

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

**1. SEE NOTICE ON REVERSE.**

**2. PLEASE TYPE OR PRINT.**

**3. STAPLE ALL ADDITIONAL PAGES**

Case Caption:  BEACON ASSOCIATES LLC I, BEACON ASSOCIATES LLC II, ANDOVER ASSOCIATES LLC I, ANDOVER ASSOCIATES (q) LLC  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.	District Court or Agency:	Judge:
	S.D.N.Y.	M.J. Andrew J. Peck
	Date the Order or Judgment Appealed from was Entered on the Docket:	District Court Docket No.:
April 8, 2015	No. 14-cv-02294 (AJP)	
Date the Notice of Appeal was Filed:	Is this a Cross Appeal?	
April 14, 2015	Yes <input checked="" type="checkbox"/> No	

<b>Attorney(s) for Appellant(s):</b>  Plaintiff  Defendant  Interested party	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	Mitchell P. Hurley	Akin Gump Strauss Hauer & Feld LLP One Bryant Park, 41st Floor New York, NY 10036	(212) 872-1011	(212) 872-1002	mhurley@akingump.com

<b>Attorney(s) for Appellee(s):</b>  Plaintiff  Defendant	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	Please refer to Addendum C.				

Has Transcript Been Prepared?	Approx. Number of Transcript Pages:	Number of Exhibits Appended to Transcript:	Has this matter been before this Circuit previously?	Yes	<input checked="" type="checkbox"/> No
Yes	86 pages	0	If Yes, provide the following:		
			Case Name:		
			2d Cir. Docket No.:	Reporter Citation: (i.e., F.3d or Fed. App.)	

**ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.**

**ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.**

**PART A: JURISDICTION**

1. <u>Federal Jurisdiction</u>		2. <u>Appellate Jurisdiction</u>	
U.S. a party	Diversity	<input checked="" type="checkbox"/> Final Decision	Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))
<input checked="" type="checkbox"/> Federal question (U.S. not a party)	Other (specify): _____	Interlocutory Decision Appealable As of Right	Other (specify): _____

**IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.**

**PART B: DISTRICT COURT DISPOSITION (Check as many as apply)**

1. Stage of Proceedings	2. Type of Judgment/Order Appealed	3. Relief
<input checked="" type="checkbox"/> Pre-trial During trial After trial	Default judgment Dismissal/FRCP 12(b)(1) lack of subj. matter juris. Dismissal/FRCP 12(b)(6) failure to state a claim Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	Dismissal/other jurisdiction Dismissal/merit <input checked="" type="checkbox"/> Judgment / Decision of the Court Summary judgment Declaratory judgment Jury verdict Judgment NOV Directed verdict Other (specify):
		<input checked="" type="checkbox"/> Damages: <input checked="" type="checkbox"/> Sought: \$ 4,166,156.00 Granted: \$ _____ Denied: \$ _____
		Injunctions: Preliminary Permanent Denied

**PART C: NATURE OF SUIT (Check as many as apply)**

1. Federal Statutes	2. Torts	3. Contracts	4. Prisoner Petitions
Antitrust Bankruptcy Banks/Banking Civil Rights Commerce, Energy Commodities Other (specify): _____	Communications Consumer Protection Copyright <input type="checkbox"/> Patent Trademark Election Soc. Security Environmental	Freedom of Information Act Immigration Labor OSHA Securities Tax	Admiralty/ Maritime Assault / Defamation FELA Products Liability Other (Specify):
		Admiralty/ Maritime Arbitration Commercial Employment Insurance Negotiable Instruments Other Specify	Civil Rights Habeas Corpus Mandamus Parole Vacate Sentence Other
5. <u>Other</u> Forfeiture/Penalty Real Property Treaty (specify): _____ <input checked="" type="checkbox"/> Other (specify): <u>Distribution order</u>	6. <u>General</u> Arbitration Attorney Disqualification Class Action Counsel Fees Shareholder Derivative Transfer	7. Will appeal raise constitutional issue(s)? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Will appeal raise a matter of first impression? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

1. Is any matter relative to this appeal still pending below? Yes, specify: \_\_\_\_\_  No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

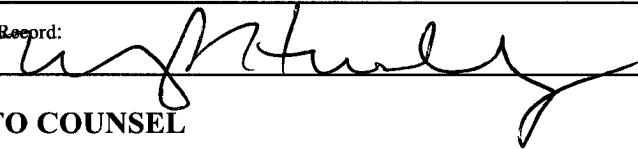
(A) Arises from substantially the same case or controversy as this appeal? Yes  No

(B) Involves an issue that is substantially similar or related to an issue in this appeal?  Yes  No

If yes, state whether "A," or  "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name: In re Bernard L. Madoff Investment Securities	Docket No. 1:15-cv-01151-PAE	Citation: 522 BR 41 (Bankr. S.D.N.Y. 2014)	Court or Agency: S.D.N.Y. (on appeal from Bankr. S.D.N.Y.)
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Name of Appellant: **Diana Melton Trust, Dated 12/05/05**

Date: 4/28/2015	Signature of Counsel of Record: 
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**NOTICE TO COUNSEL**

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

**PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.**