

**SUPREME COURT OF THE STATE OF NEW YORK.  
COUNTY OF KINGS**

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RICHARD C. LITMAN,

Plaintiff,

-against-

JOSHUA B. GOLDBERG,

Defendant.

Index No.: 524343/2025

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**PLAINTIFF’S DEMAND FOR A BILL OF PARTICULARS**

(Affirmative Defenses Only – CPLR 3041 & 3042)

PLEASE TAKE NOTICE that, pursuant to CPLR 3041 and 3042, Plaintiff demands that Defendant serve a verified Bill of Particulars specifying the factual bases for each affirmative defense asserted in Defendant’s Answer (NYSCEF Doc. No. 65), as follows

**FIRST AFFIRMATIVE DEFENSE**

(Statute of Limitations – Generally)

Identify the specific statute of limitations Defendant contends applies to Plaintiff’s claims.

1. State the date(s) of accrual Defendant contends govern each claim.
  2. Identify the specific use(s) of Plaintiff's name Defendant contends are time-barred.
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**SECOND AFFIRMATIVE DEFENSE**

(CPLR 215(3))

4. Identify each publication or use Defendant contends is barred under CPLR 215(3).
  5. For each, state:
    - (a) the date of first publication;
    - (b) the medium (e.g., issued patent, website); and
    - (c) whether Defendant contends any later publication occurred.
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**THIRD AFFIRMATIVE DEFENSE**

(First Publication Rule)

6. Identify each publication Defendant contends constitutes the "first publication."
  7. State whether Defendant contends that:
    - (a) each issued U.S. patent is a single publication only, and
    - (b) later-issued patents are not new publications.
  8. State the factual basis for those contentions.
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**FIFTH AFFIRMATIVE DEFENSE**

(Waiver / Estoppel / Laches / Unclean Hands)

9. Identify each act or omission by Plaintiff Defendant contends supports this defense.
  10. State the date(s) of each such act or omission.
  11. State how Defendant relied on each act or omission.
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**SIXTH AFFIRMATIVE DEFENSE**

(Res Judicata)

12. Identify the prior action or proceeding Defendant contends bars Plaintiff's claims.
  13. Identify the specific claim(s) Defendant contends are barred.
  14. State whether Defendant contends Plaintiff's Civil Rights Law §§ 50–51 claim was actually litigated or necessarily decided therein.
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**SEVENTH AFFIRMATIVE DEFENSE**

(Collateral Estoppel)

15. Identify the specific issue(s) Defendant contends were actually litigated and decided.
  16. Identify the tribunal, date, and decision for each such issue.
  17. State the basis for Defendant's contention that Plaintiff had a full and fair opportunity to litigate each issue.
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**EIGHTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

18. Identify each specific action Defendant contends Plaintiff failed to take.
  19. State the date(s) Plaintiff allegedly should have taken such action.
  20. State how Defendant contends such action would have reduced or eliminated damages.
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**NINTH AFFIRMATIVE DEFENSE**

(No Damages)

21. State whether Defendant contends:
    - (a) Plaintiff suffered no damages, or
    - (b) damages are not legally recoverable.
  22. State the factual basis for that contention.
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**TENTH AFFIRMATIVE DEFENSE**

(Implied and/or Express Consent)

23. Identify each written document Defendant contends constitutes express consent.
24. State the date of execution of each document.
25. Identify the specific use(s) Defendant contends were authorized.
26. If Defendant contends consent was implied, state the facts supporting that contention and identify any writing relied upon.

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**RESERVATION / COMPLETENESS**

27. Identify any facts, documents, or witnesses Defendant intends to rely upon in support of any affirmative defense not otherwise identified above.

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**VERIFICATION**

This Bill of Particulars shall be verified pursuant to CPLR 3042.

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Dated: Brooklyn, New York

January 27, 2026

/s/ Richard C. Litman

Richard C. Litman  
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