

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BEACON ASSOCIATES LLC I, BEACON  
ASSOCIATES LLC II, ANDOVER  
ASSOCIATES LLC I, ANDOVER  
ASSOCIATES (q) 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.,

*Defendants.*

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

**DECLARATION OF MITCHELL P. HURLEY**

I, MITCHELL P. HURLEY, hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury:

1. I am a partner at Akin Gump Strauss Hauer & Feld LLP, counsel to AIJED International, Ltd (“AIJED”). I make this declaration in support of AIJED’s Application for Release of Funds Due Pursuant to this Court’s October 31, 2014 Order. This declaration is based upon my own personal knowledge and belief, and upon my review of documents and information made available to me through AIJED, Beacon and other parties involved in this dispute.

2. Attached hereto as Exhibit A is a true and correct copy of the Court’s Final Distribution Order dated October 31, 2014.

3. On March 4, 2015, counsel for AIJED had a call with counsel for Beacon<sup>1</sup> and Max Folkenflik, a lawyer representing certain of the Beacon investors who have challenged AIJED's entitlement to a current distribution from Beacon (the "Challenging Investors"). On the call, AIJED posed questions regarding data and documents produced by Beacon and the Challenging Investors in discovery, as well as other matters concerning the transactions reflected in those documents and at issue in this dispute. Among other things, Beacon's counsel indicated that Beacon conferred with the Brattle Group in or around 2012 and/or 2103 concerning the appropriate methodology for calculating net equity for AIJED, Associates, and all other investors in Beacon. Upon information and belief, Mr. Folkenflik also participated in at least some of the conferences among Beacon and the Brattle Group concerning appropriate net equity calculations for Beacon's investors.

4. Following the call, on March 5, 2015, my colleague Rachel Presa sent an email to Beacon's counsel and the Challenging Investors' counsel summarizing AIJED's understanding of the facts discussed on the call and requesting that they respond with any additional or new information they obtained on certain topics. Attached hereto as Exhibit B is a true and correct copy of Ms. Presa's March 5, 2015 email.

5. Attached hereto as Exhibit C is a true and correct copy of Beacon counsel's March 10, 2015 email in response to Ms. Presa's March 5, 2015 email.

6. Attached hereto as Exhibit D is a true and correct copy of a spreadsheet provided by Beacon and labeled Holdback 0006.

7. Attached hereto as Exhibit E is a true and correct copy of a spreadsheet provided by Beacon and labeled Holdback 0007.

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<sup>1</sup> All defined terms used and not defined herein shall have the definition assigned to them in AIJED's Application for Release of Funds Due Pursuant to this Court's October 31, 2014 Order.

8. Attached hereto as Exhibit F is a true and correct copy of a spreadsheet provided by Beacon and labeled Holdback 0015 Updated 03-12-15

9. Attached hereto as Exhibit G is a true and correct copy of an email and attached spreadsheet provided by Mr. Folkenflik on behalf of the Challenging Investors and labeled INV 000021-000022.

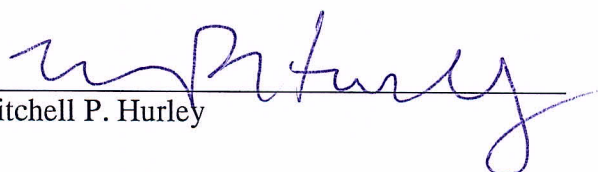
10. Attached hereto as Exhibit H is a true and correct copy of a document produced to AIJED by the Challenging Investors bates numbered INV 00008.

11. Attached hereto as Exhibit I is a true and correct copy of a letter from Beacon's counsel to Judge Peck filed on the docket in this matter at ECF No. 48.

12. Attached hereto as Exhibit J is a true and correct copy of a spreadsheet provided to AIJED by Beacon's counsel to AIJED in this matter.

13. On or around February 27, 2015, at Mr. Folkenflik's request, AIJED made Arthur and David Gordan available for a telephone conversation with Mr. Folkenflik and counsel for Beacon. During the call, in which I also participated, the Gordons answered questions from Mr. Folkenflik regarding spreadsheets AIJED had previously produced identifying the members of AIJED and the different members of Associates, and contribution and withdrawal date for each of those members to the two respective funds.

Dated: March 13, 2015  
New York, New York

  
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Mitchell P. Hurley