SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, COMMERCIAL DIVISION

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 REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF DISSOLUTION AND ORDER TO SHOW CAUSE**

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PRELIMINARY STATEMENT

Respondents' opposition papers confirm what has been apparent from the outset of this dispute: the Estate of Alexis L. Santos has no substantive defense to Petitioner's entitlement to an equitable buyout of its interests in Central Park Advanced Imaging ("CPAI"). Rather than meaningfully engage with the legal framework that compels separation—whether under Partnership Law or the Limited Liability Company Law ("LLCL")—Respondents devote the entirety of their submission to a form-over-substance argument about the proper statutory label for the parties' business relationship, while ignoring the valuation principles that will determine what the Estate is actually owed.

Several critical points remain undisputed. Respondents do not dispute that the parties' interests must be separated. They do not dispute that Petitioner is the sole operator of CPAI and has been since Mr. Santos's death on March 12, 2025. They fail to rebut truthfully that they have contributed nothing—no capital, no labor, no guarantees—since that date. And they do not dispute that Petitioner has shouldered the entire financial burden of keeping CPAI operational, personally guaranteeing millions of dollars in lease and equipment obligations while Respondents sat idle. Elsewhere, Respondents' collateral accusations regarding Petitioner's alleged banking activity and the Estate's purported contribution to CPAI's new lease are untrue and contradicted by the documentary record, as provided in Petitioner's Reply Affidavit submitted herewith.

Respondents' recent conduct is also notable. After challenging Petitioner's valuation and advocating for a higher valuation of its interests in CPAI, it is apparent that Respondents have relied on *Petitioner's* valuation report for the Estate's Form 706 tax filing with the IRS. This should be treated as an adoptive admission of the report's valuation conclusions, and it independently supports estoppel because Respondents should not be permitted to use Petitioner's valuation for estate-tax purposes before the IRS while simultaneously demanding a higher value before this Court.

Moreover, the Court should deny Respondents' request to convert this special proceeding into a plenary action. Besides proposing a futile search for an operating agreement that everyone knows does not exist, Respondents fail to identify what, if any, discovery is necessary to address the parties' separation. If anything, Respondents' request is nothing more than procedural gamesmanship designed to preserve a status quo in which the Estate bears no risk, assumes no obligations, yet nonetheless claims entitlement to speculative future profits and seeks to leverage that position to demand a higher buyout if and when the company becomes profitable. The undisputed record before the Court is more than sufficient to grant summary disposition in Petitioner's favor and order the equitable buyout that both sides have long acknowledged and admitted must occur—including Respondents' own prior counsel.

For all of these reasons, and as amplified below, Petitioner's Order to Show Cause should be granted in its entirety.

ARGUMENT

I. THE DEBATE OVER PARTNERSHIP LAW VERSUS THE LLCL IS A FORM-OVER-SUBSTANCE DISTRACTION THAT DOES NOT ALTER THE OUTCOME

Respondents' opposition rests almost entirely on the contention that Mr. Santos and Petitioner were "50/50 members" of CPAI, a limited liability company, rather than partners in an at-will general partnership. But this argument, even if credited, changes nothing about the ultimate result.

As Petitioner demonstrated in his opening brief, a buyout is warranted under any statutory framework. Under Partnership Law, the partnership dissolved by operation of law upon Mr.

Santos's death. Partnership Law § 62(4); *Burger, Kurzman, Kaplan & Stuchin v. Kurzman*, 139 A.D.2d 422, 424 (1st Dep't 1988) ("A partnership is dissolved by the death of any partner, absent a specific agreement to the contrary."). Even under cases construing the LLCL, this Court possesses inherent equitable authority to order a buyout where, as here, continued co-ownership has become fundamentally inequitable. *See, e.g.*, *Lyons v Salamone*, 32 A.D.3d 757, 758 (1st Dep't 2006) (holding that the absence of an express statutory buyout provision in the Limited Liability Company Law does not deprive the court of authority to grant buyout rights in a dissolution proceeding, including based on the fair market value of the other's interests); *Matter of Superior Vending LLC*, 71 A.D.3d 1153, 1154 (2d Dep't 2010) (approving buyout of a member's interest, in the absence of an operating agreement, where member had essentially abandoned any participation in the LLC); *Mizrahi v. Cohen*, 104 A.D.3d 917, 918 (2d Dep't 2013) ("[A] buyout may be an appropriate equitable remedy upon the dissolution of an LLC."); *PFT Tech., LLC v Wieser*, 181 A.D.3d 836, 838 (2d Dep't 2020) (same).

Respondents' own opposition concedes this point. They cite LLCL § 608 for the proposition that the Estate may "exercise all of the member's rights for the purpose of settling his or her estate or administering his or her property." But that is precisely what a court-ordered buyout accomplishes. The proceeding settles the Estate's account by providing it the fair value of its interest. The statute does not confer upon the Estate the right to hold Petitioner hostage indefinitely while contributing nothing to the business. Nor does Respondents' reliance on *Matter of Bodenchak v. 5178 Holdings LLC*, 242 A.D.3d 592 (1st Dep't 2025), or *Crabapple Corp. v. Elberg*, 153 A.D.3d 434 (1st Dep't 2017), advance their position. Those cases confirm that an estate may exercise a deceased member's rights under LLCL § 608—a truism Petitioner does not (and need not) dispute here.

What those cases also do not hold is that the Estate may indefinitely forestall a buyout or dissolution proceeding properly brought by CPAI's surviving member. CPAI has no operating agreement. (Pet. ¶ 71.) Its governance contemplated joint participation that is no longer possible. Petitioner refuses to continue the business with the Estate. (*Id.* ¶ 8.) And the Estate has made no capital contributions, assumed no guarantees, and has not participated in operations since Mr. Santos's death. (*Id.* ¶¶ 4, 22.) Indeed, even the Estate's own prior counsel agreed that a buyout makes the most sense. (*Id.* ¶ 91 ("I can confirm that we appear on the same page.").) These undisputed facts warrant equitable relief. Whether the Court analyzes CPAI as a partnership or an LLC, the result is identical: a court-supervised buyout in which the Estate receives the fair value of Mr. Santos's interest as of the date of his death on March 12, 2025, consistent with New York law and valuation principles.

Therefore, the statutory label Respondents insist upon is a distinction without a difference, and they should not be permitted to delay what all parties recognize must occur with their strawman arguments.

II. RESPONDENTS' USE OF PETITIONER'S VALUATION REPORT FOR THE ESTATE'S FORM 706 FILING IS AN ADOPTIVE ADMISSION AND ESTOPS THEM FROM ADVOCATING A HIGHER VALUE

The record now supplies an independent reason to reject Respondents' attempt to inflate CPAI's value in this proceeding. Federal estate tax returns are generally due "within 9 months after the date of the decedent's death." 26 U.S.C. § 6075(a). The Secretary may grant a reasonable extension of time to file, but absent circumstances not present here, that extension may not exceed six months. 26 U.S.C. § 6081(a); *Comm'r v. McCoy*, 484 U.S. 3, 5 (1987) (recognizing that an estate-tax election tied to Form 706 had to be made by the statutory filing deadline, including extensions). Here, because Mr. Santos died on March 12, 2025, the Estate's Form 706 would have been due nine months later as a general rule, but it appears Respondents obtained a six-month extension and were preparing to file by the extended deadline: June 12, 2026. (*See* Yu Reply Affirm.)

The parties' recent communications through counsel confirm this. On June 8, 2026, Respondents' counsel requested "a copy asap" of Petitioner's valuation "for estate tax filing purposes," and when Petitioner's counsel asked whether the report would be used for the Estate's "706 filing," Respondents' counsel answered: "Correct. 706 filing." (*Id.* ¶¶ 3–4 & Ex. A.) Petitioner then provided the report while expressly advising that the report had been prepared for buyout negotiations, not for the Estate's tax reporting, and that Petitioner, his counsel, and his expert assumed no responsibility for Respondents' decision to use or rely on it in connection with the Estate's Form 706 filing. (*Id.* ¶ 8 & Ex. A.) In other words, Respondents asked for Petitioner's valuation for the Estate's federal tax filing, accepted it for that stated purpose, and appear to have used it—while somehow reserving for this litigation the incompatible position that CPAI is worth substantially more. (*See* NYSCEF Doc. 15.)

That conduct is an adoptive admission. Under New York law, "any declaration or conduct of a party that is inconsistent with the party's position at trial may be offered against that party as an admission," and statements by another may be treated as adoptive admissions where "direct or circumstantial evidence clearly indicates that the party acknowledges and assents to such statements." *Cepeda v. AC&S, Inc.*, 15 Misc. 3d 1111(A) (Sup. Ct. N.Y. Cnty. 2007) (citations omitted). Here, Respondents did not merely receive Petitioner's valuation report; they requested it for a federal tax filing and confirmed the precise purpose. Having likely used the report to reduce the Estate's tax liability, Respondents cannot credibly disavow its valuation conclusions in this judicial proceeding.

The same facts also support estoppel. Judicial estoppel and related quasi-estoppel principles prevent a party from asserting one factual position to obtain a benefit in one forum and then asserting the opposite position when its interests change. *New Hampshire v. Maine*, 532 U.S. 742, 749–51 (2001) (identifying factors for judicial estoppel, including clearly inconsistent positions, acceptance of the prior position, and unfair advantage or detriment); *Chevron Corp. v. Donziger*, 833 F.3d 74, 128–29 (2d Cir. 2016) (explaining that judicial estoppel prevents a party from gaining an advantage on one theory and then seeking another advantage through an incompatible theory). New York courts apply that principle with special force to tax positions. *See, e.g.*, *Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415, 422 (2009) (holding that "a party to a litigation may not take a position contrary to a position taken in an income tax return"); *Naghavi v. NY Life Ins. Co*., 260 A.D.2d 252, 252 (1st Dep't 1999) ("[W]e deem him to be bound by his contrary representations in the income tax returns he filed for those years."); *Am. Mfrs. Mut. Ins. Co. v. Payton Lane Nursing Home, Inc.*, 704 F. Supp. 2d 177, 193–94 (E.D.N.Y. 2010) (collecting New York and federal authorities applying estoppel to positions taken in tax returns and administrative filings).

Those principles fit this record. Respondents should not be permitted to use Petitioner's lower valuation before the IRS for estate-tax purposes while advocating a materially higher valuation here to extract a premium from Petitioner. That is precisely the kind of inconsistency courts reject because it would allow a litigant to obtain an unfair advantage from shifting factual positions. Further, Respondents' apparent election to rely on Petitioner's valuation report for the Estate's Form 706 filing is confirmation that Petitioner's valuation is sound and reasonable, and Respondents should be foreclosed from urging the Court to adopt a higher valuation that they were unwilling to report to the IRS under the penalty of perjury.

III. RESPONDENTS DO NOT DISPUTE THAT VALUATION DISCOUNTS APPLY TO THE ESTATE'S INTEREST, AS IT MUST, UNDER NEW YORK LAW

Petitioner's opening memorandum demonstrated that the Estate's interest in CPAI must be valued with discounts for lack of marketability ("DLOM") and lack of control, supported by detailed legal authority and Petitioner's expert valuation report. Respondents, however, offer no substantive response to these arguments, identify no competing legal analysis addressing the discounts, and raised no triable issue warranting discovery or a hearing on that point. Under CPLR 409(b), the Court may "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) (affirming summary determination in a special proceeding where no triable issue of fact was shown). Respondents' silence therefore leaves Petitioner's showing unrebutted.

The Court should apply a 25% DLOM to the Estate's interest—and that application here is well supported under New York law. A discount for lack of marketability reflects the economic reality "that a potential investor would pay less for shares in a close corporation because they could not readily be liquidated for cash." *Matter of Friedman v. Beway Realty Corp.*, 87 N.Y.2d 161, 165 (1995). New York courts routinely apply marketability discounts in this range to closely held interests. *See* *Matter of Blake v. Blake Agency, Inc.*, 107 A.D.2d 139, 149 (2d Dep't 1985) (applying 25% DLOM 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 Fleischer*, 107 A.D.2d 97, 101 (2d Dep't 1985) (affirming 25% DLOM and holding that "discounts for the lack of marketability of such shares are appropriate and do not provide a windfall to the majority shareholders"); *In re Brooklyn Home Dialysis Training Ctr., Inc.*, 293 A.D.2d 747, 747 (2d Dep't 2002) (affirming a 22.5% DLOM and an additional discount based on the company's earning capacity); *Rosenblum v. Treitler*, 242 A.D.3d 472, 473 (1st Dep't 2025) (reaffirming that DLOM is fact-specific and must account for impaired liquidity and "the difficulties a third-party investor would risk in purchasing and supports the DLOM applied").

A 25% DLOM is warranted here because every relevant fact confirms illiquidity. CPAI is a closely held, non-public business with no operating agreement that recently emerged from an auction, with no income, no buy-sell provision, no public market, no history of distributions, and substantial ongoing obligations. The Estate holds, at most, a passive economic interest in a business that has operated at a loss since inception and whose value depends on Petitioner's continued funding and management. On this record, a 25% marketability discount is generous, and an equitable way to measure what a willing buyer would pay for the Estate's illiquid interest as of March 12, 2025.

A discount for lack of control is equally warranted because the Estate holds, at most, a passive assignee interest. Under LLCL § 603(a)(1)–(3), an assignee does not obtain management, voting, or governance authority. *See Behrend v. New Windsor Group, LLC*, 180 A.D.3d 636, 639 (2d Dep't 2020) (holding that an assignee of an LLC membership interest receives only the assignor's distributions and allocation of profits and losses, not management rights); *Kober v. Nestampower*, 243 A.D.3d 902, 903–04 (2d Dep't 2025) (reaffirming that LLCL § 603 limits an assignee to economic rights absent admission as a member). As courts recognize, "[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 Cnty. 2009) (defining lack-of-control discount). The Estate was never admitted as a member of CPAI, holds no management rights, cannot compel distributions, and has assumed no post-death risk or obligations. Its interest is the definition of passive with no control.

The Court should therefore apply a 25% DLOM, together with an appropriate lack-of-control discount, to the Estate's 50% interest as valued by Petitioner's valuation expert.

IV. THE ESTATE'S REQUEST FOR DISCOVERY AND A PLENARY HEARING IS DILATORY AND SHOULD BE DENIED

Respondents ask this Court to convert the special proceeding to a plenary action, permit meandering discovery from Petitioner and third parties, and effectively delay resolution of this matter. That request should be denied as a transparent effort to obstruct the orderly buyout of the Estate's interests in CPAI.

As a threshold matter, Respondents have not identified a single triable issue of fact that would warrant a hearing, let alone the conversion of this proceeding. Respondents vaguely assert that "discovery is necessary" to determine whether an operating agreement exists and to investigate the proper valuation of CPAI. But these are not genuine factual disputes. As to the operating agreement, the undisputed record establishes that no operating agreement was ever executed. While Respondents speculate that one may have been drafted, even they concede that any such agreement would be "unsigned" and its enforceability uncertain.

As to valuation, Petitioner has already retained an independent expert and produced a detailed valuation report. Respondents were given full access to CPAI's books, financial records, and accountant for months before this proceeding was commenced. (Pet. ¶¶ 85, 100–102.) Their admitted failure to adequately engage with the valuation process does not create a right to additional discovery at Petitioner's expense and to his prejudice.

It cannot be overstated that the true purpose of the Estate's request is to continue its delay tactics. Since Mr. Santos's passing, Respondents have adopted a consistent "wait and see" approach—declining to participate in the business, refusing to contribute capital, and yet claiming entitlement to its value *if* and when that happens. Converting this proceeding to a plenary action would reward that strategy by permitting the Estate to continue free-riding on Petitioner's efforts while the litigation drags on for months or years. Courts have recognized that such dilatory conduct warrants denial of further discovery. *See Barrett v. Toroyan*, 45 A.D.3d 301 (1st Dep't 2007) (affirming denial of additional discovery where party was "dilatory in seeking" it and noting that repeated requests for discovery amount to impermissible additional "bite[s] at the apple"). Meanwhile, the prejudice to Petitioner is concrete and ongoing. He continues to personally guarantee millions, fund daily operations, and manage CPAI without any contribution or support from the Estate or Respondents.

Finally, Respondents' cited authorities do not support conversion because they arise from significantly different circumstances. To wit, *David H. Berg & Assoc. v. Weksler*, 2021 N.Y. Misc. LEXIS 63663, 2 (Sup. Ct. N.Y. Co. 2021) involved a procedurally complex dispute concerning "significant disputed factual claims," attorney charging liens, the effect of an Appellate Division order overturning a settlement, non-party issues, and privileged communications requiring substantial factual development. None of these factors are remotely present here. The case of *Odette Realty Co. v. Tremblay*, 203 A.D.2d 149, 150 (1st Dep't 1994) is even further afield. There, dismissal was required because a prior judgment had extinguished the petitioner's ownership interest, leaving it without standing. There are no standing issues here. Petitioner's authority to seek judicial relief arises directly from the parties' business relationship, cannot be seriously disputed, and is straightforward under New York law.

V. RESPONDENTS' FRIVOLOUS ACCUSATIONS WITH RESPECT TO PETITIONER'S BANKING ACTIVITY ARE BELIED BY THE DOCUMENTARY EVIDENCE

In their opposition papers, Respondents claim that "on September 25, 2025, a company owned by Mr. Santos wired $543,900 to pay for CPAI's security deposit for its office," and they cite this alleged payment as evidence of the Estate's financial contribution to CPAI. (Opp. at 10.) This allegation is patently false.

As Petitioner confirms under oath, the alleged $543,900 payment was not made by the Estate on behalf of CPAI, nor was it a new capital contribution by the Estate. (Pet. Reply Aff. ¶ 4.) Rather, the payment "reflected a drawdown by the landlord against a pre-existing security deposit previously funded in connection with Amric LLC ('Amric'), the former tenant of the office space and the prior entity under which the business operated and was sold at auction." (*Id.* ¶ 5.) The security deposit was made before CPAI's existence—likely in or around 2021 or 2022—in connection with Amric's original lease with its landlord. (*Id.* ¶ 6.) The drawdown was applied toward "pre-existing obligations associated with Amric's office space, including rental arrears and tenant improvement contributions," which Petitioner—not the Estate—subsequently negotiated and reduced in connection with the assignment of the lease from Amric to CPAI. (*Id.* ¶¶ 7–8.) Moreover, Petitioner separately and personally funded the security deposit obligations required under CPAI's new lease through five installment payments of $108,780 each, as evidenced by wire transfer records annexed to his Reply Affidavit. (*Id.* ¶ 8, Ex. 1.)

Respondents' allegations concerning Amric's Spencer Savings Bank account are also meritless. Petitioner was not a signatory on the account linked to Amric's lease, had no authority to initiate transfers, and exercised no control over the account or its funds. (*Id.* ¶ 13.) Therefore, Respondents offer no evidence to the contrary besides rank speculation made "upon information and belief," none which creates a triable issue of fact or overcome the undisputed documentary record before this Court.

CONCLUSION

For all of 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 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 the 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 a 25% discount for lack of marketability and an appropriate discount for lack of control, as determined by the Court;

d. Denying Respondents' request to convert this special proceeding into a plenary action;

e. 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;

f. 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;

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

h. 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;

i. Granting Petitioner such other and further relief as the Court may deem just and proper under the circumstances.

Dated: Cedar Grove, New Jersey
June 12, 2026

O'TOOLE SCRIVO, LLC

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. The following statement is made in accordance with NYCRR § 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 3,733 words.

Dated: Cedar Grove, New Jersey
June 12, 2026

O'TOOLE SCRIVO, LLC

Respectfully submitted,

Young Yu, Esq.