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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEACON ASSOCIATES LLC I, BEACON
ASSOCIATES LLC II, ANDOVER ASSOCIATES,
L.P., ANDOVER ASSOCIATES LLC I, ANDOVER
ASSOCIATES (QP) LLC,

Plaintiffs

-vs-

BEACON ASSOCIATES MANAGEMENT CORP.,
ANDOVER ASSOCIATES MANAGEMENT CORP.,
INCOME PLUS INVESTMENT FUND, DAVID
FASTENBERG, TRUSTEE, LONG ISLAND
VITREO-RETINAL CONSULTANTS 401K FBO
DAVID FASTENBERG,

Defendants.

14-CIV-2294

ORDER TO SHOW
CAUSE FOR MANDATORY
INJUNCTION AND
DECLARATORY JUDGMENT

Whereas, this Declaratory Judgment Action was commenced on April 2, 2014, and thereafter the parties set an agreed upon schedule for submitting papers in support of relief being sought in this Action, which has been modified several times by order of this Court at the request of the parties; and

Whereas, pursuant to that agreed upon schedule, Defendant David Fastenberg (“Fastenberg”) is submitting papers on August 27, 2014, in support of the relief he seeks, and requests this order to show cause in lieu of a motion to preserve the existing Court ordered schedule;

Now, upon consideration of the attached Declaration of Max Folkenflik dated August 27, 2014, Defendant Fastenberg's Memorandum of Law in Support of his Request for a Mandatory Injunction and a Declaratory Judgment, and good and sufficient cause appearing therefore it is hereby:

ORDERED that the above-named plaintiff and other Defendants appear and show cause, before the Honorable Andrew J. Peck, United States Magistrate- Judge, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312, Courtroom 20D, on October 7, 2014 at 9:00 a.m. thereof, or as soon thereafter as counsel may be heard, why an Order should not be made and entered: (i) declaring that the Net Equity method, sometimes referred to as the Net Investment Method is the proper method to be used to distribute proceeds recovered from the Beacon and Andover Allowed Madoff Bankruptcy Claims, and other recoveries with respect to losses incurred resulting from the Beacon Funds' investments in BLMIS, including the Beacon Fund Nassau Settlement award and distribute any other future recoveries by Beacon or Andover, due to Madoff losses; (ii) declaring that the Valuation Method is the proper method to be used to distribute proceeds recovered from Non-Madoff investments; and (iii) issuing a mandatory injunction requiring the Beacon Funds to distribute to the Beacon Fund all funds received by the Beacon Funds from the BLMIS Trustee within 45 days of this order; and it is further

ORDERED that service to all counsel of record in at their usual and customary offices by electronic mail, and ECF filing of the papers in support of this Order no later than August 27, 2014, and service of this order within one business day of the entry of this Order shall constitute sufficient and proper notice of the hearing and the relief sought; and it is further

ORDERED that answering papers, if any, shall be filed electronically and served by e-mail or by hand upon counsel for Defendant Fastenberg, Max Folkenflik, Folkenflik & McGerity, 1500

Broadway, 21st Floor, New York, New York 10036 (email: mfolkenflik@fmlaw.net), on or before September 12, 2014; and it is further

ORDERED that no reply papers shall be served absent further order of the Court.

SO ORDERED.

Dated: New York, New York
August 27, 2014

Honorable Andrew J. Peck
United States Magistrate Judge

