IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JOHN MICHAEL QUINN, Plaintiff, v. KREINDLER & KREINDLER LLP and JAMES P. KREINDLER, Defendants.	)	Civil Action No: 21-1824

POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(1) & (6)

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Defendants Kreindler & Kreindler LLP and James P. Kreindler,[1] by and through their undersigned attorneys, hereby move this Court to dismiss the Complaint of Plaintiff John Michael (Jack) Quinn in its entirety with prejudice.

INTRODUCTION

The law firm K&K represents families and victims of the 9/11 terrorist attacks and has been litigating on their behalf in a consolidated multi-district litigation in the Southern District of New York for nearly two decades. In connection with that fight, K&K has assumed the significant costs and expenses of litigation, including retaining experts and advisers, pursuing recovery for the 9/11 families on a purely contingent basis. Quinn is one such adviser who entered into a contractual arrangement with K&K in 2013 for lobbying services to help address sovereign immunity barriers to litigation against the Kingdom of Saudi Arabia. The Parties have subsequently amended and replaced their original contract with subsequent writings, but the core agreement has remained the same: K&K hired Quinn to perform lobbying services for K&K in exchange for a contingent fee to be calculated on the basis of "net recovery." "Net recovery" is both a defined term and a condition precedent of the Parties' contract—but Quinn has not pled that any "net recovery" yet exists.

Impatient with the lengthy SDNY litigation, Quinn brings this lawsuit demanding compensation today from K&K. He brings this action with his hand out even though (a) there is no provision of the governing contract suggesting that any compensation that might become owed to him is yet due or owing; (b) he pleads his work under the contracts is continuing, ongoing and not complete; (c) the SDNY litigation is far from resolved and indeed fact and

[1] We refer to defendants Kreindler & Kreindler and James P. Kreindler collectively as "K&K" unless context otherwise requires.

expert discovery remain ongoing,[2] so costs continue to accrue while awards or recoveries remain unknown; and (d) there is no other theory that entitles him to recovery.

Quinn's shotgun pleading articulates eight overlapping and/or alternative causes of action and remedies, all of which seek to find some way of manipulating the same simple written contract and set of facts to obtain some cash now. But it fails as a matter of law because nowhere in his lengthy 38-page narrative Complaint does Quinn allege facts that support a plausible cause of action. First, the breach of contract claim fails as a matter of law because Quinn does not and cannot plead that there has been any calculable net recovery as the relevant contract defines that term. In a tacit acknowledgement that there is no provision of the Parties' contracts that can be said to have been breached, he hedges by trying to plead several alternative quasi contract causes of action. But because a written contract exists and governs the Parties' relationship and no other extraordinary circumstances are pled, the claims for quasi contract or implied-in-fact contract also fail as a matter of law. Quinn's breach of fiduciary duty claim rests on a fiction that he and K&K are joint venturers by virtue of a "co-counsel" relationship. To the contrary, this claim fails because the contract and attendant facts clearly establish that the Parties have entered into nothing more than an independent contractor's fee agreement (and in any event a co-counsel relationship does not create a joint venture). The claims for constructive trust and accounting are equitable remedies, not proper causes of action, and thus fail (and in any event breach of contract provides an adequate legal remedy). Finally, the piercing the corporate veil claim also fails. No facts are pled to support Quinn's boilerplate allegations—most egregiously, Quinn never even

[2] *See, e.g.*, *In re Terrorist Attacks on Sept. 11, 2001*, 03-md-1570 (S.D.N.Y.) ECF No. 7004, filed 08/09/2021 (FBI stating that it is continuing to produce materials on a rolling basis).

identifies as to whom the veil should be pierced or what domination or culpable activity would justify piercing the partnership.

Quinn's allegations as to his entitlement are simply bare conclusions, largely asserted on information and belief, resting on infirm legal theories. The Complaint does not make out a plausible cause of action upon which relief can be granted. And, for the same reason that his breach of contract claim fails—that no cognizable breach has been pled and Quinn's claim to compensation is simply premature—the entire case is not ripe for review.

As set forth in more detail below, K&K moves to dismiss the Complaint with prejudice in its entirety.

BACKGROUND FACTS[3]

I. The Parties.

Plaintiff Jack Quinn is a well-credentialed political operative with a background as a lawyer. Dkt. 1 at 3-4 (Compl. ¶ 9). Among other things, Quinn worked in Congress and was counsel to President Clinton from 1995-1997. *Id.* Turning away from a strictly legal practice, Quinn co-founded his own public affairs firm, Quinn Gillespie & Associates, in 2000 and worked there for fifteen years. He currently works through his own sole proprietorship, as well as through the law firm, Manatt. *Id.* Kreindler & Kreindler is a law firm, organized as a New York limited liability partnership, with its main offices in New York City. Dkt. 1 at 4 (Compl. ¶ 10). Among other things, K&K's practice includes the representation of plaintiff victims and their families in mass tort lawsuits, often involving aviation. *See, e.g.*, Dkt. 1 at 6 (Compl. ¶ 19)

[3] These background facts are based upon the factual allegations contained in the Complaint, the attached documents, and public records appropriate for the Court's consideration under Fed. R. Civ. P. 12. For current purposes, K&K assumes, but does not concede, the truth of all well-pleaded factual allegations and reasonable inferences in Quinn's favor. K&K intends to contest many of these facts and inferences on the merits.

(K&K represented plaintiffs in litigation over Pan Am Flight 103, Lockerbie Scotland); ¶ 20 (K&K represents plaintiffs in litigation over the September 11 attacks). James P. Kreindler is an attorney practicing with K&K, and is alleged to be K&K's managing partner. Dkt. 1 at 4 (Compl. ¶ 11).

Quinn alleges that K&K represents many victims and families of the terrorist attacks of 9/11 seeking compensation through litigation for the harm they suffered. Dkt. 1 at 6 (Compl. ¶ 20) & Dkt. 1-2 (Ex.2). K&K and other law firms were able to—and did—bring suit against Iran and Sudan (among other defendants) on behalf of the 9/11 victims and families. Sovereign immunity blocked any redress against the Kingdom of Saudi Arabia (KSA)—where most of the hijackers originated—because KSA had not been designated as a state sponsor of terrorism. Dkt. 1 at 5 (Compl. ¶¶ 15-16). Although litigation began many years ago, trial has not yet occurred (indeed there is no trial date set) and while the Complaint alleges that discovery was scheduled to close in June of this year, discovery is, in fact, ongoing. *Compare*, Dkt. 1 at 11 (Compl. ¶ 32) (alleging close of discovery), *with*, *supra*, p.2 n.2 (discovery continues) & *generally*, Docket in *In re Terrorist Attacks on Sept. 11, 2001*, 03-md-1570 (S.D.N.Y.) (same).

In 2013, K&K sought the help of certain lobbyists, including both Quinn and Bob Crowe of the well-known lobbying firm of Nelson, Mullins. Both had ties to the incoming Democratic Obama administration and were tasked with helping overcome the legal barriers to suing the KSA. Dkt. 1 at 3, 6, 9 (Compl. ¶¶ 9, 22-23, 29).

Ultimately, Congress enacted the Justice Against Sponsors of Terrorism Act (JASTA) on September 28, 2016 and K&K was able to add KSA and others to what is now a consolidated multi-district litigation in the Southern District of New York. Dkt. 1 at 5, 13 (Compl. ¶¶ 18, 38). The Parties understood that enactment and protection of JASTA for the purpose of obtaining

recovery against KSA was the goal of the Parties' relationship, and their agreements so acknowledged. *See* Dkt. 1 at 11 (Compl. ¶ 35) & Dkt. 1-2 (Ex. 2) (making specific reference only to the passage and protection of JASTA and no other services). The Agreements do not reference any claims against Iran or anything concerning recoveries from the United States Victims of State Sponsored Terrorism Fund.

II. The Parties' Agreements Define Their Relationship.

The Parties first memorialized their agreement in 2013. *See* Dkt. 1-1 (Ex. 1). This is the first of five (5) agreements and amendments, none longer than a page,[4] the Parties executed to control their relationship. The Parties amended their agreement to address circumstances if and as needed. *See* Dkt. 1-1 to 1-4 (Exs. 1-4). As relevant to this motion, each of the five Agreements is consistent and unambiguous that:

(1) K&K retained Quinn to provide services to and advise K&K—not K&K's underlying clients. The Agreements describe a commercial fee agreement between Quinn and K&K, and never use the words "co-counsel," "partnership," "joint venture," or anything similar; and

(2) None of the five Agreements contains any provision for the timing of payment of any compensation owed or to become due to Quinn. All five calculate Quinn's profit share as a percentage of net recovery. The Agreements define "net recovery" as "the amount realized by each client less out of pocket costs to K&K and exclusive of legal fees paid to

[4] We refer to all five contracts as the Agreements, or by date as necessary. They are all attached to the Complaint, albeit in a somewhat confusing fashion. Dkt. 1-1 (Ex. 1) (June 20, 2013); Dkt. 1-2 (Ex. 2) (May 19, 2017 *nunc pro tunc* to January 1, 2017); Dkt. 1-2 (Ex. A to Ex. 2) (July 10, 2014); Dkt. 1-3 (Ex. 3) (May 19, 2017 *nunc pro tunc* to January 2, 2017); Dkt. 1-3 (Ex.3) is another Ex. 1 (a redundant copy of May 19, 2017, *nunc pro tunc* to January 1, 2017); Dkt. 1-3 (Ex. A to Ex. 1) (a redundant copy of July 10, 2014); and finally Dkt. 1-4 (Ex. 4) (August 26, 2017).

> K&K." None of the Agreements provides for any payment to Quinn absent a net recovery. None of the agreements grants Quinn a right to demand interim accountings from K&K.

Dkt. 1-1 to 1-4 (Exs. 1-4).

The first agreement, which the Parties signed in 2013, refers to the "Kreindler & Kreindler clients" and makes no reference to shared clients or any co-counsel arrangement. Compl. Ex. 1. Nor does it have any provision for timing of payments to Quinn or Crowe. *Id.* As with all of them, the first agreement bases Quinn's compensation on "net recovery." *Id.* The Parties superseded their 2013 agreement in 2014. The only substantive change is to replace Quinn's then-firm (Quinn Gillespie) with Quinn in his individual capacity. *See* Dkt. 1-2 (Ex. A to Ex. 2). The 2014 agreement again speaks of the 9/11 plaintiffs "of Kreindler & Kreindler LLP" (not of Quinn) and there is no mention of shared clients or any co-counsel arrangement. *Id.* The 2014 agreement also has no provision for timing of payments; payments remain keyed to net recovery. *Id.*

On May 10, 2017, the Parties signed two new agreements, the first *nunc pro tunc* to January 1, 2017 and the second *nunc pro tunc* to January 2, 2017. These agreements still say nothing about "co-counsel" or "co-representation." Rather, they relate to "services rendered and to be rendered **by Quinn to K&K** in support of the representation **by K&K** of approximately 2000 clients …" Dkt. 1-2 (Ex. 2, ¶ 1) (emphasis added). It reiterates that "Quinn will continue to serve as counsel to and advise K&K and Kreindler" and that any compensation is to be paid "for [Quinn's] sustained effort in assisting and advising K&K and Kreindler." *Id.* ¶¶ 3, 4. In keeping with the Parties' relationship from the outset, it contains no timing provision, and again defines Quinn's compensation in terms of "net recovery." *Id.* That net recovery, in turn, comes from

K&K "for **its** representation of clients on whose behalf **K&K** filed claims . . . ." Dkt. 1-3 (Ex. 3, ¶ 3).

The Parties' final agreement, from August 2017, is the same. Quinn's compensation is to be paid "as specified in the May 19 [2017] Agreements," which key Quinn's compensation to K&K's net recovery and speaks of clients who have retained K&K—not Quinn. Dkt. 1-4 (Ex. 4).

None of the Agreements provides for a termination date because the Parties understood that obtaining any recovery in the SDNY litigation already had been and would continue to be a prolonged process. Dkt. 1 at 7 (Compl. ¶ 23). The Agreements themselves contemplate that Quinn "will continue to serve as counsel to and advise K&K" with respect to JASTA and as they seek to "accomplish reasonable settlement or other resolution of the litigation". Dkt. 1-1 to 1-4 (Exs. 1–4). Quinn himself pleads that his work is not complete and he "continues to work" pursuant to the Agreement. Dkt. 1 at 11 (Compl. ¶ 35). Quinn pleads no fact or contractual obligation to support his assertion that any payment to him is due now, before the SDNY litigation concludes and a "net recovery" can be calculated.

III. The Agreements Are Commercial Fee Agreements For Quinn's Lobbying Services.

The Agreements, by their own terms, are fully integrated and define the full scope of the Parties' relationship with respect to their subject matter. Dkt. 1-2 (Ex. 2, ¶ 2). Quinn does not plead any facts to suggest that K&K has disavowed the Agreements. To the contrary, Quinn pleads only that "Defendants have asserted through counsel" that Quinn is not now "entitled to fees" under the Agreements—not that Agreements do not exist, are not valid, or do not govern the Parties' relationship. Dkt. 1 at 10 (Compl. ¶30). Quinn also pleads that his request for internal accounting records of K&K is based on his alleged status as "co-counsel." Dkt. 1 at 18 (Compl. ¶¶ 54-55) That is because the Agreements contain no provision for accounting. K&K's

denial of such a request, therefore, has nothing to do with the validity or existence of the Agreements.

The language of the Agreements is perfectly consistent with what lobbyist Quinn pleads he did pursuant to these Agreements: lobby for JASTA in order to permit K&K to litigate against KSA on behalf of the 9/11 victims and families. The Complaint alleges that "A large part of Quinn's work . . . has involved analysis of and advocacy for the legal and policy bases justifying enactment of JASTA, as well as subsequent work to help formulate and articulate arguments to defeat efforts to reverse all or part of that important statute in the years after its enactment." Dkt. 1 at 12 (Compl. ¶ 36). Quinn describes this work in some detail. Dkt. 1 at 12-13 (Compl. ¶¶ 36-39). Any of Quinn's activities not related to JASTA are accordingly pled as incidental or superficial activities and/or conclusory statements without factual support. *See, e.g.*, Dkt. 1 at 14-15 (Compl. ¶¶ 40, 45, 46).

Quinn pleads no facts to suggest that K&K had any ability to control his activities, or that he had any ability to control the activities of K&K.[5] With respect to his lobbying activities, Quinn pleads that he undertook the work only "with Kreindler's enthusiastic and regular encouragement," Dkt. 1 at 12 (Compl. ¶ 36), and at most, at Kreindler's "request." Dkt. 1 at 15 (Compl. ¶¶ 45-46). Further revealing the true nature of this commercial relationship, Quinn tacitly admits the Parties' total lack of control over one another. He pleads only with respect to some of his work in Washington that "Defendants were aware of Quinn's involvement, as they were on numerous emails and phone calls during negotiations over the bill with opposing counsel and Quinn." Dkt. 1 at 14 (Compl. ¶ 40). With respect to the litigation itself, Quinn

[5] The 2014 agreement specifically entitles Quinn to retain others to work with him, but those are his sole responsibility. Nothing in that or any other agreement suggests that K&K could control Quinn's hiring on his own account, and nothing obliges K&K to share in the cost of so doing.

pleads no facts to suggest he had any control over K&K's litigation of the SDNY action. The sole fact Quinn pleads related to his alleged involvement with the litigation (revealing the obvious truth that he is hardly a co-counsel in any respect) is that his work included "familiarizing himself with the more important court filings made by Defendants and certain other parties . . . ." Dkt. 1 at 12 (Compl. ¶ 37).

And fundamentally, nothing in the Agreements suggests that there is joint responsibility for losses. K&K alone bears the risk of all loss, all investment in the litigation, and all costs associated with decades of litigation on behalf of the 9/11 families and victims. Quinn even admits that he does not even know who these victims and families are. Dkt. 1 at 21 (Compl. ¶ 70) (Defendants have not provided "the names, addresses and phone numbers of 9/11 families they have or do represent . . ."). Quinn stands to gain a percentage of net recovery if K&K is successful, but Quinn bears no exposure to the considerable losses K&K will bear if they are not.

The Complaint alludes to the existence of some relationship between Quinn and the 9/11 victims and families by referring to K&K's and Quinn's "shared clients," which he then defines as 9/11 families and victims that the Parties "jointly represent". Dkt. 1 at 7 (Compl. ¶ 24). Quinn refers to these allegedly "shared clients" no fewer than thirty-six (36) times throughout the Complaint. Dkt. 1 at *passim* (Compl.). However, Quinn does not plead a single concrete fact to support that bare legal conclusion. For example, he never pleads (because he cannot) that he signed representation agreements with the 9/11 plaintiffs K&K represents, nor that he even filed a notice of appearance on behalf of those plaintiffs. His assertions of joint representation are wholly inconsistent with language in the Agreements indicating that Quinn is working for K&K, not for K&K's underlying clients.

LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint that "pleads facts that are 'merely consistent with' a defendant's liability, [] 'stops short of the line between possibility and plausibility of 'entitlement to relief' " and thus fails to state a claim for which relief can be granted. *Iqbal*, 556 U.S. at 677 (quoting *Twombly*, 550 U.S. at 557). The court need not accept as true inferences unsupported by facts set out in the complaint or legal conclusions cast as factual allegations. *Warren v. Dist. of Columbia*, 353 F.3d 36, 39 (D.C. Cir. 2004); *Browning*, 292 F.3d at 242. Stated differently, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

In contrast, a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) "presents a threshold challenge to the Court's jurisdiction," and thus "the Court is obligated to determine whether it has subject-matter jurisdiction in the first instance." *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) (citation and internal quotation marks omitted). "It is to be presumed that a cause lies outside [a federal court's] limited jurisdiction," *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994), unless the plaintiff can establish by a preponderance that the court possesses jurisdiction, *see, e.g., United States ex rel. Digital Healthcare, Inc. v. Affiliated Comput.*, 778 F. Supp. 2d 37, 43 (D.D.C. 2011) (citation omitted). Thus, the "plaintiff's factual allegations in the complaint . . . will bear closer scrutiny in resolving a

12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim." *Id.* (citation and internal quotation marks omitted)).

"A facial challenge [to the Court's jurisdiction] attacks the factual allegations of the complaint that are contained on the face of the complaint[.]" *Al-Owhali v. Ashcroft*, 279 F. Supp. 2d 13, 20 (D.D.C. 2003) (citation and internal quotations marks omitted). When a defendant makes a facial challenge, the Court must accept the allegations contained in the complaint as true and consider the factual allegations in the light most favorable to the non-moving party. *Erby v. United States*, 424 F. Supp. 2d 180, 182 (D.D.C. 2006).

ARGUMENT

I. Quinn Fails To State A Claim For Breach Of Contract (Count I) Because He Has Not And Cannot Plead K&K's Clients Have Realized A Net Recovery.

To state a claim for breach of contract, District law requires a party to "establish (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by the breach." *Logan v. LaSalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1023 (D.C. 2013) (quoting *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009)); *Osseiran v. Int'l Fin. Corp.*, 950 F. Supp. 2d 201, 208 (D.D.C. 2013) (same). Count I fails because it does not allege that K&K has breached any of the terms of the operative Agreements.

The Agreements[6] unambiguously refer to the basis of any compensation to Quinn as a percentage of the defined term "net recovery." *See* Dkt. 1-2 (Ex. 2, ¶ 4) ("As compensation . . . K&K will pay to Quinn a fee of [percentage] of the net recovery…"); Dkt. 1-3 (Ex. 3, ¶ 3)

[6] "[C]ourts may ordinarily examine other sources when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated [in] the complaint by reference, and matters of which a court may take judicial notice." *Coon v. Wood*, 68 F. Supp. 3d 77, 83 (D.D.C. 2014) (citations and internal quotations omitted).

("…K&K shall pay to Quinn a fee of 1% of the net recovery on …"); Dkt. 1-4 (Ex. 4, ¶ 2) ("Quinn shall receive compensation as specified in each of the May 19 Agreements…"). All three agreements define net recovery (one of the only defined terms in all the Agreements) as:

> the amount realized by each client less out of pocket costs to K&K and exclusive of legal fees paid to K&K. In the event the eventual attorneys' fees are reduced from the fees set forth in the K&K retainer agreements with K&K clients, then the Quinn fee shall be reduced in the same proportion represented by a reduction in the K&K fee.

Dkt. 1-2 (Ex. 2, ¶ 5); Dkt. 1-3 (Ex. 3, ¶ 4).

To trigger a payment obligation from K&K to Quinn, there must be a "net recovery" from which Quinn's percentage can be calculated. Yet nowhere in the 148 paragraphs or 34 pages of the Complaint does Quinn allege that there has been such a net recovery.

First, Quinn avoids this obvious condition by misstating the contract and wrongly alleging that "what is required for Quinn's entitlement to his fees is first, that Defendants receive a fee and second, that such fee is received in connection with recoveries paid to the 9/11 families co-represented by Plaintiff and Defendants." Dkt. 1 at 10, 16 (Compl. ¶¶ 30, 48) (emphasis omitted). This is incorrect. These two events are necessary conditions to payment, but not sufficient ones. There must also be a net recovery because without such a net recovery it is a legal and factual impossibility to even calculate any compensation to Quinn. Nor can he change the meaning of a contract term or create an ambiguity simply by pleading an unsupported conclusory legal interpretation that ignores the key term. *See, Bagley v. Foundation for Preservation of Historic Georgetown*, 647 A.2d 1110, 1113 (D.C. 1994) (contract not ambiguous merely because the parties disagree over its meaning, and courts are enjoined not to create ambiguity where none exists).

Second, even viewed in the light most favorable to Quinn and drawing every reasonable inference in Quinn's favor, the allegations of the Complaint simply do not support a plausible

inference that a "net recovery" exists or that a "net recovery" could even yet be calculated. Quinn pleads—on information and belief only—that

> (a) the VSSTF[7] has issued substantial awards to K&K's and Quinn's shared clients and (b) K&K distributed amounts obtained from the VSSTF to its clients and to both Defendants . . . and (c) other distributions may have been made by Defendants to third parties.

Dkt. 1 at 16 (Compl. ¶ 49). These vague, speculative, and conclusory allegations fall short of the *Twombly* standard, 550 U.S. at 555-57, offering no concrete facts or personal knowledge to suggest K&K's investment of costs in the ongoing litigation is complete. It is thus not possible to determine whether K&K will realize a positive "net recovery." To the contrary, the Complaint contains factual allegations that suggest such net recovery **cannot** yet be calculated. Quinn admits that there "have not yet been judgments or awards in the SDNY litigation as to the parties' shared clients;" that "the parties anticipate that recoveries may finally be realized soon;" and that "[d]iscovery in the SDNY litigation will close June 30, 2021."[8] Dkt. 1 at 11 (Compl. ¶ 32). In other words, the litigation remains unresolved. So long as the litigation goes on, costs continue to increase, and recoveries are yet to be realized. Moreover, and obviously, because the

[7] The VSSTF refers to the United States Victims of State Sponsored Terrorism fund, an administrative fund that Congress established in 2015, a description of which may be found at http://www.usvsst.com/. The funds come from financial penalties assessed against entities and individuals that have violated trade sanctions laws, not from the 9/11 litigation. *See id.*

[8] This allegation is incorrect, demonstrating not only that the litigation is far from complete, but also that Quinn has little to no familiarity with the lawsuit in which he claims to be co-counsel to 9/11 families. As the docket entries show, in June—a month before Quinn filed this Complaint—the Court set September 15, 2021 as the date for Plaintiffs' expert disclosures and has yet to set a schedule for defense expert reports, rebuttal reports or expert depositions. *See In re Terrorist Attacks on Sept. 11, 2001*, 03-md-1570 (S.D.N.Y.), ECF No. 6872 (filed 06/09/2021). Furthermore, the Department of Justice recently announced that it would be producing new materials responsive to Plaintiffs' subpoena, served in the fact phase of the case, which is extending the fact discovery portion of the litigation. *See id.*, ECF No. 7004 (filed 08/09/2021). With motion practice and appeals it may well be years before this case is finally resolved and any contingency legal fees and net recovery determined.

litigation is not yet resolved, there has not been a final hearing on the full fee application K&K will ultimately submit (if successful at trial). Accordingly, it is also as yet unknown whether K&K's fees will be reduced by the court so it cannot yet be known whether any compensation to Quinn must also "be reduced in the same proportion." *E.g.*, Dkt. 1-2 (Ex. 2). Quinn's demand for payment is premature. The protestation that K&K has breached an obligation is simply without support.

This is precisely the type of pleading failure that subjects a breach of contract claim to dismissal. For example, in *Corporate Sys. Resources v. Washington Metro. Area Transit Authority*, 31 F. Supp. 3d 124 (D.D.C. 2014), the plaintiff subcontractor alleged breach of a subcontracting agreement. Plaintiff alleged he performed by submitting required documentation and invoices to the contractor. But the subcontract at issue states that "payments due to [the subcontractor] under this letter contract shall be made within ten calendar days after receipt of payment by [contractor] from [client]." The Court dismissed the breach of contract action because nowhere did plaintiff plead that subcontractor received payment from client, which the court found to be a clear condition precedent to payment. *Id.* at 137. Courts in this District routinely dismiss pleadings that fail to identify the contract term allegedly breached. *See, Coon v. Wood*, 68 F. Supp. 3d 77, 83 (D.D.C. 2014) (plaintiff's allegation that defendants' failure "to structure the property sale in such a way as to avoid capital gains tax" failed to state a claim for breach of contract where the contract contained no term creating an obligation on the part of defendants to do so; complaint dismissed under 12(b)(6) with prejudice); *Logan v. LaSalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1023-1024 (D.C. 2013) (affirming dismissal of breach claim where plaintiff did not identify the contractual provision defendants were alleged to

have breached "through its false accountants [sic] and failure to time the credit payments and other actions.").

Third, Quinn's premature demand for payment is simply inconsistent with his unfinished and ongoing contractual obligations. The Agreements unequivocally provide that "Quinn will continue to serve as counsel to and advise K&K and Kreindler as requested or as Quinn deems advisable to the preservation of (or changes to) . . . JASTA and efforts to accomplish reasonable settlement or other resolution of the litigation." Dkt. 1-2 (Ex. 2, ¶ 3); Dkt. 1-3 (Ex. 3, ¶ 3). Quinn admits that the Agreements are silent with respect to termination and specifically contingent upon the course of the SDNY litigation and its eventual resolution or settlement. Dkt. 1 at 7 (Compl. ¶ 23) ("due to the prolonged nature of the proceedings that the 9/11 families already had been through in the SDNY litigation, none of the Agreements among the parties had termination dates"). The SDNY litigation is still unfolding, and its costs, potential rewards or settlements all remain unknown and unknowable. Considering it is not yet resolved, Quinn must, but does not, explain why he should now be paid for his required ongoing obligation to work towards accomplishing reasonable settlement or other resolution of the litigation.[9]

Finally, Quinn's allegation that K&K is in breach for failure to provide Quinn with "any information, including receipt and expenses or other financial information, expense reports, evidence of costs or any awards assessed against or provided to defendants" also fails to state a claim for breach. Dkt. 1 at 21 (Compl. ¶ 70). None of the Agreements contain any language

[9] Troublingly, Quinn seems unsure whether he is still working or not. He first alleges that he "has vigorously and effectively worked, and continues to work…" under the Agreements. Dkt. 1 at 11 (Compl. ¶ 35). He then alleges (again contradicting the plain language of the Agreements) that he has "fully and faithfully completed the obligations he had under the contractual Agreements." Dkt. 1 at 21 (Compl. ¶ 70).

requiring or suggesting that any information is owed to Quinn as a contractual matter, and Quinn points to none. *See* Dkt. 1-2 to 1-4 (Exs. 2–4). There is not a single contractual term that K&K can be said to have breached. Moreover, to the extent Quinn seeks to create an obligation based on the allegation that Quinn and K&K have shared clients, there is no basis in the contract to support such a theory, either.[10] The contractual language is quite clear: that Quinn serves as counsel to and as an adviser to K&K and Kreindler only. Dkt. 1-3 (Ex. 3, ¶ 3). There is no statement, or even a suggestion, in the Agreements that Quinn is counsel to any of the 9/11 families. For all of the above reasons, Quinn fails to state a claim for breach of contract.

II. Quinn Cannot State Claims For Quantum Meruit (Count II), Unjust Enrichment (Count VI), Or An Implied-In-Fact Contract (Count V) As Alternatives To The Parties' Written Contract Governing The Same Relationship.

Quinn pleads quantum meruit, unjust enrichment, and implied-in-fact contract as alternatives to his claim for breach of contract. Quinn, however, bases these claims on the same facts and the same written contracts (Compl. Exs. 2-4) that he alleges form his breach of express contract claim (Count I). Dkt. 1 at 22, 28-29 (Compl. ¶¶ 73, 112, & 123) (incorporating all previous paragraphs); *see* Dkt. 1 at 22-23 (Compl. ¶¶ 74-84) (no new factual allegations upon which to base the quantum meruit claim); Dkt. 1 at 2-9-30 (Compl. ¶¶ 123-24) (no new factual allegations upon which to base the unjust enrichment claim); Dkt. 1 at 29-29 (Compl. ¶¶ 113-22) (no new factual allegations upon which to base the implied-in-fact contract claim). District of Columbia law does not permit Quinn to plead alternative, quasi-contract claims for quantum meruit and unjust enrichment or for an implied-in-fact contract based on factual allegations of an express contract and these claims must also be dismissed.

[10] Indeed, there is no basis anywhere in law or in fact from which to draw such a conclusion. *See*, Section III, *infra* (no joint venture).

A. The Express Contract Between The Parties That Quinn Has Alleged Precludes Quinn's Claims for Quantum Meruit and Unjust Enrichment.

District of Columbia law "recognizes causes of action for unjust enrichment and quantum meruit as implied contract claims **in which there is no express contract between the parties** but contractual obligations are implied, either in fact (quantum meruit) or in law (unjust enrichment)." *Plesha v. Ferguson*, 725 F. Supp. 2d 106, 111 (D.D.C. 2010) (footnotes omitted) (emphasis added) (citing *United States ex rel. Modern Elec., Inc. v. Ideal Elec. Sec. Co.*, 81 F.3d 240, 246–47 (D.C. Cir. 1996) (explaining differences between quantum meruit and unjust enrichment)). "The causes of action [for quasi-contract] are alternative remedies, however, and 'in order to claim a remedy for unjust enrichment [or quantum meruit], there must be no contract, either express or implied.'" *Intelect Corp. v. Cellco P'ship GP*, 160 F. Supp. 3d 157, 190–91 (D.D.C. 2016) (quoting *Schiff v. Am. Ass'n of Retired Pers.*, 697 A.2d 1193, 1194 n. 2 (D.C.1997)).

"Because . . . unjust enrichment presuppose[s] that an express, enforceable contract is absent, District of Columbia courts generally prohibit litigants from asserting these claims when there is an express contract that governs the parties' conduct." *Id.* at 112 (string cite omitted). The rationale is simple and unassailable: "One who has entered into a valid contract cannot be heard to complain that the contract is unjust, or that it unjustly enriches the party with whom he or she has reached agreement." *Jordan Keys & Jessamy*, 870 A.2d 58, 64 (D.C. 2005). District of Columbia law and this Court treat quantum meruit the same.

> Claims for quantum meruit are also unavailable when there is an actual contract between the parties because there is no need to consider whether the parties' conduct implies a contractual relationship. *See Ellipso, Inc. v. Mann*, 460 F.Supp.2d 99, 104 (D.D.C. 2006); *Dale Denton Real Estate, Inc. v. Fitzgerald*, 635 A.2d 925, 928 (D.C. 1993) ("There is no need to resort to a quasi-contract claim based on *quantum meruit* if a true contract was in existence at the time the services were performed.")

Plesha, 725 F. Supp. 2d at 112; *Intelect Corp. v. Cellco P'ship GP*, 160 F. Supp. 3d 157, 191 (D.D.C. 2016) ("under District of Columbia law, '[n]either form of [quasi contract] restitution is available when there is an actual contract between the parties.' " (quoting *Ellipso, Inc. v. Mann*, 460 F.Supp.2d 99, 104 (D.D.C. 2006)).

Although Quinn obviously cannot prevail on both express contract and quasi-contract claims for the same relationship between the Parties, he appears to be hedging his bet in case K&K disavows a contractual relationship. *See* Dkt. 1 at 22 (Compl. ¶ 74) (quantum meruit claim is brought "[t]o the extent Defendants allege that there is no contractual relationship between them and Plaintiff…"). Quinn's hedge is unnecessary as he has not pleaded facts showing that K&K has disavowed a contractual relationship between the Parties and, as discussed (*see* Section I, *supra*, and Section V, *infra*), K&K has simply stated that any demand for payment due under the Agreements is not timely, as a condition precedent has not yet occurred.

Nevertheless, Quinn may argue he is still entitled to bring quasi contract claims in the alternative just in case he does not prevail on his express contract claim. He is mistaken. Indeed, in *Plesha v. Fergusson* this Court confronted this exact issue of alternative pleading under Rule 12(b)(6) and held that the plaintiff cannot state claims for quantum meruit and unjust enrichment where there is a contract governing the same relationship. 725 F. Supp. 2d at 112.

Plesha brought quasi contract claims for quantum meruit and unjust enrichment as alternatives to an express contract claim. *Id.* Plesha also "attached a copy of the parties' agreement to his Complaint, and [the] Defendants [did] not dispute the existence of a contract." *Id.* (citing the defendants' acknowledgment of the contract in their motion to dismiss briefing). After explaining District law prohibiting recovery under both contract and quasi contract claims, this court noted that Plesha nonetheless "argues that he should be permitted to plead these

theories as an alternative to his breach of contract claim, in the event that the finder of fact concludes that no contractual relationship exists between the parties." *Id.* This Court acknowledged two earlier examples of a court allowing alternative contract and quasi-contact claims to proceed under the *Twombly/Iqbal* standard,[11] but differentiated Plesha's alternative pleading on two critical points: first, that Plesha attached the written contract to the complaint; and second, that the defendants acknowledged the contractual relationship. *Id.* This court recognized, therefore, that there was not a plausible dispute as to whether a contractual relationship existed between the parties, even though the parties disputed the terms and effects of that contractual relationship. *Id.* Accordingly, the court dismissed Plesha's alternative quantum meruit and unjust enrichment claims under Rule 12(b)(6). *Id.*

The same reasoning applies here. Just as in *Plesha*, Quinn pleads a contractual relationship and attaches the written contract to the Complaint. And just like Plesha, K&K here does not dispute a contractual relationship exists (although K&K does dispute the terms and effects of the contractual relationship). This Court should dismiss Counts II and VI.

B. There Is No Contract To Imply-In-Fact Because A Written, Express Contract Governs The Parties' Relationship.

Under D.C. law, an implied-in-fact contract contains "all necessary elements of a binding agreement," differing from other contracts "only in that **it has not been committed to writing**" and is instead "inferred from the conduct of the parties." *Camara v. Mastro's Restaurants LLC*,

[11] *McWilliams Ballard, Inc. v. Broadway Mgmt. Co.*, 636 F.Supp.2d 1, 9 n. 10 (D.D.C. 2009) (noting a plaintiff cannot prevail on a contract and unjust enrichment claim for the same relationship, but allowing the alternate pleading against nonparties to the contract whom the plaintiff alleged were enriched via the contract through fraud against the plaintiff); *Nevius v. Africa Inland Mission Int'l*, 511 F.Supp.2d 114, 122 n. 6 (D.D.C.2007) (dismissing unjust enrichment claim brought as an alternative to a breach of contract claim for failure to state an essential element and citing as dicta that under D.C. law "there can be no claim for unjust enrichment when an express contract exists between the parties", but also including as dicta a footnote that Fed. R. Civ. P. 8(e)(2) generally allows pleading in the alternative).

952 F.3d 372, 375 (D.C. Cir. 2020) (quoting *Boyd v. Kilpatrick Townsend & Stockton*, 164 A.3d 72, 81 (D.C. 2017) (citation and quotation marks omitted)) (emphasis added). **"[I]n the absence of an express contract**, a court may imply a contract from the course of the parties' conduct." *Phillips v. Spencer*, 390 F. Supp. 3d 136, 168 (D.D.C. 2019) (quoting *Grunseth v. Marriott Corp.*, 872 F. Supp. 1069, 1073 (D.D.C. 1995), *aff'd*, 79 F.3d 169 (D.C. Cir. 1996)) (emphasis added).

As with Quinn's similar quasi-contract claims, it is a "principle" of D.C. law "that a contract between the parties will bar an implied-in-fact contract or unjust enrichment claim . . . where those claims are brought among the contracting parties." *Intelect Corp. v. Cellco P'ship GP*, 160 F. Supp. 3d 157, 191 (D.D.C. 2016) (emphasis removed) (citing *Jordan Keys*, 870 A.2d at 64). Consequently, a claim for implied-in-fact contract[12] "cannot stand where there is an express written agreement between the parties regarding the same subject matter." *Cobell v. Jewell*, 234 F. Supp. 3d 126, 159 (D.D.C. 2017), *aff'd sub nom. Cobell v. Zinke*, 741 F. App'x 811 (D.C. Cir. 2018) (citing *Dale Denton Real Estate, Inc. v. Fitzgerald*, 635 A.2d 925, 928 (D.C. 1993); *Standley v. Egbert*, 267 A.2d 365, 368 (D.C. 1970)). This is because "[w]here the parties have reduced their agreement to an express writing there is ordinarily no need to go beyond its terms." *Id.* (citing *Dale Denton*, 635 A.2d at 928).

[12] The Court in *Cobell* uses the term "quantum meruit" to describe a claim for an implied-in-fact contract, but in the next sentence explains that "*Quantum meruit* refers, after all, to an implied contractual or quasi-contractual duty." 234 F. Supp. 3d at 159 (citing *TVL Assocs. v. A & M Constr. Corp.*, 474 A.2d 156, 159 (D.C. 1984)). The *Cobell* court's choice of terminology does not affect the application of the analysis to an implied-in-fact contract. Rather, it is an example of how "[c]ourts in this district have not been consistent in their use of terminology. The term 'quantum meruit' has also been used narrowly to describe only an 'implied-in-fact contract,' while the term 'quasi-contract' has been used to refer to an unjust enrichment claim." *Intelect Corp. v. Cellco P'ship GP*, 160 F. Supp. 3d 157, 191 n.20 (D.D.C. 2016) (citing *Plesha*, 725 F. Supp. 2d at 111 & n. 3).

Here, Quinn fails to plead factual allegations of an implied-in-fact contractual relationship beyond the subject matter of the written contract. *Compare*, Dkt. 1 at 19-21 (Compl. Count I), *with* Dkt. 1 at 29-30 (Complaint Count VI). Rather, Quinn explicitly invokes the written contract to allege the existence of an implied in-fact-contract. Dkt. 1 at 29 (Compl. ¶ 118) (citing the written, "2017 Contract", Dkt. 1-2 (Ex. 2)). Indeed, Quinn pleads that as a remedy for breach of an implied-in-fact contract, he seeks "all remedies to which he is entitled under the agreed upon arrangements **established by the writings** and course of conduct of the parties, **including those set forth in the writings** between the parties as to the payouts to be made to Quinn . . . ." Dkt. 1 at 29 (Compl. ¶ 122) (emphasis added). Thus, Quinn's claim for implied-in-fact contract explicitly involves the same subject-matter as his claim for breach of the Parties' written contract. These two claims cannot logically or plausibly coexist under District of Columbia law. *See*, *Intelect Corp.*, 160 F. Supp. 3d at 191. Accordingly, the Court should dismiss Count V.

If, however, the Court allows Quinn to plead in the alternative both a written express contract and an implied-in-fact contract governing the same relationship, then Quinn fails to state a claim for breach of an implied-in-fact contract for the same reasons he fails to state a claim for breach of the written contract (Count I). *See* Section I, *supra*. "The elements of an express and an implied-in-fact contract are the same." *Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.*, 815 F. Supp. 2d 148, 163 (D.D.C. 2011). Consequently, the analysis of Quinn's failure to plead a breach of contract applies to either the express, written contract or to an implied-in-fact contract. Accordingly, this Court should dismiss Count V.

III. Quinn's Pleaded Facts And The Agreements Establish A Commercial Fee Agreement, Not A Joint Venture; Quinn Fails To State A Claim For Breach Of Fiduciary Duty In A Joint Venture (Count III).

The only basis Quinn pleads for his breach of a fiduciary duty claim is the purported existence of a joint venture.[13] Dkt. 1 at 23-25 (Compl. ¶¶ 85-100). In turn, the only specific basis he pleads for a joint venture are the Parties' contracts, which are by their nature, and which he himself characterizes as, "fee agreements." Dkt. 1 at 23 (Compl. ¶ 87) ("As identified in **the parties' fee agreements**, the parties intended for Quinn to serve as co-counsel with Defendants in their representation of the 9/11 families.") (emphasis added). But Quinn's pleading fails to establish that he and K&K were co-counsel. Even if it did, controlling District law holds that a co-counsel relationship standing alone is insufficient to create a joint venture. Absent a joint venture, his claim fails. This Court should dismiss Count III.

In *Boyd v. Kilpatrick, Townsend & Stockton*, 164 A. 3d 72 (Ct. App. D.C. 2017), attorney Dennis Gingold and Kirkpatrick, Townsend & Stockton, as co-counsel, represented a class of Native American plaintiffs suing the United States.[14] *See id.* at 82 ("[]appellees did not enter into an agency relationship merely by acting as co-counsel . . ."). Gingold met Boyd, a lobbyist, and Boyd began lobbying Congress to pass a bill to fund settlement of the litigation. Boyd expected to be paid for his efforts and so told Gingold, but the latter responded that compensation should not concern Boyd. Boyd took that to mean that payment would be made. *Id.* at 76. The funding

[13] Quinn pleads Count III conditionally: "[t]o the extent Defendant's [sic: Defendants] deny the existence of a contractual relationship with Plaintiff, the Plaintiff and the Defendants engaged in a joint venture." Dkt. 1 at 25 (Compl. ¶ 97). K&K disputes the ripeness of Quinn's demand for payment and not the existence of the Agreements with Quinn, and this Court should dismiss Count III on that basis, as well.

[14] Gingold was not formally associated with Kirkpatrick & Lockhart, although the two worked closely together and the firm allowed Gingold to use some of the firm's office space. *Boyd*, 164 A.3d at 82.

bill passed, the case settled, and Gingold and KT & S received fees. Boyd demanded payment from them. The lawyers refused. Boyd then sued both Gingold and the firm.

Because Boyd apparently discussed compensation only with Gingold but never with KT & S, *cf. id.* at 76, Boyd's cause of action against the firm depended on his contention that Gingold and the firm were joint venturers. But the Court found that the co-counsel relationship between Gingold and KT & S created no such venture. *Id.* at 83-4. Even though Gingold and KT & S "collaborated on case strategy and agreed to a profit-sharing plan," the Court dismissed Boyd's claim[15] for its failure to allege indicia of a joint venture, *i.e.*, that Gingold and KT & S:

a) Retained the ability to control each other's conduct;

b) Maintained ownership of one another's business property;

c) Indicated in any manner that they intended their cooperation to extend beyond litigating the one case they had together (called *Cobell*);

d) Owed any special duties or obligations to one another that suggested the existence of a joint venture.

Boyd, 164 A. 2d at 82-3 (*citing Wash. Inv. Partners of Del., LLC v. Sec. House K.S.C.C.*, 28 A. 3d 566, 578 (D.C. 2011) (" '[M]embers [of a joint venture] must have the intent to form [such a] relationship."). The Court found there was "no legal authority suggesting that co-counsel for a party on a case invariably enters into an agency relationship, and his conclusory allegations offer no plausible reason why attorneys from separate firms or practices who work together to represent a party in a single case should be considered agents of one another." *Id.* at 82.

[15] Boyd's literal claim against Kirkpatrick Stockton & Townsend was for breach of an implied-in-fact contract, but a joint venture was an essential element of his claim.

Other than boilerplate assertions of joint control, which deserve no credit here, *see Twombly*, 550 U.S. at 555, Quinn pleads no facts indicating that a joint venture was created. Quinn never pleads that he and K&K owned business property together; that their cooperation extended past the 9/11 cases; or that he and K&K owed any sort of special duty to one another. Nor can he point to any language in the fee contract (or anywhere else, for that matter) that establishes joint control.

In dismissing Boyd's claim against KT & S, the D.C. Court of Appeal specifically relied on *Blondell v. Littlepage*, 413 Md. 96 (2010). *Blondell* explicitly ruled that a co-counsel relationship did **not** create a joint venture and therefore that no fiduciary duty arose simply by virtue of such a relationship. There, a patient retained Blondell to represent her in a malpractice action. Blondell associated Littlepage, the two agreed to split fees fifty-fifty, and both properly notified the patient of their association under the relevant ethical rules. *Id.* at 102-3.

Littlepage settled the case and paid Blondell his share of fees, but then told the patient to sue Blondell for malpractice because Blondell's delay in bringing the case created a potential statute of limitations defense. Blondell sued Littlepage, alleging breach of fiduciary duty based on a joint venture arising from their co-counsel relationship. Blondell argued that the equal fee split between him and Littlepage meant the two must have been joint venturers. *Id.* at 114-15. The Court rejected that argument, reasoning that the two failed to equally share representation responsibilities or authority over the case. *Id*. at 118-19.

Quinn's pleading here, just like in *Boyd* and *Blondell*, cannot establish a joint venture. The operative contract contradicts his conclusory claims of joint control when it reads "Quinn will continue to **serve as counsel to and advise K&K and Kreindler** as requested or as Quinn deems advisable [related to JASTA and the litigation]." Dkt. 1-1 (Ex. 1). That language does not

grant Quinn any right to control the litigation. That is why he never pleads any specific decision he made in the litigation (indeed, he does not even claim he did anything in this long-running and hotly contested litigation – with a docket exceeding 7000 entries, *see generally* 03-md-1570 (S.D.N.Y.) – other than read some pleadings, and does not even allege, because he cannot, that he entered a notice of appearance for K&K's clients). Instead, his pleading describes a situation where K&K is responsible for the litigation, while Quinn is responsible for lobbying Congress. Each entity is responsible for their own portion of that effort. The Agreements are silent as to joint control over one another's efforts.

The contract says that Quinn "serves as counsel" to K&K and "advises" K&K, but never obliges K&K to take Quinn's advice. That language establishes a relationship between Quinn and K&K, not between Quinn and the 9/11 plaintiffs K&K represents. Read correctly, the contract does not even establish that Quinn and K&K are co-counsel, much less joint venturers.[16]

Nothing in the contract grants Quinn control over the costs K&K incurs, nor does it give Quinn any say in which experts K&K was to retain. Nothing in the contract obliges Quinn to share in those costs or otherwise to risk any of the significant downside K&K has in the litigation. The reverse is also true: Quinn could retain others on his own and in his sole discretion. But he alone bears those costs, without any K&K obligation to share them. Nor does the contract permit K&K otherwise to control Quinn's lobbying efforts. This is not the stuff of joint control.

Finally, nothing in the contract extends the Parties' relationship beyond K&K's representation of 9/11 family members. Quinn does not allege that he gets a share of K&K

[16] Quinn never pleads (because he cannot) that he has representation agreements with the 9/11 plaintiffs K&K represents—or that he has any idea who they are.

profits on its other cases, nor does he allege that he deserves any share of K&K's overall profits as a firm. Rather, their contract relates to a specific, limited set of claims. Simply put, Quinn does work and Quinn gets paid. The contract is a fee agreement and nothing more.[17] The Parties' Agreements contain none of the terms that might create a joint venture under District law.[18] *See Boyd*, 164 A. 3d at 83-4; *Blondell*, 413 Md. 96 at 112-15.

Quinn cites *Beckman v. Farmer*, 579 A.2d 618 (D.C. 1990) as somehow supporting his joint venture claim. Dkt. 1 at 24 (Compl. ¶ 90). It does not. There, Farmer and Beckman formed a joint law practice with a third partner, all of whom practiced together for almost three years. *Beckman*, 579 A.2d at 622-25. They negotiated, but did not sign, a formal partnership agreement. *Id.* at 623. Farmer was to receive a guaranteed draw and a profit share if profits exceeded certain amounts. *Id.* Farmer showed the existence of a partnership through shared "leases, bank accounts, tax returns, [and] partnership announcements." *Id.* at 626. The trial court granted Farmer's summary judgment motion establishing a partnership as a matter of law. *Id.*

The Court of Appeals, however, reversed summary judgment because, despite Farmer's evidence, a jury could conclude either that Farmer was a partner of the firm or that he was merely a paid employee. The court said Farmer's lack of sufficient proof of a right of control and joint liability for losses precluded summary judgment. *Id.* The case suggests that a joint

[17] Quinn liberally sprinkles the Complaint with phrases like "shared clients" (¶¶ 2, 4, 18, 21, 35, 47, & 48), "co-represented" (¶ 14), "co-counsel" (¶¶ 54 & 55), and "joint representation" (¶ 50). Dkt. 1 at *passim*. These conclusory allegations cannot and do not change the substance of the contracts at issue.

[18] As a throwaway, Quinn alleges that a joint venture arises from the Parties' conduct. Dkt. 1 at 24 (Compl. ¶ 91). But the 2017 contract unequivocally prohibits any modification absent a writing: "This Agreement shall henceforth be the sole basis of any obligation by K&K to Quinn arising in any connection with the litigation or the resolution of it. Modification of this Agreement, to be binding, may only be done in writing." Quinn's boilerplate plea about conduct cannot save his deficient joint venture pleading.

partnership involves shared tax returns, shared bank accounts, shared leases, shared representation across numerous cases, and shared control. Other than an unsupported, boilerplate pleading of joint control, Quinn pleads none of those indicia here. The case in no way suggests a joint venture between Quinn and K&K.

This Court should dismiss Quinn's joint venture claim.

IV. Accounting Is An Equitable Remedy And Quinn Fails To State An Independent Claim For An Accounting (Count IV).

In Count IV, Quinn attempts to mix an equitable claim for an accounting into his legal action premised on an alleged breach of contract. Fundamentally, however, his accounting claim seeks the same relief as his breach of contract claim: payment from K&K for the amounts due to Quinn under the Parties' contracts. *Compare*, Dkt. 1 at 21 (Compl. Count I ¶ 72) (for breach of contract, "Plaintiff requests both a full and complete accounting and the information necessary for him to calculate the compensation owed to him, payment of any such compensation in full, . . ."), *with* Dkt. 1 at 27 (Compl. Count IV ¶ 111) ("Plaintiff demands a full and complete accounting to be provided to Plaintiff; access to all financial information . . ."). Quinn's accounting theory, therefore, is duplicative of and incompatible with his legal case, and Quinn fails to state a claim for an equitable accounting.

First, as demonstrated by Quinn's duplicative request for "an accounting" as relief for his alleged breach of contract (Dkt. 1 at 21 (Compl. ¶ 72)), Quinn seeks an accounting as a **remedy** and cannot state a standalone equitable claim. As this Court explains, such a remedy is not only extraordinary, but is also only appropriate at the end of the case, after Quinn establishes both liability and that a remedy at law is inadequate.

> An accounting is a detailed statement of debits and credits between parties arising out of a contract or a fiduciary relation." *Bates v. Nw. Human Servs., Inc.*, 466 F. Supp. 2d 69, 103 (D.D.C. 2006) (quotation marks omitted). "Such relief may be obtained *at the close of litigation* . . . as long as the plaintiff is able to show that

> 'the remedy at law is inadequate.' " *Id.* (quoting 1 Am. Jur. 2d Accounts & Accounting § 59 (2006)) (emphasis added). An account therefore may "be appropriate when a plaintiff is unable 'to determine how much, if any, money is due to him from another.' " *Id.* (quoting *Bradshaw v. Thompson*, 454 F.2d 75, 79 (6th Cir. 1972)). Importantly, "an accounting is 'an extraordinary remedy' that is only appropriate, if at all, after liability has been determined." *Armenian Assembly of Am., Inc. v. Cafesjian*, 692 F. Supp. 2d 20, 48 (D.D.C. 2010).

Haynes v. Navy Fed. Credit Union, 52 F. Supp. 3d 1, 10 (D.D.C. 2014); *see also, e.g.*, 1A C.J.S. Accounting § 6 ("An equitable accounting will not lie until the plaintiff establishes a right to maintain an action, by establishing an underlying liability that gives rise to the duty to account. As such, the remedy of accounting is not warranted when the plaintiff seeks an accounting merely as a fishing expedition, and alleges facts that are mere speculation.")

The *Haynes* plaintiff brought a complaint premised on a breach of contract and raising several legal claims, but also sought in a standalone claim "an accounting in equity as part of the overall relief in this case." *Haynes*, 52 F. Supp. 3d at 10. Recognizing that an equitable "accounting" claim cannot merely be tacked on to a legal complaint, the court noted "Haynes' request for an accounting would not, strictly speaking, be a stand-alone claim at all." *Id.* The court then examined whether the plaintiff could show the requisite "fiduciary relationship (and thus a breach of this duty) as well as a breach of contract," concluded that the plaintiff could not, and dismissed the remedy (the standalone claim already denied). *Id.*

The same reasoning applies here. Quinn merely tacks on "accounting" as a remedy to his core breach of contract claim. Therefore, the standalone claim should be dismissed. *E.g., Chin-Teh Hsu v. New Mighty U.S. Tr.*, No. CV 10-1743 (JEB), 2020 WL 588322, at *11–12 (D.D.C. Feb. 6, 2020) (on Rule 12(b)(6) motion, dismissing standalone accounting claim because it is a potential remedy and not a claim).

Nor has Quinn pleaded allegations that can support entitlement to an equitable accounting remedy. As explained in Sections I & III, *supra*, and Section V, *infra*, Quinn fails to state a claim

for breach of contract and has not established any fiduciary duty (let alone a breach of that duty), as he has failed to state a claim for joint venture or constructive trust.[19] Therefore, Quinn cannot be entitled to the remedy of an equitable accounting, either.

Second, to the extent Quinn insists on invoking this Court's equitable jurisdiction over a standalone accounting, that claim necessarily fails because it is premised on a purely legal breach of contract claim. "The necessary prerequisite to the right to maintain a suit for an equitable accounting, like all other equitable remedies, is . . . the absence of an adequate remedy at law." *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477–79 (1962). Here, Quinn's bare, conclusory pleading that no remedy at law is adequate (Dkt. 1 at 26-27 (Compl. ¶¶ 106, 110)) is not supported by any factual basis as *Twombly* and *Iqbal* require, and is belied by the fact that Quinn seeks the same remedy for his breach of contract claim—an action at law. Dkt. 1 at 21 (Compl. ¶ 72).

Nor can Quinn salvage a claim for an equitable accounting through an artful amendment to his Complaint. The plaintiff in *Dairy Queen* attempted to cast that contract dispute "in terms of an 'accounting,' rather than in terms of an action for 'debt' or 'damages.' " 369 U.S. at 477. The Supreme Court saw through that ruse, however, and explained that "the constitutional right to trial by jury [of the legal claims] cannot be made to depend upon the choice of words used in

[19] As relevant here, the District's recognition of an action for an equitable accounting is predicated on the indivisible assets of partnerships prior to dissolution and the need to unwind those complicated partnership transactions. *See Beckman v. Farmer*, 579 A.2d 618, 651 (D.C. 1990); *Landise v. Mauro*, 141 A.3d 1067, 1072 (D.C. 2016). Here, Quinn does not allege a partnership with K&K and fails to state a claim for joint venture. Section III, *supra*. Nor does Quinn's bare allegation of a co-counsel relationship create a fiduciary duty from K&K to Quinn as to K&K's expenses or finances. *See id.* (no joint venture). Regardless, given that the 9/11 litigation is ongoing and Quinn pleads that his representation and obligations continue, Quinn's request for an equitable accounting is premature under District of Columbia law. *Cf.*, *Beckman*, 579 A.2.d at 651 (accounting allowable after law partnership dissolved); *see* Section I, *supra*, and Section VII, *infra* (no breach of contract and claims are not ripe).

the pleadings." *Id.* at 477-78. The Supreme Court opined, "we think it plain that their claim for a money judgment is a claim wholly legal in its nature however the complaint is construed. As an action on a debt allegedly due under a contract, it would be difficult to conceive of an action of a more traditionally legal character." *Id.* at 477-79. Consequently, the Supreme Court reversed the district court's recognition of a standalone equitable accounting claim and remanded with instructions to resolve the legal breach of contract claims before considering any remaining grounds for an equitable claim. *Id.* at 479-80.

Here, like in *Dairy Queen*, Quinn's breach of contract claim—although he fails to state the claim and it is not yet ripe, Section I, *supra*, and Section VII, *infra*—is an adequate remedy at law for payment of the monies he claims will be due to him under the Parties' Agreements. Thus, Quinn's breach of contract claim precludes a standalone claim for an equitable accounting (even if Quinn had also pleaded the requisite liability). *Dairy Queen*, 369 U.S. at 477-80; *see also, e.g.*, 1A C.J.S. Accounting § 11 ("A breach of contract claim is an adequate remedy at law precluding the need to impose an equitable remedy of an accounting where the amount due is ascertainable, or where the amount due on a contract needs to be ascertained.").

Third, Quinn's claim that all of the information necessary to calculate the amount of damage he alleges is within K&K's exclusive control[20] (Dkt. 1 at 26 (Compl. ¶¶ 104, 106)) does not state a claim for an equitable accounting or justify that remedy after establishing liability on a

[20] By claiming that he is co-counsel for all of K&K's 9/11 clients, Quinn necessarily claims he has established an attorney-client relationship with each of those plaintiffs. Quinn also conclusorily pleads he has "ethical duties" of competence to K&K's 9/11 clients. Dkt. 1 at 26 (Compl. ¶ 105). But Quinn does not plead he ever established an attorney-client relationship with any K&K 9/11 plaintiff. Instead, Quinn alleges that he does not even know who these individuals are or what claims they filed. Dkt. 1 at 26 (Compl. ¶ 104) (alleging that "the identity of the various claimants" and "the claims they filed" is "information strictly within Defendants' custody and or control . . .").

legal claim for breach of contract. "However, equitable jurisdiction does not exist merely because the plaintiff desires information which he or she could obtain through discovery. Thus, a party must show a need for discovery through an accounting, and an accounting is unnecessary where regular discovery methods are sufficient to determine the amounts at issue." 1 Am. Jur. 2d Accounts and Accounting § 56. *See also*, *Dairy Queen, Inc.*, 369 U.S. 469, 477–79 ("The legal remedy cannot be characterized as inadequate merely because the measure of damages may necessitate a look into petitioner's business records."). Quinn does not even attempt to plead that normal discovery is insufficient. Accordingly, Quinn fails to state a claim for accounting and this claim should be dismissed.

V. Constructive Trust (Count VIII)[21] Is A Remedy And Not A Claim.

A constructive trust (Dkt. 1 at 32-33 (Compl. ¶¶ 139-48)) is not an independent claim under District of Columbia law. It is instead a remedy:

> In labeling these separate counts, Plaintiffs put the cart before the horse. Neither a constructive trust nor an accounting constitutes a free-standing claim. They instead supply potential **remedies** that might be available to Plaintiffs (and only under District of Columbia law) should they ultimately prevail. It is well established that a constructive trust is "not an independent cause of action," but instead provides "'a remedy that a court devises after litigation.'" *Macharia v. United States*, 238 F. Supp. 2d 13, 31 (D.D.C. 2002), *aff'd*, 334 F.3d 61 (D.C. Cir. 2003) (quoting *United States v. BCCI Holdings*, 46 F.3d 1185, 1190 (D.C. Cir. 1995)).

Chin-Teh Hsu v. New Mighty U.S. Tr., No. CV 10-1743 (JEB), 2020 WL 588322, at *11–12 (D.D.C. Feb. 6, 2020) (emphasis original); *see also, e.g.*, *Zanders v. Baker*, 207 A.3d 1129, 1140 (D.C. 2019) ("A constructive trust is likewise a remedy for combatting unjust enrichment"). This Court should dismiss Quinn's constructive trust claim.[22] *Chin-Teh Hsu*, 2020 WL 588322, at

[21] The Complaint misnumbers this claim as the second instance of "Count VII." Dkt. 1 at 32 (Compl. at Count VIII).

[22] Quinn also fails to state aconstructive trust claim for the same reasons he fails to state a claim for unjust enrichment, Section II.A., *supra*. *Armenian Assembly of Am., Inc. v. Cafesjian*, 597 F.

*11–12 (dismissing constructive trust under Rule 12(b)(6)); *Alemayehu v. Abere*, 199 F. Supp. 3d 74, 88 (D.D.C. 2016) (same); *Macharia*, 238 F. Supp. 2d at 31 (same).

VI. Quinn Cannot State A Claim To Pierce The Corporate Veil As To K&K (Count VII) Without Identifying As To Whom The Veil Should Be Pierced And Pleading Culpable Conduct.

Count VII seeks to pierce the corporate veil "as to K&K," but fails to identify **which** individuals or entities Quinn claims have an identity of ownership or interest with K&K, **who** is allegedly using the corporate form to work a fraud or injustice, and **who** should be reached through veil-piercing. Dkt. 1 at 30-32 (Compl. ¶¶ 125-38). Nor does Quinn allege **any** nonconclusory facts that would support a reasonable inference of any element of the relevant tests as to when the corporate form may be disregarded. This count fails as a matter of law and must be dismissed. *See Iqbal*, 556 U.S. at 677-78.

A. Governing Law.

1. New York Law Governs Count VII.

Quinn cites to the veil-piercing law of the District in the body of the Complaint (Dkt. 1 at 31, ¶¶ 132-33), but the correct choice of law analysis points to New York law instead.. When determining the applicable law in a diversity case, a federal court applies the choice of law rules of the forum state. *Bledsoe v. Crowley*, 849 F.2d 639, 641 (D.C. Cir. 1988) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). The District uses the "governmental interest

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Supp. 2d 128, 134 (D.D.C. 2009) ("The Court shall combine its discussion of Counts VI (unjust enrichment) and VII (constructive trust) because the applicable legal analysis is the same.") Quinn's breach of contract claim provides an adequate remedy at law. *Sabre Int'l Sec. v. Torres Advanced Enter. Sols., Inc.*, 820 F. Supp. 2d 62, 72 (D.D.C. 2011) (denying claim for constructive trust where "Plaintiff's request for a constructive trust may be satisfied by the money damages, including pre- and post-judgment interest, it seeks on its breach of contract claim" because "Under D.C. law, . . . it is "axiomatic that equitable relief will not be granted where the plaintiff has a complete and adequate remedy at law." (citation and quotation omitted)).

analysis," which requires a court to evaluate the governmental policies underlying the applicable conflicting laws, and determine which jurisdiction's policies would be most advanced by having its law applied to the facts of the case under review. *Hartley v. Dombrowski*, 744 F. Supp. 2d 328, 336 (D.D.C. 2010) (citations omitted). The following factors from the Restatement (2d) of Conflict of Laws § 145 guide this determination: (1) the place where the injury occurred, (2) the place where the conduct causing the injury occurred, (3) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (4) the place where the relationship is centered. *Jaffe v. Pallotta Teamworks*, 374 F.3d 1223, 1227 (D.C. Cir. 2004).

In this case, Quinn seeks to disregard a partnership formed and operating under the laws of New York with its principal place of business in New York. Dkt. 1 at 4 (Compl. ¶ 10). As such, New York has the greatest interest in how its partnership is treated. *A.I. Trade Fin. v. Petra Int'l Banking Corp.*, No. CIV. A. 93-1725, 1994 WL 225383, at *2 (D.D.C. May 9, 1994), *aff'd*, 62 F.3d 1454 (D.C. Cir. 1995) (plaintiff's "suit is premised on piercing the corporate veil of a District of Columbia corporation whose only offices are in this jurisdiction, so the District of Columbia's governmental interest is in having its law apply"); *see also*, *Soviet Pan Am Travel Effort v. Travel Committee*, 756 F. Supp. 126, 131 (S.D.N.Y. 1991) (citing *Mikropul Corp. v. Desimone & Chaplin-Airtech, Inc.*, 599 F. Supp. 940, 942 (S.D.N.Y. 1984) (state of incorporation has paramount interest in regulating the standards which control piercing the veil of its corporations). The other conflicts of laws factors also favor applying New York law. The wrongdoing alleged in connection with the veil piercing count involves payments made by K&K to its partners, actions which occurred in New York. Dkt. 1 at 4 (Compl. ¶¶ 10-11). Moreover, the relationship between Quinn and K&K is centered in New York because it involves K&K's

legal representation in the litigation which of course also sits in the Southern District of New York. Dkt. 1 at 5, 7 (Compl. ¶¶ 17, 23). Accordingly, New York law should apply.

2. New York Legal Standard to Pierce the Corporate Veil.

In New York, the corporate form will be respected. "Generally, a plaintiff seeking to pierce the corporate veil must show that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury." *Conason v. Megan Holding, LLC*, 25 N.Y.3d 1, 18 (2015) (internal quotation marks omitted); *TNS Holdings*, 92 N.Y.2d at 339 (1998). Importantly, it is not enough for the plaintiff to demonstrate that the officer, director or shareholder dominated and controlled the corporate entity. *Matter of Morris*, 82 N.Y.2d 135, 141-142 (1993); *TNS Holdings*, 92 N.Y.2d at 339. The plaintiff must show that the officer, director or member used the corporation for his/her personal benefit and the corporation was nothing more than an "alter ego" or instrumentality of the officer or member. *TNS Holdings*, 92 N.Y.2d at 339. Conclusory allegations of domination and control are insufficient. *East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc.*, 16 N.Y.3d 775, 776 (2011) (noting that at the pleading stage, "a plaintiff must do more than merely allege that [the defendant] engaged in improper acts or acted in 'bad faith' while representing the corporation"). The plaintiff must demonstrate that there was a unity of interest and control between the defendant and the entity such that they are indistinguishable.[23]

[23] In the District, the law is not meaningfully different, although differently phrased. Courts will "pierce the corporate veil upon proof, 'that there is (1) unity of ownership and interest, and (2) use of the corporate form to perpetrate fraud or wrong, or other considerations of justice and equity' justify it." *Estate of Raleigh v. Mitchell*, 947 A.2d 464, 470 (D.C. 2008) (citation and quotation marks omitted). This test requires an evaluation of "(1) whether corporate formalities have been disregarded, (2) whether corporate funds and assets have been extensively intermingled with personal assets, (3) inadequate initial capitalization, and (4) fraudulent use of the corporation to protect personal business from the claims of creditors." *Id*. at 470-71. *M3 USA*

B. Count VII Fails as a Matter of Law.[24]

1. Quinn Does Not, and Cannot, Identify the Alleged Alter Ego of K&K.

Count VII fails as a matter of law under either New York or D.C. law at the very first step of the analysis. By failing to even identify the alleged "alter ego" of K&K, Quinn hardly can plead facts that such persons or entities exercise the kind of control over K&K that would be required to plausibly state a claim. The purpose of a veil-piercing claim is to hold culpable individuals liable for misuse of the corporate form to commit a fraud or wrong upon a third party and isolate themselves from liability. *Steadfast Ins. Co. v. T.F. Nugent Inc.*, 513 F. Supp. 3d 419, 424 (S.D.N.Y. 2021). Without knowing who the individuals even are, they can hardly be alleged to be culpable.

The Complaint alleges—on information and belief only—that some unidentified payments have been made to "**certain K&K partners who have not substantially participated in representing the 9/11 families . . . .**" Dkt. 1 at 30 (Compl. ¶ 128). Putting aside the obvious issue that there is nothing untoward about a law firm making distributions to its partners, the Complaint does not identify which or how many partners it seeks to hold responsible for K&K's

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Corp. v. Qamoum, C.A. No. 20-2903, 2021 WL 2324753 at *10 (D.D.C. June 7, 2021) (Moss, J.). But the inquiry rests on whether "the corporation is, in reality, an alter ego or business conduit of the person in control." *Ruffin v. New Destination, LLC*, 773 F. Supp. 2d 34, 41 (D.D.C. 2011).

[24] Quinn's claim fails as a threshold matter because K&K is a partnership. Dkt. 1 at 4 (Compl. ¶ 10). Under New York law, there is no cause of action for piercing the **corporate** veil of a **partnership**, particularly when it is not pled as to whom Quinn seeks to pierce the veil and whether such individuals are even limited or general partners. *Cantor Fitzgerald & Co. v. 8an Capital Partners Master Fund, L.P.*, 2108 N.Y. Misc. LEXIS 1801 (N.Y. Sup. Ct. 2018) ("the concept of veil piercing is not applicable to an entity in limited partnership form as a matter of law given such a partnership has by its very nature no "veil" to "pierce"). Similarly, we are not aware of any case in the District that has pierced the "veil" of a partnership. A theory of piercing the corporate veil is simply inapplicable in these circumstances and should be dismissed for that reason alone.

obligations—whether it is this certain group of unnamed partners, all the partners, or perhaps some other partner or group of partners. And because Quinn does not plead as to whom it seeks to pierce the veil, he certainly cannot (and does not) plead any facts to show how that unnamed group shares unity of ownership or interest in—or "dominates"—the partnership itself. *See, e.g..*, *Cortlandt St. Recovery Corp. v. Bonderman*, 31 N.Y.3d 30, 49-50 (2018) (culpable individuals created the scheme, created shell corporations to carry out the scheme, defrauded plaintiff and distributed corporate funds to themselves with the purpose and effect of rendering shell corporations insolvent); *Cobalt Partners, L.P. v. GSC Capital Corp.*, 97 A.D. 3d 35 (NY 1st Dep't 2012) (sufficient veil-piercing allegations include, inter alia, that the dominated corporation has no employees and operates through its alter ego, which in turn publicly describes itself as a d/b/a for the dominated corporation); *Shisgal v. Brown*, 21 A.D 3d 845 (NY 1st Dep't 2005) (sufficient veil- piercing allegations include, inter alia, that the alter ego individuals used their companies' money as a personal checking account paying for expenses such as their mother's plastic surgery, their monthly household bills and parking tickets, ran the companies without regard for corporate formalities and was constantly commingling corporate and personal funds, and using one of the companies as a shell company to borrow money for the benefit of other companies and kept no record of fund transfers between the individuals and various companies). *See, also, B&H Nat'l Place, Inc. v. Beresford*, 850 F. Supp. 2d 251, 260 (D.D.C. 2012) (allegations of corporation transferring funds to individuals does not show alter ego where individuals provided the entities with labor or services).

If Quinn is asking this Court to simply infer that some or all partners, whoever or how many there may be, should be reached for the alleged debts of K&K, without any further factual pleadings other than that upon information and belief they received partnership distributions,

then Quinn has done nothing more than ask this Court to simply ignore the law of limited liability partnerships. Quinn's claim fails at the very first step.

2. Quinn Pleads No Facts Other Than Bare, Conclusory Recitations of Elements of a Corporate Veil Piercing Claim.

More broadly, it is not enough to allege only conclusory allegations as Quinn does here. *Barneli & Cie SA v. Dutch Book Fund SPC, Ltd.*, 95 A.D.3d 736, 737 (NY 1st Dep't 2012) (dismissing veil piercing claim where conclusory allegations insufficient); *Albstein v. Elany Contracting Corp.*, 30 A.D.3d 210, 210 (NY 1st Dep't 2006) (veil-piercing claim properly rejected where plaintiff "alleged nothing more than that the corporation was 'undercapitalized' and functioned as defendant's 'alter ego' " and "failed to plead any facts to substantiate such conclusory claims"). The pleading standard in the District is the same. *Motir Servs., Inc. v. Ekwuno*, 191 F. Supp. 3d 98, 109-11 (D.D.C. 2016) (dismissing action against sole owner of a corporation where plaintiff relied on conclusory allegation that the corporation served as an alter ego for the individual defendant).

Here, Quinn alleges only the following conclusory statements, mostly "on information and belief" in support of its corporate veil piercing claim:

> 128. Upon information and belief, Defendants have been transferring VSSTF payments disbursements to certain K&K partners who have not substantially participated in representing the 9/11 families …with the impermissible effect of increasing the "net recovery", and thereby decreasing Plaintiff's compensation.
>
> 129. Defendants are thereby engaging in inappropriate transfers of assets with the effect of delaying and hindering Plaintiff's contractual right to compensation.
>
> 130. Additionally, on information and belief, payments from the VSSTF have resulted in compensation awards to Kreindler and K&K partners, the Defendants herein.

131. The business entity is being used improperly to facilitate a diversion of monies owed to Plaintiff.

136. Quinn occupies the position of a creditor against Defendant; thus any attempts to hide or divert assets to limit the payment to Quinn would constitute conduct sufficient to allow for piercing the corporate veil.

Quinn has pleaded no facts to suggest that any corporate formalities have been disregarded. Nor is there one factual allegation that K&K was set up to avoid the personal business interests of its (unidentified) partners. To the contrary, Quinn pleads that K&K is a law firm (Dkt. 1 at 4 (Compl. ¶ 10)) that is, in fact, properly engaged in the practice of law, representing thousands of 9/11 families in the multi-district litigation pending in the Federal District Court for the Southern District of New York (*see* Dkt. 1 at 1, 5-6 (Compl. ¶¶ 1, 14, 18, 19)) and has previously represented other aviation-related class action plaintiffs (Dkt. 1 at 5 (Compl. ¶ 18)).

Quinn pleads no factual allegations to support an inference that corporate funds and assets have been "extensively intermingled with personal assets." Again, to the contrary, the mere allegation that payments were made by and out of K&K and to its partners in respect of fees received by the partnership is completely inconsistent with the notion of intermingling, extensive or otherwise. Further, no fact is pled to support an inference that if distributions were made to any partners, that they were made to hide any income to K&K, that they do, in fact, hide any income to K&K, or that they would have any impact whatsoever on the contractual calculation of "net recovery" or otherwise impact any aspect of Quinn's claims.[25] No fact is pled

[25] Quinn's allegation with respect to the impact a distribution would have on the "net recovery" calculation set forth in the Agreements is incomprehensible. Dkt. 1 at 30 (Compl. ¶ 128).

to support any inference that anything about such distributions to partners is anything other than in the normal course. Quinn makes only the conclusory allegations without support that such distributions "appear" to constitute "inappropriate transfers of assets", "on information and belief." The allegation that Quinn occupies the position of a "creditor" is not a fact at all, but a legal conclusion – one that rests on the ultimate resolution of the issues of this lawsuit. This Court is not required to accept pleadings of ultimately legal issues as true. *Iqbal*, 556 U.S. at 678 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."). And finally, there is not one fact pled to support an inference that K&K had inadequate initial capitalization – or even that its capitalization is insufficient today to carry on its business.

VII. This Court Lacks Subject Matter Jurisdiction Because Quinn's Claims Are Not Ripe.

Quinn pled every one of his claims other than Count I (breach of contract) in the alternative. To properly invoke subject-matter jurisdiction, Quinn's breach-of-contract claim must be ripe. It is not on its face.

A Rule 12(b)(1) motion presents a threshold challenge to the Court's jurisdiction. *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009). "It is to be presumed that a cause lies outside a federal court's limited jurisdiction, unless the plaintiff can establish by a preponderance of the evidence that the Court possesses jurisdiction." *Phillips v. Spencer*, 390 F. Supp. 3d 136, 151–52 (D.D.C. 2019) (quotations and citations omitted). The "plaintiff's factual allegations in the complaint . . . will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim." *Id.* (quotations and citations omitted).

To be ripe, a claim must demonstrate (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties caused by withholding court consideration. *Nat'l Treasury Employees Union v. Chertoff*, 452 F.3d 839, 854 (D.C. Cir. 2006) (citing *Abbott Labs. v.*

Gardner, 387 U.S. 136, 149 (1967)). A claim "is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.' " *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–81 (1985)). By requiring claims to be ripe before deciding them, courts promote judicial economy, avoid becoming entangled in abstract disputes, and ensure a record adequate to support an informed decision when a case is heard. *Abbott Labs.*, 387 U.S. at 149.

Each of the three reasons why Quinn fails to state a claim for breach of contract, Section I, *supra*, also demonstrates that Quinn has failed to allege sufficient facts to support the ripeness of his claim and this Court's subject matter jurisdiction under a more exacting Rule 12(b)(1) examination. *Phillips*, 390 F. Supp. 3d at 151–52 (The "plaintiff's factual allegations in the complaint . . . will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim."). ***First***, "net recovery"—a critical defined term in the Agreements—is a prerequisite to any entitlement for payment. Quinn never pleads that K&K has realized any net recovery with respect to the claimants K&K represents. Section I, *supra*. ***Second,*** the Complaint's factual allegations do not support a plausible inference that a net recovery exists or that a net recovery could even yet be calculated. Rather, the Complaint alleges as fact that discovery in the 9/11 multi-district, SDNY litigation was scheduled to close. Dkt. 1 at 11 (Compl. ¶ 32). Without a trial date or trial, much less a result, that litigation remains ongoing. No net recovery can yet be calculated. Section I, *supra*. ***Third,*** Quinn's premature demand for payment is inconsistent with the unfinished and ongoing contractual obligations that he alleges. Dkt. 1 at 11 (Compl. ¶ 35) (Quinn "continues to work" under the Agreements); *see* Dkt. 1-2 (Ex. 2, ¶ 3); Dkt. 1-3 (Ex. 3, ¶ 3) ("Quinn will continue to serve as counsel to and advise K&K and

Kreindler" until "resolution of the litigation"). In sum, the unknown and currently unknowable amount of K&K's clients' "net recovery" renders any breach of contract claim (or duplicative, alternative claim) premised on entitlement to payment of a portion of that amount premature and unfit for judicial decision. *See Nat'l Treasury Employees Union*, 452 F.3d at 854 (ripeness elements).

Thus, Quinn's claims are not ripe because "net recovery" and the amount of fees Quinn may (or may not) eventually be entitled to receive from K&K are necessarily contingent upon the conclusion of the SDNY litigation in which K&K represents the 9/11 families. In such circumstances, the Supreme Court could not be more clear: "[a] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (quotation omitted); *see also, e.g.*, *SOME, Inc. v. Hanover Ins. Co.*, No. CV 21-493 (BAH), 2021 WL 2935893, at *4 (D.D.C. July 13, 2021) ("The ripeness doctrine prevents courts from adjudicating disputes based on contingencies or hypotheticals that have not yet come to pass." (citation omitted)).

This is analogous to an indemnity claim where it is black letter law that an indemnification claim is not ripe until the liability of the indemnitee has "been fixed by judgment or settlement." *Window Specialists, Inc. v. Forney Enterprises, Inc.*, 26 F. Supp. 3d 52, 57 (D.D.C. 2014). The logic is sound: absent a fixed basis to calculate the amount of indemnification to which the plaintiff is entitled and the indemnifier's subsequent refusal to pay that amount, the Court lacks the ability to adjudicate an indemnification claim. *Id.* Applied here, absent the existence of (or at least the ability to accurately calculate) a net recovery, this Court does not have the ability to adjudicate whether K&K owes Quinn whatever portion of the net recovery he may (or may not) be entitled to receive.

Quinn cannot show hardship caused by reserving court consideration, either. *See Consolidation Coal Co. v. Fed. Mine Safety & Health Rev. Comm'n*, 824 F.2d 1071, 1095 n.34 (D.C. Cir. 1987) ("The ripeness test of 'hardship' imposes the additional requirements that the injury be 'immediate and significant' and that subsequent proceedings cannot remedy it.") As explained in Section I, *supra*, the Agreements do not specify the timing of payment, except that it must necessarily be after the "net recovery" is calculable. Quinn also pleads that his contractual obligations are ongoing. Dkt. 1 at 11 (Compl. ¶ 35). Indeed, Quinn pleads that the Agreements have no termination date because it was understood that resolution of these matters would be prolonged. Dkt. 1 at 7 (Compl. ¶ 23). Quinn's impatience with waiting until the conclusion of the SDNY litigation does not modify the Parties' Agreements, and is not a hardship caused by the Court withholding consideration until then. Rather, waiting until after the SDNY litigation is resolved so "net recovery" can be calculated is precisely what Quinn bargained for. Therefore, on the face of the Complaint and the exhibits, Quinn simply has not, and cannot, allege he has suffered any damages at this point, let alone hardship from the Court declining to hear his premature claim. *See*, *Beatley v. Ayers*, 851 Fed. App'x 332, 337 (4th Cir. Mar. 10, 2021) (per curiam) (finding breach of contract claim "not ripe" where plaintiff "has not yet suffered any damages caused by the Defendants' failure to perform their obligations . . . ").

In essence, Quinn's Complaint seeks an advisory opinion as to what damages he would be entitled to **if**, after the SDNY litigation concludes, K&K's 9/11 clients ultimately realize amounts that result in a positive net recovery, and **if** K&K then refuses to pay Quinn the share of that calculable net recovery pursuant to the Parties' fee Agreements. This hypothetical breach of contract (and alternative claims) is not ripe, and the Court should dismiss Quinn's Complaint for lack of subject matter jurisdiction. *Devia v. Nuclear Regulatory Comm'n*, 492 F.3d 421, 425

(D.C. Cir. 2007) ("if a plaintiff's claim . . . depends on future events that may never come to pass, or that may not occur in the form forecasted, then the claim is unripe.").

CONCLUSION

For the foregoing reasons, the Court should dismiss the entire Complaint with prejudice.

Dated: September 3, 2021

Respectfully submitted by

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2021, the foregoing was electronically filed and served upon on all counsel of record.

/s/
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