

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 (JLC)

Defendants.

**MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES
UNDER THE COMMON FUND DOCTRINE**

Income Plus Investment Fund (“Income-Plus”) and David Fastenberg, Trustee, Long Island Vitreo-Retinal Consultants 401k FBO David Fastenberg (“Fastenberg”) hereby move for an award under the common fund doctrine to compensate them for their efforts and legal expenditures arising from their willingness to litigate unsettled issues regarding the distribution of funds received from the Madoff bankruptcy trustee by the plaintiff Beacon Associates LLC I and Beacon Associates LLC II (“Beacon”). The work performed by Income-Plus, Fastenberg, and their counsel resulted in the distribution to the vast majority of Beacon’s investors of over \$5.6 million that would otherwise not have been available for distribution to those investors.

In support of this motion, Income-Plus and Fastenberg rely on the Memorandum of Law of Defendant Income-Plus Investment Funds’ Motion for Attorneys’ Fees and Expenses Pursuant

to the Common Fund Doctrine, the accompanying Declarations of Brian E. Whiteley and John P. Jeanneret, Ph.D., and the Declaration of Max Folkenflik.

WHEREFORE, for the foregoing reasons, Defendants Income-Plus and Fastenberg respectfully request that the Court grant their Motion for Attorneys' Fees and Expenses Under the Common Fund Doctrine and order plaintiff Beacon Associates LLC to pay the sums requested in the accompanying memorandum of law and declarations.

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By: /s/ Brian E. Whiteley
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Attorneys for Defendant Fastenberg

Dated: September 20, 2019

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I electronically filed the foregoing Motion for Attorneys' Fees and Expenses using the CM/ECF system, which sent electronic or other notification of such filing to all counsel of record in this case.

/s/ Brian Whiteley
Brian E. Whiteley