SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

RICHARD C. LITMAN,

Plaintiff,

vs.

JOSHUA B. GOLDBERG,

Index No. 524343/2025

Defendant

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

Plaintiff is not asking this Court to re-litigate the Combination Agreement or the Virginia arbitration. The June 14, 2023 Arbitration Award already fixed his rights: his employment ended June 15, 2020, and he holds a five-year, “whenever collected” 20% property interest in revenues from his originated clients’ matters—essentially a deferred purchase-price stream for the law practice he sold, treated “as if [he] had died” to protect his wife and estate.

This case is about what happened next—when Defendant Joshua B. Goldberg, a New York patent lawyer, continued to use Plaintiff's name and USPTO identity as NGM's patent lawyer and attorney of record on hundreds of post-Award matters (including approximately 467 of 631 patents issued to King Faisal University in 2024 listing "Richard C. Litman" as attorney of record), while exercising exclusive control over the law-firm trust accounts and internal books that determine whether Plaintiff's vested, inheritable 20% purchase-price stream is ever paid.

At the CPLR 3211 stage, those post-Award, property- and identity-based allegations easily justify denying dismissal and granting a targeted, two-year accounting focused on the largest clients, including King Faisal University and King Saud University, with reasonable tracing as needed. Plaintiff's claims for equitable accounting, constructive trust, unjust enrichment, fiduciary-like breach, and statutory misappropriation of name and identity are plainly viable when his detailed factual allegations are taken as true and all favorable inferences are drawn, as the law requires.

STATEMENT OF FACTS

The Court is respectfully referred to the Second Amended Complaint and the Affidavit of Richard C. Litman for a full recitation of the facts. In summary:

- In 2017, Plaintiff sold his IP law practice to NGM under a Combination Agreement and amendment, taking the purchase price of 20% share of "Revenue" (attorney's fees) from

"Litman-originated clients" for a period after termination, "whenever collected."

- The parties agreed to treat Plaintiff's disability "as if [he] had died" for purposes of triggering the earn-out. On June 14, 2023, a private arbitrator issued an Award holding that Plaintiff's employment ended June 15, 2020, that Plaintiff is entitled to 20% of Revenue from originated clients for five years from that date, "whenever collected," and that disability payments cannot be used to offset the 20% stream.

- After becoming disabled, Plaintiff cleaned out his desk at the firm's Virginia office in late 2020/early 2021 and has not worked there since. Defendant Goldberg managed relationships with Plaintiff's originated clients and controlled the trust and operating accounts and the firm's Soluno / PC Law accounting systems for those matters. Plaintiff has no direct access to those systems or bank accounts.

- Despite obtaining an Award declaring that Plaintiff's employment and Senior Counsel status ended June 15, 2020, NGM's website continued for years to list Plaintiff as "Senior Counsel," "Patent Attorney," and then "Patent Attorney (Retired)," and numerous USPTO front pages continued to list "Richard C. Litman" as attorney of record or patent attorney on matters Plaintiff did not touch.

- In 2024 alone, USPTO records show approximately 631 U.S. patents issued to King Faisal University, approximately 467 of which list "Richard C. Litman" as attorney of record or patent attorney on the face of the patent. All issued after the June 14, 2023

Award; Plaintiff did not review, sign, supervise, or participate in the prosecution or issuance of those patents.

- At the same time, accounting records and partial data indicate large payments, trust transfers, “retainer” classifications, write-offs, and unexplained discrepancies in how revenues from Plaintiff’s originated clients were recorded and applied, making it impossible for Plaintiff to determine how much of his 20% vested property interest has been paid and how much remains outstanding.

POINT I

THE ARBITRATION AWARD FIXES PLAINTIFF’S RIGHTS; IT DOES NOT BAR POST-AWARD PROPERTY AND IDENTITY CLAIMS

Defendant’s res judicata and collateral-estoppel arguments ignore both what the Award actually did and what this action actually alleges.

The Award resolved:

- that Plaintiff’s employment ended June 15, 2020;
- that Plaintiff is entitled to a five-year, “whenever collected” 20% share of attorney’s-fee “Revenue” from originated clients’ matters open during that period; and

- that disability payments do not reduce that 20% stream.

In substance, the Award acknowledges a vested, inheritable purchase-price right—not wages. Once a covered matter is open for a Plaintiff-originated client during the five-year period, Plaintiff's 20% interest in the attorney-fee component of any later payments on that matter is fixed. If Plaintiff dies, those post-Award payments belong to his widow and estate as property, like any other debt or royalty owed to a decedent.

This action challenges what Goldberg did after the Award:

- continuing to use Plaintiff's identity as NGM's patent lawyer and attorney of record to keep and grow client relationships, particularly with KFU and KSU; and

- using his exclusive control over trust accounts and internal accounting systems to determine whether, when, and how much of the fixed 20% property stream is actually paid.

Many of the key facts—most notably the 467 KFU patents issued in 2024—occurred after the arbitration and could not have been litigated there. Res judicata does not bar later claims based on new conduct and new injuries that post-date an earlier decision. Nor does the Award's limited conclusion that the Combination Agreement itself did not create a fiduciary duty which precludes this Court from recognizing a special or fiduciary-like duty arising from different facts: the sale of a law practice, Plaintiff's disability and absence from the office, Goldberg's total control over a vested property stream and identity, and the subsequent pattern of post-Award misuse.

Enforcement of the 20% obligation by Plaintiff's estate is likewise not a new "contract-interpretation" dispute that must be sent back to arbitration. It is the collection of vested property rights the Award already recognized. Arbitration is a matter of consent; nothing in the Combination Agreement or Award requires a New York estate to re-arbitrate in Virginia every time a New York lawyer who controls the trust account fails to remit a payment on a vested post-Award obligation.

At the CPLR 3211 stage, these post-Award property and identity allegations are more than enough to avoid dismissal.

Furthermore, Defendant's reliance on the arbitration award is disingenuous, as he has presented the Court with an incomplete record. The Final Award (Def. Ex. C) incorporates by reference an earlier **Interim Award** dated February 21, 2023, which Defendant conveniently omitted. (See Litman Aff. ¶¶25-27, Ex.A [Letter for Interim Award]).

A review of the complete arbitral record reveals a starkly different picture. In the Interim Award, the arbitrator **denied** Respondents' motion to dismiss Plaintiff's claims for an **accounting** and **breach of fiduciary duty**. The arbitrator specifically found that the "source of duty rule" did not bar the accounting and that the pleadings were sufficient to allow the fiduciary duty claim to proceed. (Id.).

It is the height of irony for Defendant to now argue that these very same claims are so baseless that they must be dismissed as a matter of law, when the arbitrator—whose decision is the foundation of their motion—already ruled that they were viable enough to proceed. Defendant is effectively misrepresenting the outcome of the prior proceeding to this Court. The full record shows that the issue of whether Plaintiff could maintain these claims was, in fact, litigated and decided *in Plaintiff's favor* at the motion-to-dismiss stage of the arbitration.

POINT II

GOLDBERG CAN BE PERSONALLY LIABLE FOR HIS OWN POST-AWARD MISCONDUCT

Defendant's reliance on PLLC statutes and corporate-form doctrines misses the mark. Plaintiff is not suing Goldberg as a mere member of NGM for breach of NGM's contracts. Plaintiff is suing Goldberg for his own conduct, including:

- personally allowing and benefitting from the continued use of Plaintiff's identity as NGM's patent lawyer and attorney of record on hundreds of post-Award matters without written consent; and

- personally controlling the trust accounts and internal accounting entries that determine how Plaintiff's vested, inheritable 20% purchase-price stream is handled.

Corporate and PLLC shields protect members from vicarious contract liability; they do not immunize individuals for their own torts, statutory violations, breaches of duty, or unjust enrichment. New York and Virginia law are clear that individuals remain personally liable for their own inequitable conduct even when acting through an entity. Plaintiff's claims against Goldberg fall squarely in that category.

POINT III

PLAINTIFF'S NARROW, POST-AWARD REQUEST FOR AN EQUITABLE ACCOUNTING AND CONSTRUCTIVE TRUST IS WELL-FOUNDED

An equitable accounting is appropriate where:

1. there is a fiduciary or confidential relationship;

2. the defendant controls property in which the plaintiff has an interest; and

3. the plaintiff lacks information and means to determine the amounts due.

Plaintiff has alleged all three, particularly in the post-Award period.

- The nature of the relationship—two patent lawyers, one selling his practice and purchase-price rights to the other, then becoming disabled and leaving the office while the other uses his identity and controls his purchase-price stream—goes beyond a standard at-will employment relationship. It is a trust-based, special arrangement that equity readily recognizes.

- Goldberg exercises exclusive control over funds representing Plaintiff's 20% property interest, held within law-firm trust and operating accounts, and over the Soluno / PC Law entries and classifications that determine whether and how those funds are treated as "Revenue" for 20% purposes.

- Plaintiff has no independent access to those systems and has alleged discrepancies and reclassifications (e.g., "retainers," write-offs) that make it impossible for him to calculate his 20% share without Court-supervised disclosure.

Plaintiff has further limited his accounting request to the two-year, post-Award period (June 14, 2023–present), focused on KFU, KSU, and other originated clients, with only such backward tracing as is necessary to explain balances and payments in that window. That is precisely the kind of focused accounting New York courts order when fiduciary-like parties control complex financial information concerning another's property.

Plaintiff's constructive-trust claim is properly pleaded: a special relationship, a promise (the 20% purchase-price structure as fixed by the Award), transfer of his practice and identity, and unjust enrichment by Goldberg's retention of funds and benefits beyond what the 20% structure and identity statutes permit. Any further refinement can be addressed on a fuller factual record; it should not be dismissed at the pleadings stage.

Defendant's attempt to frame this as a simple contract matter is further belied by the procedural history of the related federal action. As detailed in Plaintiff's affidavit, the claims in the federal case have been clarified in a proposed Third Amended Complaint to focus squarely on the violation of federal law and public policy inherent in using a patent attorney's name and registration number without their involvement (Litman Aff. ¶¶28-30).

This distinction is critical. The unauthorized use of a federally-regulated professional identity is not a "benefit of the bargain" issue that can be resolved by interpreting a contract. It is an independent tort that harms the public, undermines the integrity of a federal agency, and exposes the Plaintiff to professional liability. Goldberg's personal direction of this conduct is the basis for his personal liability in tort, a claim that stands entirely separate from the contractual obligations of his firm."

POINT IV

UNAUTHORIZED COMMERCIAL USE OF PLAINTIFF’S IDENTITY STATES CLAIMS UNDER CIVIL RIGHTS LAW §§ 50–51 AND VIRGINIA CODE § 8.01-40 AND SUPPORTS AN IDENTITY-BASED ACCOUNTING

New York Civil Rights Law §§ 50–51 and Virginia Code § 8.01-40 prohibit the use of a person’s name or identity “for advertising purposes” or “for the purposes of trade” without written consent, and they authorize actions in equity and for damages and profits.

Plaintiff alleges that after June 14, 2023, Goldberg and NGM:

- continued to hold him out on the firm website as “Patent Attorney” or “Patent Attorney (Retired)”; and

- allowed hundreds of patent applications and patents—including at least 467 King Faisal University patents in 2024—to proceed and issue listing “Richard C. Litman” as attorney of record or patent attorney, even though Plaintiff was not involved and had been adjudicated terminated as of June 15, 2020.

Those are not stray references. They are commercial uses of his professional identity to keep clients and attract business: the entire point of leaving his name on the website and patents is to signal to the market that Plaintiff is still the patent lawyer standing behind the work. Under the statutes, no such use is permitted without written consent, which Plaintiff alleges he did not give.

Nor can Plaintiff’s identity lawfully be “borrowed” in USPTO practice. An S-signature is treated as a practitioner’s own certification. One patent lawyer cannot validly appear as another in filings; you cannot “consent” to someone else impersonating you professionally in a way that the rules themselves do not permit. Using Plaintiff’s name and registration in this context is, as he analogizes, like putting a Rabbi’s kosher certification symbol on food he never inspected: the commercial value comes from the false impression that this specific person has approved the product.

These facts state classic §§ 50–51 / § 8.01-40 claims and justify an identity-based accounting of profits from the post-Award commercial use of Plaintiff's identity, especially for the same clients (KFU, KSU) whose revenues feed into his 20% purchase-price stream.

POINT V

AT THE 3211 STAGE, PLAINTIFF'S POST-AWARD ALLEGATIONS ARE MORE THAN SUFFICIENT TO AVOID DISMISSAL

Defendant's motion asks this Court to:

- ignore the distinction between pre-Award and post-Award conduct;
- read the Award as barring enforcement of vested property rights and new statutory claims; and
- treat corporate-form protections as a shield against an individual's own misconduct.

Under CPLR 3211, that is not the standard. The Court must take Plaintiff's allegations as true and give him the benefit of every reasonable inference. When that is done, Plaintiff's claims easily clear the threshold:

- He has a vested, inheritable 20% purchase-price right, already recognized by the Award;

- Goldberg's post-Award use of his identity and control of trust-held funds and internal books present exactly the kind of equity and statutory issues New York Supreme Court is meant to hear; and

- The requested post-Award, two-year accounting is well-tailored to the issues and does not unduly burden the Court.

The motion to dismiss should be denied, and the case should move forward to an accounting and factual development.

AI-ASSISTANCE DISCLOSURE (UNIFORM RULE 202.1-b)

I, Richard C. Litman, certify that I used an artificial-intelligence-assisted drafting tool to help prepare this Memorandum of Law and related papers; that I have personally reviewed and edited all text; and that I accept responsibility for the content of this filing, including all factual statements and legal arguments.

CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court:

1. Deny Defendant's motion to dismiss in its entirety;

2. Grant Plaintiff's cross-motion for a targeted equitable accounting for the period June 14, 2023 to the present, with reasonable tracing as described and focus on King Faisal

University, King Saud University, and other Plaintiff-originated clients;

3. Impose a constructive trust over funds and benefits derived from Plaintiff's vested 20% purchase-price stream and from the unauthorized commercial use of his identity; and

4. Retain jurisdiction to enforce payment of any amounts shown by the accounting to be due but unpaid on those vested rights, including enforcement by Plaintiff's estate if he dies.

Dated: Brooklyn, New York

November 26, 2025

Respectfully submitted,

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VERIFICATION

I, Richard C. Litman, am the Plaintiff in the within action. I have read the foregoing Memorandum and know the contents thereof. The same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York November 26, 2025

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