

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, ET AL.,**

Civil Action No.
1:14-cv-02294 (AJP)

Defendants.

DECLARATION OF BRIAN E. WHITELEY

I, Brian E. Whiteley, hereby declare on oath and state as follows:

1. I am a partner with the law firm of Hiscock & Barclay, LLP, counsel for Income-Plus Investment Fund in the above-captioned matter. I am a member in good standing of the Massachusetts and New York bars and have been admitted pro hac vice to practice law before the Court in this matter.

2. Attached hereto as Exhibit 1 is a true and accurate copy of the Civil Docket for Case #1:09-cv-06910-CM, *Beacon Associates Management Corp. v. Beacon Associates LLC*, United States District Court for the District of Massachusetts (the "Prior Action").

3. Attached hereto as Exhibit 2 is a true and accurate copy of the Beacon Associates LLC I Amended and Restated Operating Agreement, dated as of April 1, 2004, as originally docketed in the Prior Action at Docket No. 40-8.

