MODIFIED FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration provision contained in the parties' Acquisition Agreement dated April 13, 2011 (the "Agreement"), having been duly sworn, and having heard the allegations and proofs of the Parties during hearings held in Charlotte, North Carolina, June 22-26, 2015, do hereby find and award, as follows:

Procedural Status and Jurisdiction

1. This action was brought by Claimants against two separate Respondent entities: 3D Systems, Inc. (a California corporation) and 3D Systems Corporation (a Delaware corporation), the parent of 3D Systems, Inc. While both signed the Agreement, many of the actions relevant to Mr. Barranco's claims after the closing of the Agreement appear to have been taken by 3D Systems, Inc. Therefore this Award will as appropriate specifically refer to 3D Systems, Inc. (hereinafter "3D California").

2. The parties submitted their dispute to the Arbitrator pursuant to Section 10(g) of the Agreement, and the Arbitrator finds that he has jurisdiction of all disputes submitted to him in this matter. This Award is issued in compliance with Section 10(g) of the Agreement, and in accordance with New York law on Counts 1 and 2 and Hawai'i law on Counts 3 and 4.

3. Five days of hearings were held from June 22-26, 2015, and evidence taken based on the Claimants' "Second Amended Demand for Arbitration" and Respondents' "Respondent's Answer to Claimants' Second Demand Arbitration."

4. Under AAA Commercial Arbitration Rule No. R-34. the Arbitrator is not formally bound by the rules of evidence, he does acknowledge the time-honored parol evidence rule and Respondents' ongoing
objections based on that rule (passim, Hearing Transcript). The Arbitrator, however, partially waives that rule due to the nature of the claims and the ambiguity of several contract terms as discussed below. Due to the legally dubious nature of the negotiation transcript itself (Exhibit 1), evidence from that transcript is allowed as an exception to the parol evidence rule only to the extent that snippets of it were offered by the parties as part of the record. Otherwise the Arbitrator has not considered any other portions of that transcript.

Summary of Findings of Facts and Law

As supported by the detailed "Findings of Fact and Law" below, the Arbitrator finds relative to Claimant's claims under the Seconded Amended Complaint:

1. **Status of the Print3D Corporation Entity:** Since Section 4(f) of the Acquisition Agreement required that Mr. Barranco change the Print3D name to one approved by Respondents but he failed to do so, the Arbitrator finds that Print3D Corporation is an inappropriate party to this action, and is hereby severed from this matter. Therefore all findings of fact and law as well as the award of damages are to Mr. Barranco and the corporate entity underlying Print3D Corporation. As part of the Award, Mr. Barranco is directed to take those actions necessary to finalize the transfer of the Print3D Corporation name to Respondents per Section 4(f) of the Agreement if he has not already done so.

2. **Count 1 - Breach of Contract:** Respondents breached two key contractual obligations they had to Claimant Ron Barranco pursuant to the Agreement, and both breaches prevented Mr. Barranco from earning any of the three bargained-for earn out payments under the Agreement.

3. **Count 2 - Breaches of Implied Covenants:** Respondents' conduct after the closing of the Agreement breached both its implied duty of "best efforts," and the covenant of good faith and fair dealing, both as implied under New York law. While separate from the express breaches of contract under Count 1, those breaches form an overlay to Mr. Barranco's overall claim, and the Arbitrator's award is made on the basis of all of Respondents' breaches of contract, both express and implied.

4. **Count 3 - Fraud:** No evidence of fraud was demonstrated by Claimant, and that claim is hereby dismissed with prejudice.

5. **Count 4 - Negligent Misrepresentation:** Because this claim largely relies on parol evidence and the contents of surreptitious recordings of pre-agreement negotiations, the Arbitrator rejects that claim as legally unviable, and therefore it is dismissed with prejudice.

6. **Count 5 - Unjust Enrichment:** Dismissed with prejudice by stipulation of the parties in accordance with the parties' "Joint Stipulations of Facts and Law" attached to this Award as Schedule A.

7. **Count 6 - Rescission:** Dismissed with prejudice by stipulation of the parties in accordance with the parties' "Joint Stipulations of Facts and Law" attached to this Award as Schedule A.
Summary of Damages Award

Total Award (including damages, interest & fees and expenses): $11,281,681.46.

Findings of Fact & Law

1. The Arbitrator acknowledges the parties' "Joint Stipulations of Facts and Law" contained in the attached Schedule A, and specifically incorporates such stipulations as part of this Award.

2. Print3D was a software tool, rather than a business that was earning revenues, and was not "fully developed or commercially available." (Stipulation No. 6.)

3. As reflected by Stipulation No. 20, Print3D was seen by Respondents as an "innovative and valuable technology within the 3-D [three dimensional] printing industry." (Stipulation No. 20.)

4. Starting in February of 2011, the parties began extensive discussions that lead to negotiations for Respondents' acquisition of Print3D. (Stipulation No's 4-17.) Also involved in the negotiations was Mr. Deelip Menezes, then co-owner and programmer of Print3D. (At no time has Mr. Menezes - currently an employee of a 3D Systems Corporation entity - been a party to this action.)

5. During those discussions, Respondents' representatives discussed with Mr. Barranco and Mr. Menezes the support that could be provided to make Print3D a success. As Mr. Damon Gregoire, former 3D Systems Corporation CFO (but still a Respondent Executive Vice President) testified, he had described during the parties' negotiations how resources would be available to support Print3D as was done with prior acquisitions:

"We talked about how just part of - part of what we do in bringing companies in with us is being part of our organization, helps with things...What I recall was talking in past acquisitions, we have put resources, thrown resources at things...." (Hearing Transcript, pp. 492 and 502).

The record reflects that Mr. Gregoire also told Mr. Barranco and Mr. Menezes that: "We can make those commitments to invest both in marketing and resources and everything there too...." (Hearing Transcript, p. 506.)

6. Negotiations culminated with the execution of the Agreement on April 13, 2011. Under the Agreement, Mr. Barranco and Mr. Menezes agreed to sell all of their rights to Print3D to Respondents, including all related intellectual property (as detailed in the Agreement's "Software Schedule") and the Print3D name.

7. Both Mr. Barranco and Mr. Menezes testified that Print3D was ready to go with a few refinements when Respondents acquired Print3D. Mr. Menezes, as the software programmer for Print3D, verified this: "But it should be understood that most of the work was already done. Like I said when we went to give the demo, we had the full thing [Print3D] already up and running. So the software development if any was just maintenance and enhancements." (Hearing Transcript, pp. 867-868.)
8. Section 2 of the Agreement provided for consideration in the form of a cash payment, shares of 3D Systems Corporation stock, and contingent "earn out payments":

   a. As noted in Stipulation No. 19, Print3D did receive both the cash and 3D Systems Corporation stock payments as partial consideration for the sale.

   b. As discussed by the parties during their negotiations and reflected by Stipulation No. 19, the Agreement called for additional "earn out" payments that are described in Subsections 2(c)-(e). These payments are the heart of Claimant Barranco’s action in this matter.

   c. More specifically, those subsections state that:

      i. The earn out payments were based on 35% of the "Print3D Business' Gross Revenue" for any given period. Payout No. 2 was to be net of Payout No. 1, and Payout No. 3 was to be net of Payout No. 2.

      ii. Such payments were subject to various adjustments under Section 2(v), including adjustments in the event of Mr. Barranco's or Mr. Menezes' termination, for cause or without cause.

      iii. As defined at the Hearing, the earn out periods were:

            1. 6/1/11-5/31/12
            2. 6/1/12-5/31/13
            3. 6/1/13-5/31/14

      iv. Per Subsection 2(c)(vii), the maximum amounts for each projected earn out period were:

            1. Payout 1: $2,975,000
            2. Payout 2: $5,950,000
            3. Payout 3: $8,925,000

      The maximum contract price, however, was not to exceed $9,925,000 including the initial consideration of $1 Million in cash and stock.

   d. Both parties agreed that no earn out payments were ever made to Mr. Barranco or Mr. Menezes. These amounts, however, are clearly indicative of the parties' estimates of the potential for the Print3D tool and the remainder of Mr. Barranco's "benefit of the bargain."

9. As the Agreement is structured, the success of the "Print3D Business" as part of 3D California was an obvious condition precedent to any earn out payment. That success was linked to a number of factors, including Respondents employing both Mr. Barranco and Mr. Menezes as "managers" (Section 3(b)(vi)), Mr. Menezes' availability to provide programming support from India to facilitate the launch of the Print3D, and Respondents providing various types of support to the "Print3D Business" (a defined term on page 1 of the Agreement).

10. Mr. Barranco moved himself from Hawai'i to California at his own expense to be on "Mainland Time," and officially started his duties as Print3D manager in June of 2011.
11. In February of 2011, Respondents also acquired another entity called "QuickParts" which was "a provider of custom-designed parts manufactured by 3-D printing technology". (Stipulation No. 21). While Mr. Barranco was informed of this development prior to executing the Agreement (Exhibit 209), he termed QuickParts a "competitor." (Hearing Transcript, p. 69.)

12. Once Mr. Barranco started full time with Respondents, he was assigned without advanced notice by Mr. Abe Reichental, Respondents' CEO, to report to Mr. Sameer Vachani, a younger QuickParts vice president who himself had only joined Respondents in February of 2011. (Hearing Transcript, p. 61.) As Mr. Barranco testified, he had expected to report to Mr. Reichental or at least have a "dotted line" relationship with the CEO as did Mr. Menezes.

13. Moreover Mr. Barranco saw this new reporting structure as a conflict of interest:

"Print3D was to be built as a broker business which would have naturally made it a competitor to QuickParts.... Sounds a little odd, competitors. However, Sameer grew up in QuickParts. He was mentored by the founder of QuickParts, and I didn't know if it was for Print3D's benefit or -- and help that Sameer was joining or if it was for QuickParts. It seemed like a conflict of interest to me." (Hearing Transcript, p. 69.)

14. After his assignment to Mr. Vachani, the record overall demonstrates by a preponderance of the evidence that Mr. Barranco was marginalized as a manager, and unable to manage or "champion" Print3D. This situation is discussed in detail below.

15. Exacerbating this situation was Respondents' decision (made by the head of the QuickParts entity without any consultation with Mr. Barranco) to integrate Print3D into a new parts ordering system called "Qsoft." This placed Print3D's future at the mercy of QuickParts, and, for the most part, beyond Mr. Barranco's sphere of influence.

16. Despite a lack of orientation to 3D California's methods of operation and his assignment to a QuickParts vice president, the record (especially Mr. Barranco’s testimony and emails from 2011 to 2013) reflects Mr. Barranco's ongoing attempts to garner support for the launch of the Print3D tool as well as his battle for the resources needed to achieve that launch. Such resources included Mr. Menezes' dedicated programming support, marketing support, sales support, financial support for travel, and the servers on which to house the Print3D technology. Respondents' "ad hominem" attacks on Mr. Barranco's efforts in this regard are flatly rejected by the Arbitrator, especially given the totality of Respondents' own actions and inactions in this matter.

17. Mr. Barranco was terminated by Respondents without explanation on February 15, 2013. After that date, the record reflects that the Print3D Business (despite still having a profit center number) fell into disarray. In response to an inquiry, Mr. Menezes himself responds: "we are not marketing the software. I’m not even sure who owns the product." (Exhibit 78 dated 3/10/2014.)
Respondents' Breaches of Contract

1. The record clearly, and by a preponderance of the evidence, demonstrates that Respondents' actions and inactions, especially those of 3D California, subsequent to April of 2011 materially breached the following two contract provisions relative to Mr. Barranco:

   a. **Section 3(b)(vi):** "Each of the Shareholders shall have executed and delivered to 3D California an Employment Agreement employing them as managers of 3D Systems' Print3D business (each, a “Manager”)...." (Emphasis added.)

   b. **Section 2(f) - 3D Systems’ Conduct Post-Closing:** "3D Systems undertakes and agrees with Print3D that during the Earn-Out Period, 3D Systems shall continue the Print3D Business as a separate profit center and as a going concern in the ordinary and proper course." (Emphasis added.)

Taken separately:

2. **Mr. Barranco was Not Employed as a “Manager”**

   a. While Mr. Barranco was initially employed as a 3D California "manager," that term became illusory at best soon after June of 2011. Instead he was assigned taskings by Mr. Vachani while Mr. Vachani took on the actual management role for Print3D such as the development of a business plan, strategic decisions, and brokering support including programming and marketing.

   b. The Arbitrator takes arbitral notice of the definition of "manager": "a person who manages; esp....one who manages a business...." (*Webster's New World College Dictionary, Second College Ed.*)

   c. The record clearly demonstrates that by July of 2011, Mr. Barranco managed only himself. As the record repeatedly reflects, Mr. Barranco was a "manager" in title only and, in reality, a sole contributor with little or no influence over the launch of the Print3D tool or other critical aspects of the Print3D Business. He and Print3D had no staff, no financial support (except his own salary), no dedicated resources or other support, and little or no influence within 3D California.

   d. During his employment by Respondents, Mr. Barranco was never given permission to travel to key Respondent locations such as Rock Hill, South Carolina or Atlanta, Georgia, to meet with primarily QuickParts employees helping with the Qsoft integration. In contrast Mr. Menezes was made Managing Director of 3D India, provided with a budget, allowed to hire people, buy equipment, and move to a larger facility. (Exhibit 240 and passim, Hearing Transcript of Mr. Menezes testimony.)

   e. An overall assessment of the record indicates that Mr. Barranco was rarely, if ever, treated as a manager and poorly managed as an employee. Even Mr. Vachani admitted
that he had never given Mr. Barranco objectives or a performance review. (Hearing Transcript, pp. 1184-1185.) Those facts alone illustrate Mr. Barranco's functional demotion from "manager."

f. While the record is replete with examples of this "constructive demotion," Exhibit 99 is representative of the issue. In that exhibit, dated July 13, 2011, Mr. Barranco is looking for help in transferring the "print3d.com" domain name; Mr. Vachani was copied on the initial email. By August 5, 2011, Mr. Barranco is no longer copied on the email despite the discussions of critical Print3D matters such as the servers on which Print3D was to be hosted.

g. The record further reflects that Mr. Vachani routinely cut Mr. Barranco out of emails with information that would have been critical for Mr. Barranco, as a manager, to champion Print3D with 3D California. Clearly Mr. Vachani was in charge, not Mr. Barranco:

i. An email from Mr. Rajiv Kulkami, a high ranking officer of Respondents and, at the time, Mr. Menezes superior, wrote in August 23, 2011 to Mr. Vachani: "As the leader of the project [Print3D], only you can request this spending approval." (Exhibit 99.)

ii. Mr. Vachani, not Mr. Barranco, was communicating with Mr. Reichental, the CEO, on Print3D strategy as reflected in Exhibit 26 dated January 22, 2012.

iii. By February 3, 2012, Mr. Vachani decided that the Print3D launch would be delayed again until "plugged into QEM for pricing and QSOFT to streamline operations within the parts business unit." (Exhibit 33.)

iv. Mr. Vachani communicates with a QuickParts marketing manager, but Mr. Barranco is not copied on the email. (Exhibit 308.)

h. Though marketing was crucial to informing potential users of the release of Print3D, there was little sustained marketing support provided by Respondents except for an anemic "beta" launch. For example, Mr. Barranco testified about the "borrowed" efforts he was getting from Adam Cleveland, a QuickParts employee:

**Question:** What involvement did you have in preparing that email to be sent out on Print3D on March 7?

**Answer:** None. This was a bit of a surprise to me. I was talking to him about the pricing study and suddenly I got news that he's working on a Google Analytics campaign for me. (Hearing Transcript, p. 187.)
Also telling is Exhibit 13 dated September 23, 2011, in which Mr. Barranco is answering an email from Mr. Reichental, the 3D Systems CEO, about a date for the Print3D launch. As he testified, Mr. Barranco had only gotten that email because Mr. Vachani sent him a copy. Though nominally the Print3D manager, Mr. Barranco is forced to tell the CEO that it would be Mr. Vachani who would "send a more defined answer." (Exhibit 13.) When asked at hearing about this exhibit, Mr. Barranco noted:

**Question:** When you write Sameer will send over a more defined answer, why would Mr. Vachani have a more defined answer for the progress of the Print3D business unit than you, the manager of the Print3D business?

**Answer:** This is the new -- this is the way that Print3D had been taken over. And it didn't install me as the head, it installed Sameer as the head or at least the person who would dictate what, when, who - which programmers would be available. (Hearing Transcript, pp. 77-78.)

By February 6, 2012, Mr. Menezes (also still hoping for his share of the earn out payments) observes: "They don't want you anywhere close to them. They want you out of all this so that they can drive Print3D the way they want or just let it rot there, which is what they have been doing all this time." (Exhibit 37.)

Thus it is clear to the Arbitrator that Mr. Barranco was *not* a manager. He had no authority to hire anyone to assist with Print3D, little or no support for Print3D except as brokered by Mr. Vachani, and couldn't even travel without Mr. Vachani's approval. For example, in the Exhibit 37 email trail, Mr. Barranco asks Mr. Vachani for permission to travel to either Atlanta or Rock Hill to work on Print3D matters. Mr. Vachani refused that request, directing Mr. Barranco to work on other tasks.

The record further shows that Mr. Vachani's actions in managing Mr. Barranco largely quashed Mr. Barranco's efforts and ability to manage and "champion" Print3D. Instead Mr. Vachani's primary focus was on the QuickParts "Qsoft" system, and only intermittently actually supporting Print3D or Mr. Barranco's efforts.

Respondents' vigorous and sometimes vitriolic defense in this regard rings hollow and fails. They contend that once Mr. Barranco was "employed" as a manager under Section 3(b)(vi), this condition was satisfied as of the closing of the Agreement. The Arbitrator rejects this as circular reasoning.

Mr. Barranco's claims do not rest solely on *not* being a manager. While Respondents did meet this obligation by entering into an employment agreement with him, the gravamen of this breach is actually Respondents' functional demotion of Mr. Barranco shortly after he started work at 3D California in June of 2011. The demotion, in large
part, tied his hands and prevented him from helping Print3D to succeed. As a result, he never realized any earn out payments.

ii. If Respondents' assertion - that hiring Mr. Barranco as a manager on the Agreement's Closing Date, and then not allowing him to function as a manager - were upheld, that would render Section 3(b)(vi) meaningless, and amount to contractual "bait and switch." Moreover it appears that the "Manager" title was "bargained for" consideration for both Mr. Barranco and Mr. Menezes, and critical for both of them in working to get Print3D successfully launched.

3. **Print3D was Never A "Going Concern"

   a. This a case where seemingly routine boilerplate language becomes a key determinant to the outcome. Section 2(f) of the Agreement fails to define the term "going concern." Black's Law Dictionary and the Eleventh Circuit explain the concept: “The term ‘going concern’ is generally understood to refer to ‘[a] commercial enterprise actively engaging in business with the expectation of indefinite continuance.’” *Cox Enterprises, Inc. v. News-Journal Corp.*, 510 F.3d 1350, 1358 (11th Cir. 2007) citing Black's Law Dictionary (8th Ed. 2004).

   b. Though Print3D was carried on Respondents' accounting ledgers as a "profit center," (a simple accounting system function actually described as a “cost center” by Mr. Gregoire), the record clearly demonstrates that it was never a **going concern** in the sense of the definition above. Even Andrew Johnson, Respondents' General Counsel, understood by October of 2011 that Print3D was only "a branding name, not an entity." (Exhibit 16 - emphasis added.)

   c. Instead Respondents' decision to fold Print3D under the QuickParts "Qsoft" system both "killed" Print3D as a going concern and added to the delay in actually launching the Print3D tool.

   d. While Mr. Barranco and Mr. Menezes initially thought that integration with Qsoft would be a good idea, Respondents' subsequent actions in failing to support Print3D's launch delayed the Print3D launch well into 2012. Indeed the record demonstrates that Print3D was never commercially launched as "Print3D." This fact alone ensured that Mr. Barranco would never receive any earn out payments. As Mr. Menezes testified, that integration shouldn't have taken more than "a couple of weeks" with "dedicated staff resources." (Hearing Transcript, pp. 874 and 923.)

   e. Even though Mr. Barranco may have initially acquiesced in the integration, it was clear that he did so to keep his job, and saw it as the only way to get Print3D launched. He echoes this concern in an email to Mr. Menezes on February 3, 2012: "Abe [Mr. Reichental] was never going let Print3D be a business like [QuickParts]. . .QP has been
maneuvering and manipulating to get Print3D all along...Not sure we have much choice...." (Exhibit 283.)

f. The record clearly shows that Mr. Vachani’s and Respondents’ attention and allocation of resources was to efforts on the QuickParts system, and not Print3D.

g. Mr. Menezes, though located in India, also knew there was a problem. By January of 2012, he writes Mr. Barranco:

"Print3D is out there in the cold to fend for itself. The people who want it to fail and who are jealous that you and I have an earn out of $9 Million while they get salary are going to ensure that things don't work for us. As you can see their plan is succeeding." (Exhibit 27.)

h. While the Arbitrator finds no evidence of a concerted plan by Respondents to "kill" Print3D, the overall effect of Respondents’ actions was to block both Mr. Barranco and Mr. Menezes from ever receiving any earn out payments. Print3D was, by mid-June 2011, clearly made a part of QuickParts and, therefore, was neither a "Print3D Business" nor a "going concern."

i. Respondents’ defense points to Section 10(k) of the Agreement as justifying the move of Print3D under QuickParts:

"Conduct of Business of 3D Systems. Neither the entering into, nor any provision contained in, this Agreement shall in any way be construed or deemed, either before or after the Closing, to restrict 3D Systems in the conduct of its business."

i. To the extent that Mr. Barranco had been allowed to "champion" Print3D and Respondents actually had used "best efforts" to exploit Print3D (see below), that might be consistent with the record here. While that section may, however, generically provide Respondents with flexibility, it did not empower them to cloak breaches of the Agreement under the heading of "a change of business plan," etc.

ii. The unmistakable net effect of Respondents’ decision to put Print3D under QuickParts, coupled with Mr. Barranco’s "constructive demotion," rendered the Print3D Business a non-entity, and negate any semblance to a "going concern."

j. Respondents have also submitted as part of the record a picture of the whiteboard list of "3DS Resources" created during the hearings to demonstrate the "extensive" support that Mr. Barranco and Print3D were provided. The Arbitrator finds this list self-serving and lacking in credibility. Curiously, the list starts with "Ron Barranco" as a "resource" for Print3D. In fact, he was the only full time resource that the Print3D Business was
assigned until he was terminated on February 15, 2013. The remainder of the names on that list - including Mr. Reichental, Mr. Vachani and even Mr. Menezes - were part-time or hit-and-miss resources whose time, the record demonstrates, was never dedicated per se to Print3D.

k. Though Print3D's demise as a recognizable technology within 3D California was reported by May of 2014, the Arbitrator finds it more probable than not that the technology embodied within Print3D became an integrated part of the QuickParts Qsoft system, and sales through that system were no longer credited to Print3D.

i. Indeed it strains credulity to imagine that Respondents would spend $1 Million for a tool they had recognized as an "innovative and valuable technology within the 3-D [three dimensional] printing industry" (Stipulation No. 20), and not use that technology. This would also explain why the Print3D cost center recorded so few sales as evidenced by various Respondent exhibits such as No. 205.

ii. In fact, as Mr. Menezes noted at the hearing, Print3D would have been the only "front end" of that system meaning it would be the software tool that customers would use to get parts quotations and pricing. (Hearing Transcript, p. 930.) In that way, Print3D would have derived the revenue to support the requirements for Mr. Barranco's earn out payments.

Breaches of Implied Covenants

In its totality, the record reflects by a preponderance of the evidence that Respondents breached two separate implied covenants that New York law attaches to all contracts: the (a) implied standard of "best efforts," and (b) the implied covenant of good faith and fair dealing. As noted earlier, these breaches are an overlay to Respondents breaches described above, but they further support the Arbitrator’s conclusions in this matter.

1. Implied Requirement for Best Efforts

a. Since New York law applies to Counts 1 and 2, the parties have cited New York case law. The Arbitrator finds Advanced Retail Marketing, Inc. v. News America Marketing FSI, Inc. especially germane. In reviewing a trial court's decision on an acquisition agreement involving earn out payments, the court held that an “earn-out” arrangement requires the acquiring party “to use its best efforts, as measured by objective criteria, in exploiting the [acquired product].” 303 A.D.2d 231, 231-32 (N.Y. App. Div. 2003)(emphasis added).

b. The Arbitrator specifically finds that Respondents did not use best efforts to exploit the "acquired product" - Print3D. As demonstrated by a preponderance of the evidence, Respondents' actions and inactions - whether by design or organizational negligence - fell far short of "best efforts" in any aspect pertinent to Print3D.
c. Instead Respondents' actions - especially those of Mr. Vachani - created a cumulative series of roadblocks that prevented Mr. Barranco from managing Print3D at all. These were ongoing failures until 3D California terminated Mr. Barranco on February 15, 2013, and continued well past his termination.

d. Further aggravating the situation was the eventual removal of Mr. Menezes - the programming author of Print3D – from the Print3D Business as a technical resource.

   i. Initially Mr. Menezes testified that he had to "borrow" one or more programmers from his group in India to try to support the Print3D launch. By January of 2012, Mr. Menezes reported to Mr. Barranco that his own manager (Mr. Rajeev Kulkarni) had effectively removed him from working on Print3D: "Just judging by the way Rajeev walked into my office and stopped everyone from doing anything on Print3D, but rather work only on Cubify, I know that Print3D doesn't stand a chance." (Exhibit 27 - emphasis added.)

   ii. A further crisis occurred in June of 2012 when one of the few programmers other than Mr. Menezes who had worked on Print3D, Manali Prabhu, resigned. Mr. Barranco was so desperate for her support that he suggested that Mr. Menezes and he pay her out of their own pockets! (Exhibit 58 and Hearing Transcript, pp. 205-208.) This didn't occur due to company policy, and she was never replaced as a Print3D resource.

e. While the Arbitrator acknowledges that Section 2d of the Agreement does not require any specific amount of "investment" by Respondents, that provision does not excuse the almost abject lack of dedicated support provided to Mr. Barranco to advance Print3D generally once it was subsumed by QuickParts. That lack of support, illustrated at various points in this Award, doomed the success of the Print3D Business and Mr. Barranco's bargained-for earn out payments.

2. **Implied Covenant of Good Faith and Fair Dealing**

   a. The Arbitrator also finds that Respondents breached the implied covenant of "good faith and fair dealing" after the closing date of the Agreement. Under New York law, courts will find an implied covenant of good faith and fair dealing in all contracts:

   i. The covenant "precludes each party from engaging in conduct that will deprive the other party of the benefits of their agreement." *Leberman v. John Blair & Co.*, 880 F.2d 1555, 1560 (2d Cir.1989). Hence, the covenant is violated "when a party to a contract acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other of the right to receive the benefits under the agreement." *CSI Inv. Partners II, L.P. v. Cendant Corp.*, 507 F. Supp. 2d 384, 425 (S.D.N.Y. 2007).
ii. Another New York court identified the obvious antonym to "good faith and fair dealing - bad faith. "'[B]ad faith' may include 'evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance...."" Restatement [Second] of Contracts § 205, Comment d) cited by Stevens v. Publicis S.A. et al., 50 A.D.3d 253, 256 (2008). 

b. The list of actions and inactions of Respondents evidencing bad faith relative to Mr. Barranco and Print3D is a long one. Most pertinent to Mr. Barranco's claims, however, are the following:

i. Once Mr. Barranco started reporting to Mr. Vachani, his ability to get internal support to advance Print3D was totally dependent on Mr. Vachani's approval or intervention. For example, as noted earlier, Mr. Menezes’ ability to support Print3D had quickly eroded and was largely non-existent by January of 2012. Mr. Menezes wrote in a February 24, 2012, email to Mr. Reichental, Respondents CEO, that Print3D was no longer his assigned priority:

"There is no direction, no leadership and no sign of anything that tells me that the Print3D software that I wrote is going to be marketed to CAD users in any meaningful way...Things have stalled for one reason or the other and sometimes for no good reason at all...My mandate is Cubify only and I have been prevented from doing anything else." (Exhibit 42 - emphasis added.)

ii. Further Mr. Barranco was rarely if ever consulted on the Print3D marketing efforts. Mr. Vachani himself appears to have coordinated what little marketing support there did occur. Such support, piecemeal at best, didn't occur until 2012. Several examples emphasize this:

1. In Exhibit 308, Adam Cleveland, a marketing manager, sends ideas for Print3D marketing to Mr. Vachani but Mr. Barranco is not copied on that email.

2. Another 3D California employee, Michael White, testified about the minimal, fragmented and decidedly unfocused marketing efforts Print3D was given during the three-year earn out period. (Hearing Transcript, p. 1389ff.)

3. Tellingly Respondents never allocated any marketing expenses to the Print3D profit center. (Exhibit 205.)

c. Once Mr. Barranco was terminated, even Mr. Vachani went on to other things, thus ending any hope that Mr. Barranco would realize any earn out payment: "...[O]nce this
happened in February [2013], there were other tasks that came on my plate in terms of responsibility.” (Tr. 1236:8-19.) Mr. Vachani explained further that “at that time I was reassigned to work with this new leader that had come from Europe.” (Hearing Transcript, p. 1245.)

Thus, the record, both testimonial and documentary, is clear by a preponderance of the evidence that Respondents, at least in part, acted in bad faith and barred any hope for Print3D's success or Mr. Barranco receiving earn out payments.

**Review of Respondents’ Defenses**

1. In part, Respondents’ defense counters that Mr. Barranco’s "unclean hands" bar his claims in this matter. The Arbitrator sees little or no merit in either alleged breach of contract by Mr. Barranco that support such a defense. Certainly neither allegation bars Mr. Barranco's claims.

   a. **Failure to Change Print3D Name:** Section 4(f) required that Mr. Barranco change the Print3D name. Mr. Barranco testified that he had asked Respondents' counsel for assistance, but the matter seems to have been lost in the shuffle. At no time did Respondents present any evidence that (i) Respondents have been prevented from using the Print3D name, (ii) they have been prejudiced by Mr. Barranco's oversight here, or (iii) there was any demand for such name change during Mr. Barranco’s employment by Respondents. Thus it is not a defense. Moreover this Award seeks to remedy that oversight.

   b. **Disclosure of Confidential Information:** Respondents point to Mr. Barranco’s email to an outside programmer (Exhibit 238) as a breach of Mr. Barranco's confidentiality obligations. While technically Mr. Barranco's disclosure might have been a breach, the Arbitrator finds it to be de minimis at best. As Mr. Barranco testified, this information was either Print3D's in the first place or "generic" programming information. Moreover Respondents made no showing that (i) they had taken any steps to protect such information as a trade secret nor that (ii) they were prejudiced in any way by this alleged "disclosure." It should also be noted that Mr. Barranco was making such a disclosure in an effort to advance both Print3D and Respondents' interests.

**Conclusion**

While the Arbitrator finds no "smoking gun" to reflect that Respondents' actions involved in the above-described breaches were intentional, the totality of such actions - whether a comedy of errors, a plethora of misunderstandings, or the machinations of an arcane management structure - ultimately deprived Mr. Barranco of his "benefit of the bargain." In the end, he never received any earn out payment and, without explanation, also lost his job less than two years after the closing of the Agreement. Therefore damages are warranted in this matter.
Arbitrator's Award of Damages

1. The Arbitrator acknowledges the difficulty of calculating and assessing damages in this case, but finds several New York cases instructive. Notably, New York law does not bar a damages award even if "it is apparent that the quantum of damage is unavoidably uncertain, beset by complexity or difficult to ascertain." Berley Indus., Inc. v. City of New York, 45 N.Y.2d 683, 687 (1978). Moreover any damage award should comport with what was “within the contemplation of the parties at the time the contract was made.” Biotronik A.G. v. Conor Medsystems, Ltd., 22 N.Y.3d 799, 812 (2014). In this case, the benchmark for damages should be the estimated earn out values contained in Section 2(c)(vii).

2. While Mr. Barranco's damage models presented at the hearings are hardly perfect, the Arbitrator also finds Respondents' proffered revenue numbers for Print3D self-serving and difficult to believe. This is especially true based on the revenues QuickParts reported in the Respondents' annual 10-K reports (Exhibits 94 and 96) for the years 2012-2014, the years covering earn out payments. Though Respondents insist that those revenue numbers are due solely to "acquisitions," there was no evidence to support that claim except for Mr. Gregoire's general assertions. In addition Mr. Gregoire, Respondents' former CFO, proudly noted that QuickParts' profit margins were increasing to 45% or more. (Hearing Transcript, p. 531.) Finally, as Claimants' post-hearing analysis notes, Respondent 3D Systems Corporation (per its 10-K reports) grew QuickParts from $24 million to $122 million during the earn out period covered by this matter.

3. Similarly the Arbitrator is not persuaded by the testimony of Respondents' damages expert. Despite his sterling background, his testimony was largely based on the dubious Print3D numbers provided to him by Respondents.

4. In this case, the key to assessing damages is the amount that would compensate Mr. Barranco for his "benefit of the bargain." Without reliable revenue numbers for Print3D due to the integration of the tool into Qsoft, the first benchmark is the estimated maximum for earn out payments set out in Section 2(c)(vii): $8,925,000. As part of Mr. Barranco's amended demand, however, was reduced to $7,253,820.00.

5. Given the nature of Respondents' breaches and the benchmark noted above, the Arbitrator is persuaded that Mr. Barranco's proffered Damage Scenario No. 1 is as accurate a damage accounting for this matter as either side can present. The Arbitrator further finds that the Print3D revenue estimates in this scenario are conservative, and concede that (a) there was no earn out payment for Period No. 1 (as noted above) despite evidence that Print3D should have been launched and earned revenues during that period;, and (b) the scenario reduces his earn out payment due to his termination in February of 2013.
6. This damages award is consistent with the two New York cases cited above:

   a. In *Advanced Retail Marketing, Inc.*, cited *supra*, the appeals court found an "award was reasonably premised upon the estimate that defendant would have reached $150,000,000 in gross earnings by exploiting plaintiff's design over the five-year earn-out period, since evidence showed that defendant earned three times that much by choosing to exploit the competing technology during the same period. Thus, there is a legitimate connection between the proof and the trial court's award." (*Advanced Retail Marketing, supra* at 231-232.)

   b. In *CSI Investment Partners*, the federal court construing New York law made a similar award where a lack of marketing efforts formed key part of the plaintiffs' claim: "Nor is there any reasonable doubt about the damages Credentials suffered as a result of Cendant's breach. Because Cendant failed to cross-market and market aggressively, Sellers did not earn any of the contingent payment. There is no evidence on the record that the contingent payment would have been anything other than $50,000,000.00." (*CSI Investment Partners, supra* at 417.)

7. In assessing the attorneys' fees and expenses portion of this Award, the Arbitrator utilized the formula set out Section 10(g)(iv) of the Agreement as well as the amounts submitted post-hearing by the parties. He acknowledges Respondents' lodestar concern. However the cases cited (Footnote 4 to Respondents' Post-Hearing Submission Regarding Attorneys' Fees and Expenses) in that argument date back to 1992 when a 20% contingency fee may have been appropriate. In the years covered here, 30% appears to be fair and reasonable given the complex nature of the claims as well as the financial wherewithal of Respondents to mount a vigorous defense.

8. **Award:** On the basis of the reasoning noted above, the Arbitrator hereby awards Mr. Barranco the total sum of $11,281,681.46 which includes actual damages, total attorneys' fees and expenses as calculated under Subsection 10(g)(iv)(a), with pre-judgment interest at 9% per New York law, less the remainder amount for fees and expenses (19%) computed under Subsection 10(g)(iv)(b). The elements of the award are as follows:

   - **Actual Damages:** $7,253,820.00
   - **Parties' Total Attorneys' Fees and Expenses (including AAA fees) per Subsection 10(g)(iv)(a) (including Poe, Gaw contingent fee):** $2,861,667.04
   - **Prejudgment interest at 9% from 2/15/2013 – 9/28/2015**: $1,709,911.16

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1 As the *CSI Investment Partners* court opinion does, the following detail is provided:

   - Interest is due from February 15, 2013 (the date of Mr. Barranco's termination) through the date of this Award, September 28, 2015, a period of 956 days.
• **Less Subsection 10(g)(iv)(b) remainder amount (19%)**: $543,716.74

**TOTAL**: $11,281,681.46

The above sums (including AAA fees = $14,200 and Arbitrator Compensation and Expenses = $14,437.50) are to be paid on or before thirty (30) days from the date of this Award.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

10/16/15  [Signature]  

Date  Michael C. Hagerman, Esq.

Arbitrator

I, Michael C. Hagerman, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

10/16/15 [Signature]  

Date  Michael C. Hagerman, Esq.

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• **Annual interest**: $7,253,820.00 x .09 = $652,843.80
• **Daily interest** is $652,843.80/365 days = $1,788.61/day
• Thus, the amount of prejudgment interest due from Respondents on Mr. Barranco's breach of contract claims is $1,709,911.16.

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2 These calculations are based on the parties total attorneys' fees and expenses (including AAA administrative fees and the Arbitrator's fees) of $2,861,667.04
SCHEDULE A

Joint Stipulations of Fact and Law
AMERICAN ARBITRATION ASSOCIATION
STATE OF NORTH CAROLINA

RONALD BARRANCO and PRINT3D CORPORATION,

Claimants,

vs.

3D SYSTEMS CORPORATION, a Delaware corporation and 3D SYSTEMS, INC., a California corporation,

Respondents.

AAA No. 01-14-0001-8349

JOINT STIPULATED FACTS AND LAW

Claimants Print3D Corporation ("Print3D") and Ronald Barranco ("Barranco" and together with Print3D, "Claimants") and Respondents 3D Systems Corporation ("3D Corp.") and 3D Systems, Inc. ("3D Inc.") (3D Corp. and 3D Inc. collectively referred to as "3D Systems") file these Joint Stipulations of Facts and Law upon:

FACTS

1. Claimant Print3D Corporation was a startup company that had begun developing a piece of software designed to integrate into CAD (Computer-Assisted Design) software as a "plug-in." Once installed, the Print3D plug-in was to permit CAD users to determine the production cost of the three-dimensional parts they designed, as they designed, all within their design environment. The Print3D plug-in had no back-end order fulfillment capability. Print3D Corporation was founded by Claimant Ron Barranco and owned 50/50 by Barranco and Deelip Menezes ("Menezes"), who wrote the code for Print3D. In 2012, Menezes conveyed his interest in Print3D to Barranco.

2. Respondent 3D Systems Corporation is a holding company incorporated in Delaware that operates through subsidiaries in the United States, Europe, and the Asia-Pacific Region. Respondent 3D Systems, Inc. is a provider of 3D content-to-print solutions and produces 3D printers, integrated print materials, and on-demand custom parts services for professionals and consumers. Respondent 3D Systems, Inc. is a wholly-owned subsidiary of Respondent 3D Systems Corporation (together, "3D Systems").

3. On February 1, 2011, Barranco sent an email to Avi Reichental ("Reichental"), CEO of 3D Systems, asking for a meeting to pitch Print3D.

4. On February 17, 2011, Barranco met with representatives of 3D Systems in Rock Hill, SC to discuss Barranco’s and Menezes’ desire to sell Print3D.
5. During the February 17, 2011 meeting, Barranco and Menezes conducted a demo of Print3D for representatives of 3D Systems.

6. As of February 17, 2011, the Print3D plug-in and software was not fully developed or commercially available.

7. On February 27, 2011, Barranco emailed Reichental with a further pitch for Print3D and for working with 3D Systems.

8. On February 28, 2011, Barranco and Menezes met in Los Angeles, California with Damon Gregoire ("Gregoire"), 3D Systems CFO, and Andrew Johnson ("Johnson"), 3D Systems Assistant General Counsel, to discuss the potential purchase of Print3D by 3D Systems.

9. Barranco recorded the February 28 meeting and has produced a transcript of that recording.

10. During the February 28 meeting, Gregoire described the potential structure of an acquisition, to include an earn-out, which he illustrated on a whiteboard.

11. On March 15, 2011, Johnson sent Barranco and Menezes a proposed letter of intent ("LOI") for the purchase of Print3D.

12. Barranco and Menezes signed the LOI on or about March 17, 2011.

13. The LOI, which proposed a purchase price payable in $750,000 cash at closing, issuance of $250,000 in 3D Systems stock at closing, and a potential “earn-out” over three years post-closing conditioned on a stated formula, was captioned “SUBJECT TO CONTRACT.”

14. On March 29, 2011, Johnson sent a draft of an Acquisition Agreement ("AA") to Barranco and Menezes for their review and invited questions.

15. On April 4-5, 2011, Barranco and Menezes met for a second time in Los Angeles, California with Reichental, Gregoire, and Johnson to discuss Print3D.

16. On April 5, 2011, Barranco ate lunch at a restaurant called Joan’s on Third with Gregoire, Johnson and Reichental to discuss his web domains, stereolithography.com and lasersintering.com. Menezes was not present and the meeting was not related to Print3D.

17. On April 6, 2011, Johnson sent Barranco and Menezes the final draft of the AA, along with a redline of changes based on the parties’ meeting in California.

18. On April 13, 2011, the parties, including Barranco and Menezes, signed the AA and closed the purchase of Print3D. 3D Systems wired $750,000 to Print3D and issued shares of 3D Systems stock valued at $250,000 to Print3D.

19. The AA by which 3D Systems purchased the “Acquired Assets” of Print3D Corporation provided that 3D Systems would pay $1 million at closing in cash and stock, with the potential for an “Earn-Out Amount,” which was to be calculated over a three-year “Earn-Out Period,” subject to certain conditions and a formula set forth in the Acquisition Agreement.

20. At the time of the acquisition, 3D Systems believed Print3D was an innovative and valuable technology within the 3-D printing industry.

21. In February 2011, 3D Systems acquired a company called Quickparts (a provider of custom-designed parts manufactured by 3-D printing technology), and in April 2011, acquired Print3D.

22. On April 15, 2011, Barranco signed an Agreement for At-Will Employment and Binding Arbitration ("At-Will Employment Agreement").
| 23. | The At-Will Employment Agreement specifies that it is “At-Will” and that it is “not to be construed as a contract of employment, either for an indefinite or fixed period of time.” |
| 24. | Upon the closing of the Print3D acquisition, 3D Systems employed Barranco as the Manager of Print3D and paid him an annual salary of $150,000. |
| 25. | On April 26 and 28, 2011, 3D Systems issued press releases announcing the acquisition of Print3D. |
| 26. | At some point following the acquisition through the end of his employment, Barranco reported to Sameer Vachani, Quickparts’ Vice President of Business and Corporate Development. |
| 27. | On February 21, 2012, 3D Systems issued a press release announcing the launch of Print3D. |
| 29. | There were thousands of price quotes attributed to Print3D during the “Earn-Out Period.” |
| 30. | Counts 1 and 2 of the SAD are governed by New York law. |
| 31. | Counts 3 and 4 of the SAD are governed by Hawai‘i law. |
| 32. | Claimants voluntarily dismiss with prejudice Counts 5 and 6 of the SAD. |
DATED: June 15, 2015.

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STATE OF NORTH CAROLINA

RONALD BARRANCO and PRINT3D CORPORATION,

Claimants,

vs.

3D SYSTEMS CORPORATION, a Delaware corporation; 3D SYSTEMS, INC., a California corporation, and DAMON GREGOIRE,

Respondents.

AAA No. 01-14-0001-8349

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2015, the foregoing document was served via email on the AAA, Arbitrator, and Claimants’ counsel as follows:

Mark Poe, Esq.   mpoe@gawpoe.com
Randolph Gaw, Esq.   rgaw@gawpoe.com

DATED: June 15, 2015.

[Signature]

Nikole Setzler Mergo
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