¹¹²

¶ 81. At bottom, this is a claim for the operating savings that Ariat expected to achieve from an automated distribution center that never opened. Whether framed as increased costs of operation or, more indirectly, as a loss of profits caused by those increased costs, the loss is a function of Ariat's distribution network, staffing, automation schedule, and alternative operating arrangements. Those expenses do not measure the value of the leasehold Exeter promised to provide. Even if the alleged breach made them necessary, they are consequential losses arising from Ariat's particular operations. Section 24 therefore excludes them without requiring the Court to decide whether they also qualify as lost profits. Summary judgment as to this \$22,466,010 is **GRANTED**.

6. *Ariat may seek the value of its existing leasehold, but not the benefit of an unexecuted expansion and extension.*

¹¹¹ Bramer Report ¶¶ 41–42 & Ex. 6 (Pl.'s App. 131–32, 160–61).

¹¹² *Id.* (Pl.'s App. 132–36).

¶ 82. The final category consists of additional base rent and operating expenses under Ariat’s replacement lease at PR Crow, also called ACE. Bramer calculates these losses at \$15,926,573 through March 2032, or \$24,004,456 through March 2037.¹¹³

¶ 83. Exeter first argues that these costs are lost profits in disguise and therefore barred by Section 24. That is not an accurate characterization. The value of a tenant’s leasehold is distinct from the profits it expects to earn while occupying the property.¹¹⁴ A claim for the former does not become a claim for the latter simply because favorable lease terms would have reduced the tenant’s operating costs.

¶ 84. Exeter’s second argument is more persuasive. A displaced tenant’s direct damages are measured by the difference between the contractually agreed rent and the market rental value of the leasehold for the *unexpired term*.¹¹⁵ Here, that unexpired term ends October 31, 2027. Bramer’s calculations instead assume that the parties would have executed a second amendment expanding Ariat’s space to the entire building and extending the term to March 2032. The larger calculation further assumes a five-year renewal to March 2037—more than nine years past the term actually bargained for.

¹¹³ *Id.* (Pl.’s App. 136–38).

¹¹⁴ *Briargrove*, 647 S.W.2d at 336 (explaining that an evicted party can recover both rental differential and special damages “such as net profits,” thereby recognizing both to be separate and distinct damage categories).

¹¹⁵ *Id.* at 336; *First Cash*, 538 S.W.3d at 201–02.

¶ 85. Damages built on those assumptions measure the benefit of a separate, never-consummated transaction. They do not measure what Ariat actually lost under the existing Lease. Any loss of that kind is necessarily consequential to a breach of the Lease and is excluded by Section 24. The post-March 2032 calculation illustrates the distinction. It assumes identical rent and operating expenses per square foot at both facilities, so the entire difference comes from the replacement facility's greater size. Ariat would pay more simply because it leased more space, not because comparable space cost more.

¶ 86. Partial summary judgment is therefore **GRANTED** as to the claimed losses attributable to the unexecuted expansion and extension, including the further renewal assumed in Bramer's model. Ariat may still seek the difference between the market rental value of its existing leasehold and the agreed rent for the remaining term ending October 31, 2027.

CONCLUSION

¶ 87. For these reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Exeter's Traditional Motion for Summary Judgment on Ariat's Counterclaims. Summary judgment is **GRANTED** only as to the damages expressly excluded under Section 24 in this opinion and is otherwise **DENIED**.

¶ 88. All four counterclaims remain pending, subject to these damages limitations. This ruling establishes no liability and awards no damages. Exeter's

affirmative claims and Ariat's defenses to those claims remain unresolved. This Order is interlocutory.

IT IS SO ORDERED.



HON. BRIAN STAGNER
Judge of the Texas Business Court,
Eighth Division

SIGNED: October 2, 2026

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