SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of RUMI DURMAZ, Petitioner, For the Dissolution and Judicial Winding Up of CENTRAL PARK ADVANCED IMAGING, - against - Anna L. Santos and David A. Nigrelli, Esq. in their representative capacities as Co-Administrators of the ESTATE OF ALEXIS L. SANTOS, deceased, Respondents.	Index No.: 651291/2026

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF HIS VERIFIED PETITION FOR DISSOLUTION AND OTHER RELIEF

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Pursuant to New York Partnership Law ("Partnership Law") §§ 62(4), 62(1)(b), and 68, Petitioner Rumi Durmaz ("Petitioner"), respectively submits this memorandum of law in support of his petition for an equitable buyout, judicial dissolution, and winding up of Central Park Advanced Imaging ("CPAI" or "Partnership"), against the Estate of Alexis L. Santos ("Estate") and its Co-Administrators, Anna L. Santos ("Anna")[1] and David A. Nigrelli, Esq. ('Mr. Nigrelli") in their representative capacities (together, "Respondents").

PRELIMINARY STATEMENT

This dispute arises from an at-will New York general partnership that Petitioner and Alexis L. Santos ("Mr. Santos") formed and operated together to run a medical-imaging business. Their conduct—joint bidding, capitalization, shared management, and coordinated decision-making—established a true co-ownership venture, even though formal organizational documents were to be finalized after the auction of certain predecessor assets. Mr. Santos unfortunately passed away on March 12, 2025, before the venture could formally be converted to an LLC. With his death, the Partnership immediately dissolved and has since existed for the sole purpose of winding down. This is undisputed and standing alone warrants dissolution of the Partnership.

There is also an independent and equally dispositive basis for dissolution. Petitioner does not consent to continuing his business relationship with the Estate or Respondents. Where, as here, a partnership has no definite term or particular undertaking, any partner may dissolve the partnership by will. The equities here also decisively favor dissolution based on Respondents' lack of participation and positions they adopted following Mr. Santos's death. After Mr. Santos's passing, Petitioner promptly sought direction from the Estate—through Co-Administrators Anna

[1] Petitioner refers to Respondent Anna Santos as "Anna" to avoid any ambiguity and intends no disrespect.

and Mr. Nigrelli—asking for a clear commitment to continue participating in the Partnership by contributing capital and assuming necessary guarantees, or for a negotiated buyout to avoid litigation. Respondents would not decide, would not fund, and would not assume guarantees. This not only immobilized the business, but unfairly shifted all burdens of its preservation to Petitioner, who was forced to shoulder those responsibilities then and continues to do so to this day.

The prejudice to Petitioner has been concrete and severe. To prevent defaults and protect CPAI for going out of business, he alone, without compensation or contribution from the Estate, kept the business afloat by running daily operations, maintaining the books, managing vendors, and personally guaranteeing millions of dollars in obligations, including the MRI equipment and premises leases. In contrast, Respondents contributed nothing and assumed no risk, yet astonishingly now claim they are entitled to the future profits, if any, of the business. The law does not require a surviving partner to bankroll a defunct at-will partnership so an estate can speculate on potential future profits. Because dissolution occurred by statute on March 12, 2025, the only proper course is a prompt wind-up.

Against this backdrop, Petitioner made extensive, good-faith efforts to resolve the valuation and remittance of Mr. Santos's interest in the Partnership without judicial intervention. He provided Respondents and their professionals access to the Partnership's accountant, accounting records, supporting documentation, and complete QuickBooks files. Petitioner, through counsel, also retained an independent valuation expert and delivered a detailed valuation report[2] assessing both CPAI and Mr. Santos's partnership interest as of the date of death. New York law is clear in this regard: upon dissolution by death, the Estate's interest is fixed as of the

[2] As set forth in Point IV below, the valuation reports contain proprietary, non-public financial information of CPAI, including detailed financial statements and capital structure data. Accordingly, good cause exists to seal those reports pursuant to 22 N.Y.C.R.R. § 216.1(a).

date of death. It is not entitled to participate indefinitely in future profits while contributing absolutely nothing. Nor is the Estate entitled to an undiscounted share of CPAI's aggregate value, because what transferred at death was, at most, a passive economic interest in a closely held business devoid of management authority or voting rights. And because CPAI has operated at a loss from its inception through today, this economic reality should also be reflected in any valuation of the Estate's interests.

Separately, Respondents have now gone further by threatening to demand that the Partnership be offered for sale if the parties cannot agree on valuation—despite lacking any statutory or contractual authority to compel such relief. This position is legally untenable and underscores the necessity for judicial intervention and the issuance of restraints. The Partnership has already dissolved by statute; and what remains is an orderly wind-up. Respondents are not entitled to propose a sale of the business that Petitioner has fought hard to keep alive.

Even if Respondents contend that the venture must be evaluated under the Limited Liability Company Law ("LLCL"), the result remains the same. Continued co-ownership is no longer reasonably practicable, and dissolution—or, as a more equitable and less draconian remedy, a compelled buyout—is warranted under LLCL § 702 and New York common law. Moreover, independent of any statutory framework, this Court's inherent equitable authority provides a separate and sufficient basis to order a fair-value buyout of the Estate's passive interest, after applying appropriate discounts for lack of marketability and lack of control.

For these reasons and as amplified herein, Petitioner's Order to Show Cause should be granted.

STATEMENT OF FACTS

Petitioner relies on and hereby incorporates by reference the facts set forth in the Verified Petition and the Affirmation of Young Yu, Esq. submitted herewith.

STANDARD OF REVIEW

In a special proceeding, such as one for the judicial dissolution of an at-will general partnership, this Court is authorized under CPLR 409(b) to "make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised." *TNT Petroleum, Inc. v. Sea Petroleum, Inc.*, 72 A.D.3d 694, 695 (2d Dep't 2010). Summary disposition under CPLR 409(b) is therefore "analogous" to summary judgment under CPLR 3212. *People ex rel. Robertson v. New York State Div. of Parole,* 67 N.Y.2d 197, 203 (1986). Similar to a motion for summary judgment, the petitioner has the initial burden of demonstrating entitlement to relief. Once the petitioner states a prima facie case, the burden then shifts to the respondent to raise an issue of fact. If triable issues of fact are raised, then "an evidentiary hearing must be held." *Hernandez v. Motor Vehicle Acc. Indemnification Corp.*, 120 A.D.3d 1347, 1349 (2d Dep't 2014). If the petitioner satisfies its prima facie burden, and, in opposition, the respondent fails to raise a triable issue of fact, summary disposition should be granted in favor of the petitioner. *TNT Petroleum*, 72 A.D.3d at 695.

LEGAL ARGUMENT

POINT I

JUDICIAL WINDING UP OF THE PARTNERSHIP IS REQUIRED BECAUSE THE PARTNERSHIP WAS DISSOLVED BY OPERATION OF LAW UPON MR. SANTOS'S DEATH AND BECAUSE RESPONDENTS HAVE REFUSED TO PERMIT AN ORDERLY WIND-UP

The Court's intervention is required not to dissolve an ongoing entity, but to implement a dissolution that has already occurred by statute. What remains is the orderly implementation of that dissolution and judicial supervision of a wind-up process that Respondents have impeded despite unambiguously *consenting* to a buyout.

A. Mr. Santos and Petitioner Formed an At-Will General Partnership.

As a threshold matter, Mr. Santos and Petitioner unequivocally formed an at-will New York general partnership. A partnership is defined as "an association of two or more persons to carry on as co-owners of a business for profit." Partnership Law § 10. Courts determine existence of a partnership from the parties' conduct—including profit sharing and joint control. Partnership Law § 11. Courts have held that a partnership (and its close analogue, a joint venture) may be implied in fact from the parties' actions and mutual assent requiring proof of (i) intent to be associated as co-owners, (ii) contributions by each, (iii) some degree of joint control, and (iv) an agreement to share profits and losses—even absent a formal, written agreement. *Richbell Info. Servs., Inc. v. Jupiter Partners, L.P.*, 309 A.D.2d 288, 298 (1st Dep't 2003); *cf. Slabakis v. Schik*, 164 A.D.3d 454, 455 (1st Dep't 2018). Indeed, "[a]n indispensable [element] of a contract of partnership or joint venture, both under common law and statutory law, is a mutual promise or undertaking of the parties to share in the profits of the business and submit to the burden of making good the losses." *Matter of Steinbeck v Gerosa*, 4 N.Y.2d 302, 317 (1958).

Here, it is undisputed that Petitioner and Mr. Santos formed an at-will New York general partnership. They agreed to become equal, 50/50 partners following the acquisition of Amric's assets. (Pet. ¶ 51.) Their contemporaneous communications reflect a shared understanding that CPAI required joint capital contributions to operate and succeed. (*Id.* ¶ 52.) The contemplated structure of CPAI assumed equal participation and contribution from both partners. Their conduct further confirms co-ownership and intended shared control. During the auction process, Petitioner represented that the acquisition would "be closed under an entity formed" with Mr. Santos. (*Id.* ¶ 54.) Mr. Santos and Petitioner jointly prepared the Asset Purchase Agreement ("APA"), governing the transfer of the business assets. (*Id.* ¶¶ 55–57.) Petitioner submitted the qualifying bid with the executed APA, was deemed the winning bidder, and thereafter confirmed that a new entity between himself and Mr. Santos would be formed. (*Id.* ¶¶ 59–60.) These coordinated actions reflect mutual assent to co-ownership for profit, reciprocal contributions, and shared management—the precise indicia courts rely upon to find a partnership in the absence of a written agreement. *Richbell*, 309 A.D.2d at 298.

To be sure, Petitioner filed Articles of Organization for Central Park Advanced Imaging Center, LLC ("LLC") on February 12, 2025. But he did so individually, and applied for and received an employer identification number ("EIN") from the IRS with respect to the LLC as the "sole member." *Id.* ¶ 66. Moreover, the entity was never governed by an operating agreement or utilized as the operative vehicle for the parties' business prior to Mr. Santos's death. Nor was Mr. Santos ever admitted as a member of the LLC. Consequently, the rights and obligations of the parties—and the dissolution automatically triggered by Mr. Santos's passing—are governed primarily by New York Partnership Law.

B. <u>Dissolution of the Partnership Is Proper Under Partnership Law §§ 62(4) and 62(1)(b).</u>

Two independent statutory grounds compel dissolution of the Partnership.

First, a partnership dissolves by operation of law upon the death of any partner, absent an agreement to the contrary. Partnership Law § 62(4); *Burger, Kurzman, Kaplan & Stuchin v. Kurzman*, 139 A.D.2d 422, 424 (1st Dep't 1988). Upon death, the surviving partner's rights in specific partnership property vest for partnership purposes only (*i.e.*, to wind up, not to continue with the estate). Partnership Law § 51(2)(d).

It is undisputed that this record fits squarely within these rules. There is no written agreement providing for continuation of the Partnership after Mr. Santos's death. (Pet. ¶¶ 62–73.) Mr. Santos died on March 12, 2025 (*Id.* ¶ 69.) Although Petitioner filed Articles of Organization for CPAI on February 12, 2025, the conversion to an LLC was not completed at the time of Mr. Santos's death. (*Id.* ¶¶ 65, 67–72.) CPAI therefore remained a New York at-will general partnership. These facts compel a declaration that the Partnership dissolved as a matter of law on March 12, 2025. *See* Partnership Law § 62(4) (stating "[d]issolution is caused . . [b]y the death of any partner"). Dissolution upon a partner's death is automatic by operation of statute and does not depend on judicial discretion or the parties' subsequent conduct. A court's function is to recognize the legal status that already exists and to oversee the statutory consequences that follow, and that is what is required here.

Second, where the partnership has no definite term or particular undertaking, any partner may dissolve by express will. Partnership Law § 62(1)(b); *Gelman v. Buehler*, 20 N.Y.3d 534, 538–45 (2013). Because the Partnership here lacked any definite term or particular undertaking, dissolution is also proper by Petitioner's express will under Partnership Law § 62(1)(b). New York courts treat § 62(1)(b) as the default rule in the absence of a contrary agreement. *Gelman*, 20 N.Y.3d at 538–45. The First Department has further held that, following a partner's death, the surviving partner holds the exclusive right to wind up, and the decedent's representative has no right to participate in the conduct of the business. *B & G Holding Co., Inc.*, 210 A.D.3d 580, 581 (1st Dep't 2022); *Gross v. Neiman*, 147 A.D.3d 505, 506 (1st Dep't 2017). Those holdings dovetail with Partnership Law § 51(2)(d) (surviving partner's possessory right in specific partnership property for partnership purposes) and Partnership Law § 68 (court-ordered winding up "upon cause shown").

Setting aside the statutory provisions at play, Petitioner has also shown indisputable cause for dissolution and judicial supervision as a matter of equity. This record reflects that judicial intervention became necessary after efforts to resolve the wind-up without court involvement proved unsuccessful. Indeed, in the immediate aftermath of Mr. Santos's death, Petitioner sought cooperation—not confrontation. He repeatedly requested joint decision-making and equal financial participation from Respondents. (Pet. ¶¶ 78–84.) He proposed an equal $415,000 capital contribution per partner to secure the lease transfer deposit, fund the $525,000 equipment payment, and cover necessary operating expenses to prevent default. (*Id.* ¶ 80.) But Respondents neither funded nor countered. Instead, they directed Petitioner to advance the required capital while they would "get organized." (*Id.* ¶ 84.) Faced with immediate contractual obligations and the risk of catastrophic default, Petitioner acted alone because he had to. He ended up advancing operating funds out of pocket and personally guaranteeing millions of dollars in lease and equipment obligations to prevent CPAI's collapse. (*Id.* ¶ 6.) Respondents contributed nothing and assumed no financial exposure whatsoever.

Even after assuming extraordinary personal risk, Petitioner pursued resolution rather than litigation. He provided full access to CPAI's books and financial records to Respondents. (*Id.* ¶ 85.) He retained an independent valuation expert and delivered a completed valuation report assessing Mr. Santos's interest as of the date of his death. (*Id.* ¶¶ 100–102.) Rather than reciprocate in accordance with that framework as agreed, Respondents have stalled, shifted positions, and failed to meaningfully advance the agreed upon valuation process. (*Id.* ¶¶ 90-91, 103–08.)

Surprisingly, Respondents have also advanced that the Estate is entitled to share in post-death profits generated exclusively through Petitioner's post-dissolution labor, additional capital contributions, and personal guarantees. (Pet. ¶ 109.) That position is irreconcilable with the statute's plain language and settled partnership law. To be clear, the Estate may receive the value of its interest as of the date of dissolution (*i.e.*, the date of Mr. Santos's death) or instead choose to receive the profits attributable to the use of Mr. Santos's share of the partnership property—but not both—under Partnership Law § 73. Indeed, such an election for profits is available only in the event there has been no settlement of Estate's account and the business is continued with Respondents as partners, which is not the case here. Moreover, as the business has consistently operated at a loss and has generated no net income or distributions since Mr. Santos's passing, any election for "profits" would be mathematically zero in any event.

On this record, the Partnership dissolved by law on March 12, 2025. The valuation date is fixed. The Estate's entitlement is fixed. And what remains is implementation. The Court should respectfully enforce the statute as written, declare dissolution as of March 12, 2025, and supervise an orderly wind-up of the Estate's interest consistent with New York law and valuation principles.

C. <u>Petitioner Has The Right To Wind Up The Partnership.</u>

By statute, the right to wind up belongs exclusively to "the partners who have not wrongfully dissolved the partnership," and the Court may provide judicial supervision "upon cause shown." Partnership Law § 68. Furthermore, "on the death of a partner, 'his [or her] right in specific partnership property vests in the surviving partner or partners.'" *Neilson v 6D Farm Corp.*, 123 A.D.3d 676, 678 (2d Dep't 2014) (quoting Partnership Law § 51(2)(d)). Accordingly, Petitioner is vested with the sole authority to wind up the Partnership, and this Court should value of the Estate's interest as of the date of dissolution: March 12, 2025.

POINT II

EVEN IF ANALYZED UNDER THE LLCL, DISSOLUTION OR A BUYOUT ARE MANDATORY AND INEVITABLE

Even assuming *arguendo* that CPAI were analyzed under the LLCL rather than the Partnership Law, dissolution—and, at minimum, a compelled buyout—would still be required. LLCL § 702 authorizes judicial dissolution where it is "not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement." Dissolution is warranted where management becomes so dysfunctional that continued operation is impracticable, or where those in control are unable or unwilling to promote the entity's purpose. *Fakiris v. Gusmar Enters., LLC*, 53 Misc. 3d 1215(A) at *5 (Sup. Ct. Queens Cnty. 2016). That standard is satisfied here.

CPAI has no operating agreement. (Pet. ¶ 71.) Under the LLCL's default provisions, governance would necessarily require joint participation. Yet Petitioner expressly refuses to continue in business with Respondents or the Estate under any circumstances. (*Id.* ¶¶ 8.) Respondents, for their part, have made no capital contributions, have not participated in operations (*id.* ¶¶ 4, 22), and nevertheless assert entitlement to post-death profits (when none exists) while threatening to market or sell CPAI without authority. (*Id.* ¶¶ 94–96, 109.) Meanwhile, Petitioner alone has guaranteed millions in obligations and solely operated CPAI since Mr. Santos's passing. (*Id.* ¶¶ 6, 82–83.)

This is no longer a functioning jointly managed enterprise. Where joint governance becomes unworkable and the relationship between co-owners irretrievably breaks down, dissolution is appropriate. *Fakiris*, 53 Misc. 3d 1215(A) at *5–6. A limited liability company cannot operate "in conformity" with its governing structure where one side refuses to continue co-ownership and the other demands economic benefit without operational participation. That is the precise impracticability contemplated by LLCL § 702.

To be sure, while the LLCL does not expressly mandate a buyout, New York courts consistently recognize that such a result is a proper equitable remedy where the circumstances require it. Indeed, a compelled buyout is the practical and necessary alternative to a draconian liquidation, particularly where, as here, fairness dictates that the surviving member be permitted to continue the business while providing the Estate its value as of the date of dissolution. *See, e.g.*, *Mizrahi v. Cohen*, 104 A.D.3d 917, 918 (2d Dep't 2013); *Matter of Superior Vending, LLC*, 71 A.D.3d 1153, 1154 (2d Dep't 2010); *Lyons v. Salamone*, 32 A.D.3d 757, 758 (1st Dep't 2006).

Accordingly, even if this matter were construed under the LLCL, the outcome would not change. The undisputed facts alleged in the Petition establish that joint governance has collapsed, continued co-ownership is no longer reasonably practicable, and the statutory standard for dissolution is plainly satisfied. A fair value buyout should be ordered.

POINT III

INDEPENDENT OF ANY STATUTORY ANALYSIS, THIS COURT POSSESSES INHERENT EQUITABLE AUTHORITY TO ORDER A BUYOUT

Even if the LLCL were deemed inapplicable or unsatisfied, dissolution is warranted under common-law principles and the powers vested with this Court. Indeed, the authority to dissolve a closely held entity does not originate solely in the LLCL. It derives from the court's inherent equity jurisdiction. *Barclay v. Barrie*, 209 N.Y. 40, 49 (1913). The LLCL did not extinguish that authority. In *Tzolis v. Wolff*, 10 N.Y.3d 100, 109 (2008), the Court of Appeals made clear that established principles of equity apply in the LLC context unless clearly displaced by statute. No provision of LLCL §§ 701 or 702 purports to make those sections exclusive. As the First Department has recognized, statutory dissolution "supplemented" rather than supplanted equitable dissolution. *Ferolito v. Vultaggio*, 99 A.D.3d 19, 28 (1st Dep't 2012); *Leibert v. Clapp*, 13 N.Y.2d 313, 315 (1963). Courts invoke it where continued co-ownership would compel one fiduciary to remain indefinitely bound to an arrangement that has become fundamentally inequitable. *Leibert*, 13 N.Y.2d at 316–17. The doctrine also exists to prevent abuse of control, inequitable allocation of risk, and the frustration of a member's reasonable economic expectations.

The circumstances and the record presented here embody the very inequity that a court is designed to remedy. Petitioner alone bears substantial financial exposure while Respondents assert economic entitlement without corresponding contribution or assumption of risk. (Pet. ¶¶ 6, 82–84.) Respondents claim the benefits of ownership while disavowing its burdens. Equity does not compel one member to underwrite the enterprise while the other retains upside without exposure. Where the parties' obligations are unbalanced in this manner, and once equitable grounds are established, the court may fashion the remedy fairness requires, including a compelled buyout. *Mizrahi*, 104 A.D.3d at 918 (explaining "a buyout may be an appropriate equitable remedy upon the dissolution of an LLC"); *Matter of Superior Vending*, 71 A.D.3d at 1154 (holding same); *Lyons*, 32 A.D.3d at 758 (affirming buyout despite "absence of a provision in the Limited Liability Company Law"). Equities aside, it also remains undisputed that Respondents do not wish to participate in the business and have confirmed through counsel that a buyout is proper. On these facts, continued forced co-ownership is untenable, and equitable dissolution or a compelled buyout is the only fair outcome.

POINT IV

THE ESTATE'S OWNERSHIP INTEREST IN CPAI MUST BE VALUED WITH DISCOUNTS FOR ITS LACK OF CONTROL AND LACK OF MARKETABILITY, AND WITHOUT GOODWILL OR POST-DEATH VALUE

This Court should find that the Estate is only entitled to a discounted fair value of its ownership interest in CPAI as of March 12, 2025. Specifically, the Court should apply discounts for lack of marketability and lack of control, and it should exclude goodwill and post-death value so that the award corresponds to the Estate's actual rights as they existed on March 12, 2025.

A. In the Absence of Any Governing Agreement, Equity Requires Valuation of the Estate's Ownership Interest With Discounts for Lack of Control and Lack of Marketability.

There is no partnership agreement, operating agreement, or buy-sell provision governing the valuation of the Estate's ownership interest in CPAI. (Pet. ¶¶ 36, 71, 124–25). No contract mandates an undiscounted payout, establishes a redemption formula, or provides a mechanism for liquidity. Consequently, this Court should determine, in equity, the fair market value of the Estate's interest as of March 12, 2025.

Although the LLCL "does not expressly authorize a buyout in a dissolution proceeding," courts retain broad equitable authority to fashion appropriate relief, including ordering a buyout where warranted. *Matter of Superior Vending*, 71 A.D.3d at 1154; *Mizrahi*, 104 A.D.3d at 918. Where the statute is silent and the parties failed to contract for a valuation mechanism, equity governs both the remedy and the valuation methodology. Fair value is determined by what a willing purchaser in an arm's-length transaction would pay for the specific ownership interest under the actual circumstances presented. *Matter of Friedman v. Beway Realty Corp.*, 87 N.Y.2d 161, 168 (1995). That inquiry expressly incorporates the reality of illiquidity, *i.e.*, "that a potential investor would pay less for shares in a close corporation because they could not readily be liquidated for cash." *Id.* at 165.

A discount for lack of marketability ("DLOM") reflects that a rational purchaser will pay less for an ownership interest that cannot be readily converted to cash. *Id.* at 165. New York courts routinely apply such discounts to prevent an inequitable windfall. *See Matter of Blake v. Blake Agency, Inc.*, 107 A.D.2d 139, 149 (2d Dep't 1985) (applying 25% discount for lack of marketability and recognizing that DLOM "is properly factored into the equation because the shares of a closely held corporation cannot be readily sold on a public market"); *In re Brooklyn Home Dialysis Training Ctr., Inc.*, 293 A.D.2d 747, 747 (2d Dep't 2002) (affirming trial court's DLOM application of 22.5% and yet another discount based on the "earning capacity of the company"). Calculating discounts for lack of marketability is "not an exact science," and "it is particular facts and circumstances of each case that will dictate the result." *Rosenblum v. Treitler*, 242 A.D.3d 472, 473 (1st Dep't 2025) (cleaned up). Most recently, the First Department in Rosenblum reaffirmed that fair value must reflect impaired liquidity and "the difficulties a third-party investor would risk in purchasing" a closely held company. *Id.* (affirming trial court's application of DLOM).

Equally clear is that upon the transfer of an interest by operation of death, the transferee acquires only economic rights unless admitted as a member in compliance with the statute. An assignee does not obtain management, voting, or governance authority. LLCL § 603(a)(1)–(3); *Behrend v. New Windsor Group, LLC*, 180 A.D.3d 636, 639 (2d Dep't 2020); *Kober v. Nestampower*, 243 A.D.3d 902, 903–04 (2d Dep't 2025). "A minority discount, a discount for lack of control, is an amount or percentage deducted from the pro rata share of value of 100% of an equity interest in a business to reflect the absence of some or all of the powers of control." *Matter of Jamaica Acquisition Inc. v. Shea*, 25 Misc 3d 1212(A), 1212A (Sup Ct. Nassau County 2009).

That is the legal posture here. The Estate was never admitted as a member, and it has no management rights or control. (Pet. ¶¶ 10–11, 26, 72.) It holds only a passive, transferable entitlement to profits and losses—in an enterprise that currently generates only losses. (*Id.* ¶¶ 21, 111–112.) As such, no rational buyer would pay an undiscounted pro rata share for an ownership interest that (i) carries no managerial authority, (ii) provides no guaranteed liquidity, (iii) cannot compel distributions, and (iv) perhaps most importantly, is tied to a loss-generating enterprise. *See In re Brooklyn Home Dialysis Training Ctr., Inc.*, 293 A.D.2d at 747 (affirming trial court's discount based on the "earning capacity of the company").

Accordingly, the Court should fix the fair market value as of March 12, 2025, applying appropriate discounts for lack of control and marketability to reflect the limited economic interest the Estate actually holds.

B. <u>CPAI Has No Goodwill and the Estate Has No Right to Post-Death Value.</u>

CPAI has no legally recognizable goodwill, and the Estate is not entitled to any increase in CPAI's value after March 12, 2025. The valuation must therefore be limited to CPAI's condition as it existed on Mr. Santos's death, without adding value based on subsequent operations.

Under settled New York law, goodwill exists only where a business generates profits in excess of a fair return on its tangible assets. *See, e.g., Von Au v. Magenheimer*, 126 A.D. 257, 270 (2d Dep't 1908), aff'd, 194 N.Y. 597 (1909) (explaining that "purchase of the average annual profits should be taken as the value of the good will"). Without normal earnings, goodwill does not exist. Separately, a departing owner is not entitled to value arising after the operative valuation date. *See Williams v. McClave*, 168 A.D. 192, 200 (1st Dep't 1915) ("But for the subsequent years when the company was running at a loss she was not entitled to divide profits by way of salary in lien of dividends, when she performed no services and there were no profits. So that for these years she must account."). Here, CPAI has never generated excess earnings. It operates at a continuing monthly loss. (Pet. ¶¶ 21, 111.) It has produced no net income and issued no distributions. (*Id.* ¶ 112.) An income-based valuation would yield no value. (*Id.* ¶ 17.) A business that consistently loses money cannot, as a matter of law, produce the excess earnings required to support goodwill. Any attempt to assign goodwill would require capitalizing negative earnings or speculating about profitability that does not exist. Nor can the Estate expand valuation beyond March 12, 2025. From that date forward, Petitioner alone funded operations, infused capital, and personally guaranteed substantial obligations to prevent CPAI's collapse. (*Id.* ¶¶ 6, 22, 83, 111–112.) The Estate contributed no capital and bore no risk. (*Id.* ¶¶ 4, 22.) Any stabilization or appreciation after that date resulted exclusively from Petitioner's post-death efforts and financial exposure.

Accordingly, valuation must be fixed as of March 12, 2025, and confined to the Estate's limited economic interest as it existed on that date. Because CPAI operates at a loss, there is no goodwill to include. And because the Estate's rights terminated at Mr. Santos's death, it cannot capture post-death value. Any contrary approach as proffered by Respondents would confer a windfall to the Estate.

POINT V

THE VALUATION REPORTS SHOULD BE SEALED BECAUSE THEY CONTAIN COMMERCIALLY SENSITIVE, NON-PUBLIC INFORMATION OF CPAI THAT SHOULD NOT BE DISCLOSED TO THE PUBLIC

Court records may be sealed "upon a written finding of good cause" and the "consider[ation of] the interests of the public as well as the parties." 22 N.Y.C.R.R. §216.1(a). In weighing the public interest, courts consider "the general right of the public to have open court proceedings." *In re E. 51st St. Crane Collapse Litig.*, 31 Misc. 3d 406, 413 (Sup. Ct. N.Y. Cnty. 2011) (internal quotations omitted). A party's interest in sealing court records overcomes the public interest when "disclosure could harm the private corporation's competitive standing." *Mancheski v. Gabelli Grp.*

Cap. Partners, 39 A.D.3d 499, 502–03 (2d Dep't 2007); *see Crain Commc'ns, Inc. v. Hughes*, 135 A.D.2d 351, 351 (1st Dep't 1987), *aff'd*, 74 N.Y.2d 626 (1989) (granting motion to seal documents when "records are a source of business information which might harm a litigant's competitive standing."); *Matter of Cohen v. S.A.C. Capital Advisors LLC*, 11 Misc. 3d 1054(A), at *9 (Sup. Ct. N.Y. Cnty. 2006) (granting motion to seal record when document contained "sensitive proprietary and business information," and where disclosure did not "implicate any matters of public interest").

Courts routinely seal documents that contain a party's confidential and proprietary information. For example, courts have sealed documents where "necessary or appropriate to the protection of confidential trade information." *Crain Commc'ns*, 135 A.D.2d at 352; *see Bernstein v. On-Line Software Int'l, Inc.*, 232 A.D.2d 336, 337 (1st Dep't 1996) (affirming an arbitration panel's "attorneys eyes only" confidentiality order). Courts have likewise sealed documents reflecting "current or future business strategies" and "proprietary financial information." *Mancheski*, 39 A.D.3d at 502-03. Courts have also noted that "[t]here [is] a compelling interest in sealing . . . third-party financial information since disclosure could impinge on the privacy rights of third parties who clearly are not litigants." *Manufacturers & Traders Tr. Co. v. Client Server Direct, Inc.*, 156 A.D.3d 1364, 1366 (4th Dep't 2017) (quoting *Mancheski*, 39 A.D.3d at 502).

Here, good cause exists to seal the parties' respective valuation reports. The reports prepared by Petitioner and Respondents contains non-public, competitively sensitive commercial, and confidential information regarding CPAI's business and financials. If such information were to become public, it would cause CPAI significant competitive harm, including by giving third parties, equipment lessees, and potential buyers a significant and unfair competitive advantage in contract negotiations. CPAI's competitors, who offer similar medical imaging services, could also use the information contained in the valuation reports to infer CPAI's competitive business strategies, pricing, costs, income, and other information to undercut CPAI in the marketplace. New York courts routinely seal records containing precisely this type of confidential financial information, particularly where disclosure would harm a party's competitive standing or unnecessarily expose private financial affairs. *Mancheski*, 39 A.D.3d at 502–03; *Crain Commc'ns*, 135 A.D.2d at 352. At the same time, public disclosure here would serve no legitimate public interest. This is a private dissolution dispute involving a closely held entity. It does not concern governmental conduct, public safety, or any matter of public importance. *Matter of Cohen*, 11 Misc. 3d 1054(A), at *9.

Accordingly, because the valuation reports contain nonpublic financial information, and because no countervailing public interest outweighs the substantial privacy and competitive concerns implicated, good cause exists under 22 N.Y.C.R.R. § 216.1(a) to seal both reports in their entirety. The application to seal should be granted.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his Order to Show Cause and enter the following relief:

(a) Ordering an equitable buyout and judicial decree authorizing Petitioner to purchase Mr. Santos's interests in CPAI;

(b) Declaring that the CPAI was dissolved as of the date of Mr. Santos's death on March 12, 2025;

(c) Directing Respondents and the Estate to accept Petitioner's tender of amount representing Mr. Santos's share in CPAI as of the date of his death in accordance with the valuation report prepared by Petitioner, after accounting for and deducting all applicable discounts, including but not limited to discount for lack of marketability and discount for lack of control, as determined by the Court;

(d) Enjoining Respondents, the Estate, and all persons acting under their direction from marketing, attempting to market, soliciting interest in, or offering for sale CPAI or any of its assets pending completion of the Court-supervised wind-up and buyout;

(e) Enjoining Respondents and the Estate, pending completion of the wind-up, from: (i) holding themselves out as having any ownership or management authority in CPAI, (ii) interfering with Petitioner's wind-up activities or CPAI's operations, and (iii) using CPAI's name, accounts, confidential information, or assets for any purpose other than for settling the Estate's account and wind-up activities;

(f) Declaring that the Estate, its surviving representatives, or Respondents shall have no interest, voting rights, or management rights in CPAI;

(g) Declaring that the Estate, its surviving representatives, and Respondents are not entitled to any profits or revenue generated after Mr. Santos's death, and that they have no actual or implied expectation of future profits or financial benefit from CPAI following his passing based on the facts and circumstances of this matter;

(h) Permanently sealing the valuation reports attached as Exhibit 14 [NYSCEF No. 15] and 15 [NYSCEF No. 16] to the Verified Petition;

(i) Permanently redacting all text in any document filed publicly in this action quoting or reproducing the financial information contained in the valuation reports; and

(j) Granting Petitioner such and other relief as the Court may deem just and proper under the circumstances.

Dated: Cedar Grove, New Jersey
March 4, 2026

O'TOOLE SCRIVO, LLC

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CERTIFICATE OF COMPLIANCE

1. The following statement is made in accordance with N.Y.C.R.R. § 202.70, Rule 17.

2. The foregoing Memorandum was prepared in the processing system Microsoft Word, with Times New Roman typeface, 12-point font.

3. Relying on the word count of the word-processing system, the total number of words in this document, exclusive of the caption, table of contents, table of authorities, and signature block is 5633 words.

Dated: Cedar Grove, New Jersey
March 4, 2026

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