Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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HOLDRUM INVESTMENTS N.V. *individually and derivatively on behalf of* MUSEUM PARTNERS L.P.

Plaintiffs,

-against-

ASHER B. EDELMAN

Defendant.

----------X

Index No. 650950-2011

SECOND AMENDED VERIFIED COMPLAINT

Plaintiffs, HOLDRUM INVESTMENTS N.V. and MUSEUM PARTNERS L.P., by their attorney, Law Office of Jeff Davis, Esq., as and for their Second Amended Verified Complaint against the Defendant, allege as follows:

PARTIES

1. Plaintiff HOLDRUM INVESTMENTS N.V.(hereinafter "Holdrum") is a Netherlands Antilles corporation duly organized pursuant to the laws of the Netherlands Antilles, and a limited partner of the Museum Partners L.P. (hereinafter the "Partnership" or "the Company").
2. Plaintiff MUSEUM PARTNERS L.P.is a limited partnership duly organized pursuant to the laws of Delaware, with its principal place of business located at 136 East 74th Street, New York, NY 10021-3503.
3. Defendant Asher B. Edelman (hereinafter "Edelman" or "Defendant") is an individual and the general partner of the Partnership. Upon information and belief, Edelman resides at 136 East 74th Street, New York, NY10021, and maintains an office at the same address.

4. Edelman Arts, Inc., a non-party to this proceeding, is a domestic corporation duly organized pursuant to the laws of the state of New York, and maintains an office at 136 East 74th Street, New York, NY 10021-3503.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Defendant pursuant to N.Y. C.P.L.R. ("CPLR") § 301, based on the fact that Defendant maintains its principal residence and is engaged in continuing business relations in this State.

6. Venue is proper in this County pursuant to CPLR § 503.

NATURE OF THE CASE AND BACKGROUND

7. It is a fundamental principle of partnership practice that each partner owes to the other partners and to the partnership itself duties of loyalty, good faith, and fair dealing. Moreover, it is a well-established doctrine of partnership, corporate, or limited liability law that a general partner owes the highest degree of fiduciary duties to its limited partners. As such, each partner is prohibited from competing with or diverting opportunities and assets away from the partnership, yet Defendant has engaged in exactly such disloyal practices.

8. Despite the extensive duties and ethical obligations imposed on general partners, managing members, or directors and officers, Edelman deliberately abused and misappropriated assets belonging to Museum Partners L.P.("the Partnership") -- the partnership in which Plaintiff Holdrum is a partner -- for his own personal benefit and financial enrichment, and continues to do so despite numerous demands to cease and desist.

9. Upon information and belief, the Partnership was formed for the purpose of acquiring a substantial position in Societé du Louvre (hereinafter "Louvre"), a French publicly-traded company that was controlled by the Taittinger family.

10. The holdings of Louvre included Taittinger Champagne, Banque du Louvre (a French investment company and bank), Baccarat Crystal, and several French hotel chains, including Le Crillon Hotel.

11. Defendant Edelman is a widely-recognized investor known for his "activist" and aggressive methods of acquiring a recognized shareholder interest in undervalued publicly-traded companies. After acquiring such an interest, Edelman is known for pressuring or "shaking up" the board of directors and the shareholders to create shareholder value by making changes to the companies' management structures. The ultimate goal of this strategy has been to force fundamental changes within the target company to elevate the value of the then-undervalued shares. Furthermore, Defendant's investment strategy often forced companies to buy out his investment interest, once acquired, in order to avoid having to make considerable changes to the management structure that might otherwise compromise the control of certain shareholders.

12. Therefore, in the present case, the investment goal was to obtain a sizable interest in Louvre in order to attract public attention, precipitate proxy fights, put political pressure on the board of directors of Louvre to change the management structure, and effect actions of divestiture, all in order to maximize shareholder value.

13. Defendant believed and represented to Holdrum that, based on considerable research, Louvre was severely undervalued in the public market, in large part due to the fact that Louvre was predominantly controlled by a single family, the Taittingers. The members of the Tattingers were being paid exorbitant salaries while doing very little work, to the detriment of the shareholders as well as the value of the publicly-traded shares.

14. Holdrum relied substantially on Defendant's reputation and investment strategies in deciding to invest in the Partnership.

15. Once Defendant made investments in Louvre the stock price rose as one might expect. However, Defendant's investment strategy was not as successful as he had hoped because the board of directors was unmoved and unwilling to change the management structure. Neither was the Taittinger family willing to relinquish control. As such, Defendant decided to commence a derivative lawsuit in France against the Taittinger family. Said lawsuit ultimately failed.

16. Thereafter, Defendant began to sell the Partnership's holdings and distribute cash to the partners. Defendant further decided to commence a lawsuit against the Taittinger family in New York Federal Court for substantially the same reasons upon which the lawsuits in France were based.

17. Said New York lawsuit was commenced despite the fact that some limited partners opposed it because it was not consistent with the stated purpose of the Partnership and despite the fact that it was likely frivolous from the outset due to jurisdictional and full faith and credit issues. Therefore, it was not surprising that said suit was similarly unsuccessful, its end coming in the form of a dismissal.

18. As a final, last-ditch effort, Defendant decided to commence yet another lawsuit, again without the consent of the limited partners, on behalf of the Partnership, this time based on allegations of fraud, breach of confidentiality, and conversion against Starwood Hotels, in connection with certain prior negotiations pertaining to the acquisition of hotel assets owned and held by Louvre. Said lawsuit was also not congruent with the Partnership's purpose and its attached risk in and of itself constitutes a substantial waste of Partnership assets.

19. Section 8.1(d) of the Museum Partners Limited Partnership Agreement (hereinafter the "Partnership Agreement") provides that the Partnership dissolved no later than December

31, 1998. Thus, at that time, Defendant came under an obligation to wind down the affairs of the Partnership and distribute the assets to the limited partners.

20. Furthermore, on or about July of 2010, the Court of Appeals denied Defendant's request for leave to appeal with respect to the New York lawsuit. At that time, the Partnership no longer served any purpose whatsoever and Defendant thus had a responsibility to wind down the affairs of the Partnership and distribute the assets to the limited partners, even assuming that he had no such obligation commencing on December 31, 1998, as described above.

21. Instead, for a period of nearly 9 months, Defendant Asher Edelman has diverted Partnership funds and assets to his own personal investment purposes.

22. Upon information and belief, even before investing Partnership assets into Defendant's personal art investment portfolio and/or other personal assets, Defendant improperly used Partnership assets to pay off debt unrelated to the Partnership's affairs and otherwise reneged on and breached the agreement made with Holdrum.

23. When Holdrum eventually discovered Defendant's blatant disregard for his fiduciary duties, Holdrum demanded that the Partnership be wound down and that Defendant Edelman return all capital and illegally diverted funds to Holdrum and the other limited partners.

24. Despite the facts that the Partnership has long been dissolved under the Partnership Agreement, that it is no longer operating for its intended purposes, and that the Defendant continues to use Partnership assets for his own personal benefit, the Partnership has never officially wound down its affairs. The Partnership remains an active entity according to the Secretary of State's records, and its net assets have never been distributed to the partners.

25. Plaintiffs bring this action for preliminary and permanent injunctive relief barring Defendant from distributing or using Partnership assets for any purpose and ordering the Partnership to

wind down its affairs; for monetary damages resulting from Defendant's breach of his fiduciary duties to the Partnership and Holdrum; for punitive damages for Defendant's breach of fiduciary duties; and for a final accounting of the Partnership's assets pursuant to Article 4 of the Partnership Law, including revenues and assets diverted from the Partnership or otherwise obtained by Defendant in connection with his breach of his fiduciary duties.

DEMAND FOR A DERIVATIVE ACTION IS FUTILE

26. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

27. Defendant as the sole general partner has actively participated in the wrongdoing as alleged above.

28. Namely, the general partner has actively participated in skimming of company funds and waste of corporate assets and has otherwise actively participated in the distribution of said funds from the Company such that he is personally interested in each of the transactions which are complained of in this derivative action.

29. Alternatively, the Defendant, as general partner, has failed to inform himself to a degree reasonably necessary about the transactions complained of in this derivative action or otherwise failed to exercise his business judgment in approving the alleged transactions.

30. The facts set forth at length herein demonstrate that the Defendant knew of the continuing pattern of non-compliance with legal and ethical requirements of his fiduciary duties of good faith, care and loyalty, and knew that the continued failure to comply with those requirements would result in severe penalties and consequences to the Company and its limited partners.

31. The Defendant actively or constructively permitted the wrongs alleged herein and did so in affirmative violation of his duties to the Company and its limited partners and has allowed the wrongs alleged and/or has remained intentionally ignorant and willfully blind despite his actual or constructive knowledge of those wrongs.

32. The Defendant therefore culpably participated in a continuing course of partnership misconduct, theft, coercion, embezzlement, mismanagement and waste.

33. The Defendant herein is accused of conduct that is not subject to ratification or otherwise subject to the protection of the business judgment rule.

34. The wrongful actions and/or in-actions by the Defendant alleged herein amounted to breaches of his fiduciary duties of good faith, care, disclosure and loyalty to the Company and its limited partners/investors, and the abdication of his responsibilities give rise to liability to both the Company and its principal limited partners.

35. By virtue of his position as the general partner and in view of his collective experience, the Defendant knew or should have known of the existence of the wrongful business practices and company waste described herein.

36. By virtue of his position as the general partner and in view of his collective experience, the Defendant is either grossly reckless in failing to remedy the repeated instances of illegal unethical conduct, or directly implicated and involved in the alleged illegal acts.

37. The Plaintiffs did not make any demand upon the general partner or upon the Company to bring an action against the Defendant to correct these wrongs because said Defendant is the only general partner of the limited partnership.

38. Therefore it would have been futile and useless to make a further demand upon said general partners to bring an action against him-self.

AS AND FOR THE FIRST CAUSE OF ACTION

Derivative Suit Pursuant to Delaware Revised Uniform Limited Partnership Act

(DRULPA) § 17-1001

39. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

40. Plaintiff-Holdrum brings this derivative cause of action and suit as a limited partner of the Partnership on behalf of itself and in the right of the Partnership.

41. Defendant has, at all times relevant herein, acted as though he had the full power and authority of a general partner of the Partnership.

42. As aforesaid, Defendant has acted in such a manner that is in violation of his duties and obligations as set forth both in the Limited Partnership Agreement and in the Delaware Limited Partnership Act by engaging in the conduct described herein, thus breaching his fiduciary obligations to the limited partners and the Partnership.

43. The Defendant owed the Company and its partners and investors duties including a duty to act at all times with loyalty, fairness, fair-dealing, good faith and without self-interest.

44. The Defendant has breached his fiduciary and other duties to the Company and to the limited partners by virtue of his self-dealing, looting, waste and misconduct as described herein.

45. The intentional misconduct of the Defendant has resulted in a diminution of the partnership's gross income and distributions to its limited partners.

46. The misconduct of the Defendant was designed and was accomplished for the primary purpose of benefitting the Defendant to the detriment of the Company and the limited partners.

47. This claim is not barred by any statute of limitations or laches because material facts about it have been deliberately and intentionally hidden by the Defendant from the limited partners

who only recently discovered that they had been defrauded and that the looting and self-dealing described herein had been occurring because of the Defendant.

48. As a result of Defendant's continuing and egregious disregard for his duties and obligations, Plaintiff has been damaged.

49. Plaintiff and the Partnership are entitled to damages pro rata, excluding any recovery to the Defendant, in an amount to be proven at trial and estimated to exceed the jurisdiction threshold of this Court.

AS AND FOR THE SECOND CAUSE OF ACTION

Breach of Trust Obligations

Delaware Revised Uniform Partnership Act (DRUPA) § 15-404(b)(1)

50. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

51. Pursuant to DRUPA Section 15-404(b)(1), a partner must "account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct or winding up of the partnership business or affairs or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity."

52. As aforesaid the Defendant has engaged in certain self-dealing, looting, waste and misconduct as described herein.

53. The Defendant has derived profits from using partnership property and assets without the consent of the limited partners.

54. The Defendant has failed to account to the partnership for the benefit he has derived from the misappropriation, waste, embezzlement and conversion of company assets.

55. Said misconduct constitutes a violation of the Defendant's obligations as set forth in DRUPA Section 15-404(b)(1).

56. As such, the Company and its limited partners have been damaged.

57. Plaintiff is entitled to damages pro rata, excluding any recovery to the Defendant, in an amount to be proven at trial and estimated to exceed the jurisdiction threshold of this Court.

AS AND FOR THE THIRD CAUSE OF ACTION

Breach of Partnership Agreement

58. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

59. As per the limited partnership agreement, the Defendant owes a fiduciary duty as to the Plaintiff and the Partnership and at all relevant times has owed an obligation to act with the utmost loyalty, with due care, and in good faith and without self-interest in all respects concerning the Partnership.

60. The Defendant has breached his fiduciary and other duties to the Company and to the limited partners by virtue of his self-dealing, looting, waste and conspiratorial misconduct as described herein.

61. As a consequence of the Defendant's aforesaid breaches of his fiduciary duties owed to the Company, the Company, Plaintiff and the limited partners have been injured.

62. Plaintiff is entitled to damages pro rata, excluding any recovery to the Defendant, in an amount to be proven at trial and estimated to exceed the jurisdiction threshold of this Court.

AS AND FOR THE FOURTH CAUSE OF ACTION

Settlement of Account and Contributions Among Partners

Delaware Revised Uniform Limited Partnership Act § 17-804

63. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

64. Pursuant to DRULPA Section 17-804(a)(c): "Upon the winding up of a limited partnership, the assets shall be distributed...to partners first for the return of their contributions..."

65. Pursuant to section 8.1(d) of the Partnership Agreement, the Partnership was dissolved no later than December 31, 1998.

66. Furthermore, Defendant's unauthorized and unlawful conduct as described herein effectively dissolved the Partnership pursuant to RUPA Section 15-801.

67. Plaintiff demanded a return of its contribution from the general partner, but this request was ignored.

68. Moreover, the Plaintiff-Holdrum informed the Defendant of certain investment opportunity that he could not pursue without the return of his contribution.

69. The Defendant was aware of this potential investment and that the Plaintiff-Holdrum required the return of his contribution in order to pursue said investment opportunity.

70. The Defendant failed and refused to return the Plaintiff's-Holdrum contribution and as a result the Plaintiff-Holdrum lost the opportunity to benefit from the aforementioned investment.

71. As such, Plaintiff-Holdrum demands a return of its contribution plus interest.

72. In addition, Plaintiff-Holdrum demands the opportunity cost of the Plaintiff-Holdrum's lost investment opportunity an amount estimated to exceed $400,000.00.

73. Plaintiff is entitled to damages pro rata, excluding any recovery to the Defendant, in an amount to be proven at trial and estimated to exceed the jurisdiction threshold of this Court.

AS AND FOR THE FIFTH CAUSE OF ACTION

Demand for a Formal Accounting

Delaware Uniform Partnership Act (DUPA) §44

74. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

75. Section 1522 of the Uniform Partnership Act states that a partner has a right to a formal account of partnership affairs if one partner has improperly obtained secret profits in violation of his fiduciary duty to the partnership.

76. Defendant has deceptively and illegally earned profits using Partnership assets and property.

77. Plaintiff-Holdrum is entitled to an account concerning the finances of the Partnership, including any revenues or assets illegally or improperly generated or obtained by Defendant in connection with his violation of his fiduciary duties with respect to the use of Partnership assets.

78. Plaintiff-Holdrum demanded an accounting from the general partner, but this request was ignored.

79. There no other adequate remedy at law.

AS AND FOR THE SIXTH CAUSE OF ACTION

Demand for Books and Records of the Company

DRUPA § 15-403

80. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

81. Pursuant to Section 15-403 of the Revised Uniform Partnership Act, "Each partner and the partnership shall provide partners...access to the books and records of the partnership and other information concerning the partnership's business and affairs...for any purpose reasonably related to the partner's interest as a partner in the partnership."

82. Plaintiff demanded access to the books and records, lists of limited partners, and details regarding the finances of the company from the general partner, but this request was ignored.

83. As such the Defendant has breached his fiduciary duties and the Plaintiff has been damaged.

84. Plaintiff therefore also demands production of the company books and records at cost to the Defendant.

85. There no other adequate remedy at law.

AS AND FOR THE SEVENTH CAUSE OF ACTION

Order of Dissolution and Directing Partnership to Wind Down Company Affairs

DRULPA §§ 17-801(1), 17-802, 17-803

86. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

87. Pursuant to section 17-801(1) of the Delaware Limited Partnership Act: "A limited partnership is dissolved and its affairs shall be wound up…at the time specified in a partnership agreement."

88. Also, section 17-802 of the Delaware Limited Partnership Act states that: "On application by or for a partner the Court of Chancery may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement"

89. Moreover, the Delaware Limited Partnership Act section 17-803 provides that: "[T]he Court of Chancery, upon cause shown, may wind up the limited partnership's affairs upon application of any partner."

90. Pursuant to section 8.1(d) of the Partnership Agreement, the Partnership was dissolved no later than December 31, 1998.

91. Furthermore, Defendant's unauthorized and unlawful conduct as described herein effectively dissolved the Partnership as per DRULPA § 17-802.

92. As such, Plaintiff-Holdrum is entitled to an order of dissolution and directing the Partnership to wind down its affairs and appointing a receiver or a responsible partner to oversee said dissolution and winding down.

93. There no other adequate remedy at law.

AS AND FOR THE EIGHTH CAUSE OF ACTION

Statutory Legal Fees

DRUPA § 15-405(g)

94. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

95. Pursuant to the Delaware Partnership Act: "If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, form any recovery in any such action or from a partnership."

96. As such Plaintiff demands legal fees, costs and interest in connection with the within derivative action.

AS AND FOR THE NINTH CAUSE OF ACTION

Injunctive Relief

97. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

98. Defendant, as fiduciary, at all relevant times was obligated to act in good faith and with loyalty and due care, and was duty-bound to refrain from self-dealing and to serve with the

degree of care that an ordinarily prudent person would use under all similar conditions and circumstances.

99. Defendant violated his obligations as a fiduciary by misappropriating and looting the Partnership's assets and opportunities, including accounts receivable, cash, and other resources for his own personal, non-Partnership-related benefit.

100. Upon information, if left to continue with his scheme, Defendant will completely drain the Partnership of any remaining value or assets and will irreparably damage Plaintiff's investment or recourse.

101. Defendant's actions aforesaid already has caused irreparable harm to the Plaintiff and the Partnership and will continue to cause injury to Plaintiff unless Defendant is restrained and enjoined.

102. Plaintiff is entitled to preliminary and permanent injunctive relief, prohibiting and restraining Defendant or any person or entity acting on or through his behalf from using, disbursing, or otherwise taking advantage of any assets belonging to the Partnership, and directing Defendants to comply with reasonable requests for the Partnership accounts and records.

103. Plaintiffs have no other adequate remedy at law.

AS AND FOR A TENTH CAUSE OF ACTION

Compensation Recovery

104. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

105. The instant derivative action brought pursuant to New York Partnership Law §115-a also seeks to recover all compensation paid to the Defendant since his unlawful conduct, upon the grounds that the subordination of the Company's interests to the personal avarice of the

Defendant constitutes disloyalty and dishonesty in said Defendant's dealings with and on behalf of the Company as its general partner.

106. As a consequence thereof, under New York law, the Company is entitled to judgment ordering all compensation paid to the Defendant for services rendered during the period of his disloyal service to the Partnership is to be forfeited, together with applicable interest.

AS AND FOR THE ELEVENTH CAUSE OF ACTION

Conversion

107. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

108. The Partnership and each of the partners are the legal and rightful owners of all Partnership assets, including, but not limited to, the Partnership's accounts, office space, office equipment, etc.

109. Defendant is not authorized to use such assets, except in the course of his work for the Partnership.

110. The Partnership and the partners retain exclusive right, title, and interest in all Partnership assets.

111. As set forth above, Defendant has unlawfully and in bad faith misappropriated the Partnership's assets and illegally and wrongfully converted them for his own use, dominion, and control.

112. Defendant's unconscionable and inequitable conduct constitutes common law conversion and was done with a reckless disregard for the consequences and damages such conduct would cause to the Partnership and the limited partners, entitling Plaintiff to recover compensatory and punitive damages.

113. As a result of the foregoing Plaintiff is entitled to damages pro rata, excluding recovery to the Defendant, in an amount to be proven at trial and estimated to exceed the jurisdiction threshold of this Court.

114. As a result of the foregoing, Plaintiff is entitled to a judgment against Defendant in an amount to be determined at trial but estimated to exceed $3,000,000.00, plus interest as provided by law.

115. Defendant's wrongful and illegal conduct, as detailed above, is malicious, wanton, and willful, thereby justifying a further award of punitive damage.

116. It is further demanded that damages be allocated to the Plaintiff-Holdrum pro rata, excluding any recovery to the Defendant, to avoid further injustice or inequity.

AND AS FOR AN TWELFTH CAUSE OF ACTION

Prima Facie Tort

117. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing paragraphs with the same force and effect as if set forth fully and at length herein.

118. Defendant's acts, omissions, and/or statements described above constitute a prima facie tort.

119. By reason of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial but totaling no less than $3,000,000.00. It is further demanded that damages be allocated to the Plaintiffs pro rata, excluding any recovery to the Defendant, to avoid further injustice or inequity.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

Common Law Negligence

120. Plaintiff repeats and re-alleges each and every allegation set forth in the foregoing patagraphs with the same force and effect as if set forth fully and at length herein.

121. Plaintiff and the Partnership were owed a duty of cate by the Defendant.

122. As aforesaid the Defendant breached his duties to the Plaintiff and the Partnership.

123. As a direct and proximate result of the Defendant's negligence Plaintiff and the Partnership have been damaged in an amount which exceeds the jurisdictional thresholds in this Court.

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

(a) On the first, second, and third causes of action, compensatory and punitive damages in an amount to be proven at trial and estimated to exceed $3,000,000.00.

(b) On the fourth cause of action a sum to be determined at trial but no less than $600,000.000.

(c) On the fifth, and sixth cause of actions compelling the Defendant to (i) compute and determine the amount of damages suffered by the Partnership as a result of the waste and mismanagement by Defendant and directing the payment of same into the account of the Partnership for the benefit of the Partnership; (ii) compelling Defendant to account for all money and property of the Partnership which has come into his hands, and for any expenditures made by him from the money and property of the Partnership; and (iii) awarding Plaintiff the costs and disbursements of this action, together with reasonable attorneys' fees in an amount to be fixed by the court; and

(d) On the seventh cause of action: (i) dissolving the Partnership, if it has not yet been dissolved as a matter of law, and ordering an accounting of all of the Partnership's transactions and of all property and money received and paid by Plaintiffs and Defendants respectively; (ii) directing the sale of the Partnership's property, the payment of the debts and liabilities of the Partnership, and the division of the surplus, if any, in accordance with the Partnership Agreement and New Partnership Law; (iii) ordering an accounting of the affairs of the

Partnership; and (iv) enjoining Defendant Asher Edelman from disposing of the Partnership's credits, debts, or monies, or receiving monies or other property or effects of the Partnership, or from entering into any new transactions, or commencing or prosecuting any actions or proceedings in the name of or on behalf of the Partnership;

(e) On the eighth cause of action demanding legal fees for the costs of all litigation pertaining to this matter in the sum of at least $30,000.00.

(f) On the ninth cause of action, granting injunctive relief, prohibiting and restraining Defendant or any person or entity acting on or through his behalf from using, disbursing, or otherwise taking advantage of any assets belonging to the Partnership, and directing Defendants to comply with reasonable requests for the Partnership accounts and records.

(g) On the tenth cause of action damages in a sum to be determined at trial but no less than $200,000.00.

(h) On the eleventh, twelfth, and thirteenth causes of action demanding compensatory and punitive damages in the sum to be determined at trial but no less than $3,000,000.00.

in addition to the costs and disbursements of this action, together with such other and further relief as to this Court seems just and proper.

Dated: November 1, 2011
NEW YORK, NY

LAW OFFICE OF JEFF DAVIS, ESQ.

By: _____
JEFF DAVIS, ESQ.
Attorneys for Plaintiffs
80 Maiden Lane, Suite 2205
New York, New York 10075
Tel: (347) 494-1529
Fax: (718)228-9125

VERIFICATION

STATE OF NEW YORK :

: SS.

COUNTY OF NEW YORK :

THEODORE K. THORNTON, being duly sworn, says:

That I am the managing director of Plaintiff Holdrum Investments N.V.; that I have read the foregoing SECOND AMENDED VERIFIED COMPLAINT and know the contents thereof; and that the same is true to my knowledge, except as to matters herein stated to be alleged on information and belief, and as to those matters, I believe them to be true based upon my books and records.

_____

THEODORE K. THORNTON

Sworn to be this _____ day of _____, 2011

_____

Notary Public

CERTIFICATION BY ATTORNEY

I, Jeff Davis, an attorney duly admitted to practice in the courts of the State of New York, am an associate with the Law Office of Jeff Davis, Esq., attorneys for Plaintiffs in the above-entitled matter.

I hereby certify, pursuant to 22 N.Y. Comp. Codes R. & Regs. § 130-1.1(a) of the Rules of the Chief Administrator, that, to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that the presentation of the SECOND AMENDED VERIFIED COMPLAINT in this action, or contentions therein, is not frivolous as defined by Subsection (c) of that Rule.

Dated: November 1, 2011
New York, New York

LAW OFFICE OF JEFF DAVIS, ESQ.

By: _____
JEFF DAVIS, ESQ.
Attorneys for Plaintiffs
80 Maiden Lane, Suite 2205
New York, New York 10038
Tel: (347) 494-1529

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

HOLDRUM INVESTMENTS N.V. individually and derivatively on behalf of MUSEUM PARTNERS L.P.

Index No. 650950-2011

Plaintiffs,

-against-

ASHER B. EDELMAN

Defendant.

----------X

SECOND AMENDED VERIFIED COMPLAINT

Law Office of Jeff Davis, Esq.
Attorney(s) for Plaintiff
Office and Post Office Address, Telephone
80 Maiden Lane, Suite 2205
Tel: (347) 494-1529
Fax: (718) 228 9125

Signature

Print Name Beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated:_____

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Date:.....

Signature.....

Print Signer's Name.....

Exhibit 2

[illegible] 3/15/2006

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. KARLA MOSKOWITZ PART 03
Justice

ASHER B. EDELMAN, A.B. EDELMAN MANAGEMENT CO., INC., ASHER B. EDELMAN & ASSOCIATES, LLC, MUSEUM PARTNERS, L.P., MUSEE PARTNERS, L.P., EDELMAN VALUE PARTNERS, L.P. EDELMAN VALUE FUND, LTD., and WIMBLEDON EDELMAN SELECT OPPORTUNITIES HEDGE FUND,

Plaintiffs,

-against-

TAITTINGER, S.A., COMPAGNE FINANCIERTAITTINGER, ANNE-CLAIRE TAITTINGER, CLAUDE TAITTINGER, MICHEL TAITTINGER, JEAN TAITTINGER, FRANCOIS DE LAAGE DE MEUX, PATRICE DE MARGERIE, PATRICIA DE GALARD DE BEARN, JEROME HENRION, PIERRE-CHRISTIAN TAITTINGER, PIERRE EMMANUEL TAITTINGER, CHRISTOPHER DE MARGERIE, COLLETTE DE MARGERIE, MARIE CLOTHIDE HENRION, HUGHES TAITTINGER, HELEN BLONDEAU EP RENOUX, JEAN-CLAUDE MEYER, GUILLAUME DARD, BRIGITTE DE WARREN, SOCIETE FONCIERE, FINANCIER ET DE PARTICIPATIONS, PIERRE PEUGEOT, ODDO ET CIE, JEAN-PIERRE PINATTON, BNP PARIBAS, CREDIT COMMERCIAL DE FRANCE, CAGNAT & ASSOCIES, JACQUES CAGNAT, BACCARAT S.A., CHARGES HENRI FILIPPI, PIERRE DE MARGERIE, JEAN HENRION, FRANCOIS D'AULAN, GERARD MESTRALLET, THIERRY DE MONTBRIAL, FRANTZ TAITTINGER, PASCAL MALBEQUI, FRANCOIS TERREN, and JOHN DOES 1-4,

Defendants.

INDEX NO. 122663/2000

MOTION DATE _____

MOTION SEQ. NO. 015

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

FILED
MAR 15 2006
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is

ORDERED that this motion is decided in accordance with the accompanying Decision and Order.

Dated: March 13, 2006

KARLA MOSKOWITZ J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF NEW YORK : IAS PART 3

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ASHER B. EDELMAN, A.B. EDELMAN MANAGEMENT CO., INC., ASHER B. EDELMAN & ASSOCIATES, LLC, MUSEUM PARTNERS, L.P., MUSEE PARTNERS, L.P., EDELMAN VALUE PARTNERS, L.P. EDELMAN VALUE FUND, LTD., and WIMBLEDON EDELMAN SELECT OPPORTUNITIES HEDGE FUND,

Index No.122663/2000

Plaintiffs,

-against-

DECISION and ORDER

TAITTINGER, S.A., COMPAGNE FINANCIER TAITTINGER, ANNE-CLAIRE TAITTINGER, CLAUDE TAITTINGER, MICHEL TAITTINGER, JEAN TAITTINGER, FRANCOIS DE LAAGE DE MEUX, PATRICE DE MARGERIE, PATRICIA DE GALARD DE BEARN, JEROME HENRION, PIERRE-CHRISTIAN TAITTINGER, PIERRE EMMANUEL TAITTINGER, CHRISTOPHER DE MARGERIE, COLLETTE DE MARGERIE, MARIE CLOTHIDE HENRION, HUGHES TAITTINGER, HELEN BLONDEAU EP RENOUX, JEAN-CLAUDE MEYER, GUILLAUME DARD, BRIGITTE DE WARREN, SOCIETE FONCIERE, FINANCIER ET DE PARTICIPATIONS, PIERRE PEUGEOT, ODDO ET CIE, JEAN-PIERRE PINATTON, BNP PARIBAS, CREDIT COMMERCIAL DE FRANCE, CAGNAT & ASSOCIES, JACQUES CAGNAT, BACCARAT S.A., CHARGES HENRI FILIPPI, PIERRE DE MARGERIE, JEAN HENRION, FRANCOIS D'AULAN, GERARD MESTRALLET, THIERRY DE MONTBRIAL, FRANTZ TAITTINGER, PASCAL MALBEQUI, FRANCOIS TERREN, and JOHN DOES 1-4,

Defendants.

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Moskowitz, J.:

Motion Sequence Nos. 015, 016, 017, and 018 are consolidated for disposition, and are disposed of in accordance with the following decision and order.

Defendants Taittinger, S.A. and Compagnie Financiere Taittinger (CFT) move to dismiss the amended complaint for lack of personal jurisdiction; forum non conveniens; because the claims must be asserted derivatively; and because the claims are barred by collateral estoppel and res judicata. Defendants Anne-Claire Taittinger, Claude Taittinger, and Patrice De Margerie move to dismiss on the same grounds, but also seek dismissal on statute of limitations grounds. Defendant Baccarat S.A. moves to dismiss for lack of personal jurisdiction; forum non conveniens; statute of limitations; failure to state a claim; and based on the doctrines of law of the case and res judicata. Defendant Societe Des Hotels Concorde seeks dismissal for forum non conveniens; failure to state a claim; because of failure to assert the claims derivatively; and the statute of limitations.

The claims in this action arise out of plaintiff Asher B. Edelman's investment in a French company, Societe du Louvre ("SDL"). Mr. Edelman and the various investment and management funds he established for this investment held a minority shareholder interest in SDL. Plaintiff Edelman was dissatisfied with the management of SDL, bringing numerous actions, over a six-year period, in the French courts for breaches of French law, several of which are still pending. Edelman and the Edelman entities brought this action, not against SDL, but against Taittinger, S.A., CFT and other defendants, for tortious interference, breach of fiduciary duty, unjust enrichment and conversion, based on the same underlying facts regarding the management of SDL as are the subject of the French litigations. Plaintiffs claim that the Taittinger family runs SDL, as a family fiefdom, for their own benefit, and at the expense of the interest of minority shareholders.

The moving defendants all contend that extensive discovery, conducted pursuant to

CPLR 3211 (d), has demonstrated that this court lacks personal jurisdiction over them as foreign defendants who do not do business in New York, and that, in any event, New York is an inconvenient forum because there is little contact with this forum, all of the wrongs emanate from France, the witnesses and documents are there, and French law would likely apply. Defendants further contend that these claims are derivative, and plaintiffs may not pursue the claims individually. Further, the decisions in the French litigations have collateral estoppel/res judicata effect, barring relitigation of these claims. Several of the defendants, who were either first named in the amended complaint, or who were brought in again after being dismissed from the original complaint, also assert that the claims are untimely. Several of them further assert that the amended complaint fails to allege any substantive facts against them, and, therefore, the court should dismiss the pleading for failure to state a cause of action.

BACKGROUND

The Parties

Plaintiff Asher B. Edelman resides and has a place of business in New York. Amended Complaint, ¶ 1. Plaintiff A.B. Edelman Management Co., Inc. is a New York corporation, with a principal place of business here as well. Id., ¶ 2. The remaining plaintiffs, referred to as the "Edelman Funds" in the complaint, are foreign companies or partnerships, none of which are organized or incorporated in New York. Id., ¶¶ 4-9. The amended complaint alleges that the Edelman Funds, the non-New York plaintiffs, are shareholders of SDL, a French corporation (Id., ¶ 19) and that the Edelman Funds purchased these shares in France, where SDL shares are traded on the Paris Stock Exchange. Id., ¶¶ 19-20.

Defendants Taittinger, S.A. and CFT are French corporations, with principal offices in

France. Defendants Baccarat S.A. and Societe des Hotels Concorde (Concorde) are also French corporations with principal places of business in France. Plaintiffs allege that Baccarat S.A. has a wholly owned subsidiary, Baccarat, Inc. (Baccarat USA), that maintains offices in New York and New Jersey, and that Concorde, that SDL wholly owns, has a wholly owned subsidiary, Concorde USA, that has an office in New York. The individual defendants that are the subject of these motions are all residents of France, with places of business also in France.

The Amended Complaint

The amended complaint alleges that defendants have mismanaged SDL. Plaintiffs allege that the Taittinger family ran SDL for their own benefit, and not in the interests of the public shareholders not connected to defendant Taittinger, S.A. or the Taittinger family. Id., ¶¶ 23, 27. Plaintiffs' allegations of misconduct include the following: defendant Taittinger, S.A. has run SDL as a family "fiefdom" for the benefit of the Taittinger family (Amended Complaint, ¶ 23); defendants have managed SDL in a way that harmed minority shareholders but benefitted the Taittinger family (Id., ¶¶ 21, 67, 75); the Taittinger family conspired with various companies and the Peugeot family, among others, to disenfranchise Edelman and the Edelman Funds (Id., ¶¶ 31, 33-37, 67); SDL, at the direction of the Taittinger family and Taittinger, S.A., sold its interest in a French bank, Banque du Louvre, to Credit Commercial de France, at a lower price than it could have received from another bidder (Id., ¶¶ 38, 67); Taittinger, S.A. and the Taittinger family have caused SDL to pay Taittinger family members for "no show" jobs, and jobs with high salaries where they perform little or no service (Id., ¶¶ 24, 47, 67); Taittinger, S.A. and the Taittinger family have deliberately kept the share price of SDL at an artificially low level for tax purposes (Id., ¶ 44); Taittinger, S.A., CFT and the Taittinger family place their own self interest ahead of

the rest of the shareholders (Id., ¶¶ 21, 23, 44, 77); and Taittinger, S.A. and the Taittinger family have caused SDL to spend unjustified monies to prevent Edelman from acquiring SDL (Id., ¶¶ 50-52, 67). None of these acts are alleged to have occurred in New York.

Based on these allegations, the amended complaint asserts five causes of action: the first, against all defendants for tortious interference with economic advantage; the second against Taittinger, S.A., CFT and the individual Taittinger defendants for breach of fiduciary duty; the third against Taittinger, S.A. and the individual Taittinger defendants for breach of fiduciary duty; the fourth and fifth against all defendants for unjust enrichment and conversion.

The French Litigations

Plaintiffs Museum Partner, Musée Partners, Edelman Value Partners and Edelman Value Fund (the Edelman Funds) first sued defendants Taittinger, S.A., SDL and others in the Tribunal de Commerce de Paris in June 1998 (exhibit 2 to Affirmation of Jessica M. Klein). The Edelman Funds based their claims on allegations that the Taittinger family controlled and directed SDL and misused their control to harm Edelman (Id. at 4, 7). Plaintiffs sought damages and other relief. On the same day, June 17, 1998, plaintiffs filed an action against individual defendants Anne-Claire Taittinger and Patrice De Margerie (exhibit 3 to Klein Affirm.). In this second action, plaintiffs asserted breaches of fiduciary duty, waste of corporate assets, and violations of French law, based on SDL's sale of treasury shares at below market prices in order to strengthen Taittinger family control and to disadvantage minority shareholders like Edelman (Id. at 4, 6-8). The court consolidated these actions. In a judgment issued on February 1, 2000, the French court rejected plaintiffs' claims (exhibit 4 to Klein Affirm). Plaintiffs appealed this dismissal to the Paris Court of Appeals, that upheld the dismissal (exhibit 5 to Klein Affirm.). On September 21,

2004, the Supreme Court of Appeals in France rejected the plaintiffs' appeal (exhibit 6 to Klein Affirm.).

On November 5, 1998, Edelman again sued SDL in France (exhibit 7 to Klein Affirm.). Edelman alleged that SDL management refused to provide him and his entities with information they asserted they were entitled to as shareholders; the Taittinger family was keeping the stock price of SDL low in order to obtain a lower valuation of their holdings; and SDL transferred majority control of Banque du Louvre at a lower price than it could have received from a different bidder (exhibit 7 to Klein Affirm., at 4, 8-12). The French court rejected all of the plaintiffs' claims (exhibit 8 to Klein Affirm., at 8-15).

On February 19, 1999, the Edelman Funds brought a fourth action in France against SDL and numerous individual defendants, including Claude Taittinger, Anne-Claire Taittinger and Patrice De Margerie, based on allegations similar to those alleged in the amended complaint, including that the Taittinger family controlled SDL and ran it like a fiefdom; that they managed SDL for the benefit of the Taittinger family at the expense of minority shareholders; Taittinger, S.A. conspired with others to disenfranchise Edelman; the Taittinger family sold Banque du Louvre at a price below other bids; SDL paid Taittinger family members for unnecessary jobs; and the Taittinger family artificially depressed the price of SDL's stock (exhibit 9 to Klein Affirm.). On June 20, 2000, the French court again rejected plaintiffs' claims (exhibit 10 to Klein Affirm.). On May 3, 2002, the Paris Court of Appeals upheld the trial court's decision (exhibit 11 to Klein Affirm.). On September 21, 2004, the Supreme Court of Appeals rejected plaintiffs' appeal of the decision (exhibit 12 to Klein Affirm.).

In August 2000, in a fifth action, SDL sued the plaintiffs here, alleging that plaintiffs were

and had been acting in a manner not to take control of SDL, as they claimed, but to manipulate the stock market by circulating false information, with the sole purpose of personal profit, to the detriment of SDL and its shareholders (exhibit 13 to Klein Affirm.). Edelman and his entities counterclaimed against SDL (exhibit 14 to Klein Affirm.). On October 20, 2000, in connection with the counterclaims, Edelman and his entities filed an application in the United States District Court for the Southern District of New York, pursuant to 28 USC § 1782, for discovery (exhibit 15 to Klein Affirm.). SDL had previously made an application under the same statute for discovery from Edelman, that the district court had granted (see Id. at 1). Edelman's counterclaim alleged similar allegations to those alleged here. It asserted waste and mismanagement based on allegations that SDL acted to protect and enrich its directors and senior management, particularly the Taittinger family, at the expense of minority shareholders.

Procedural History in This Action

Plaintiffs initially brought this action in November 2000. On February 2, 2001, all of the defendants named in that original complaint moved to dismiss on the grounds of lack of personal jurisdiction, forum non conveniens, collateral estoppel/res judicata and failure to state a claim.

On August 8, 2001, this court heard oral argument on the motions to dismiss (exhibit 18 to Klein Affirm., August 8, 2001 Transcript). After a comprehensive analysis of the various bases for the motions, including the forum non conveniens factors, this court dismissed the complaint as to all defendants, some on the ground of failure to state a claim, some for lack of jurisdiction and some on the ground of forum non conveniens (exhibits 18 and 19 to Klein Affirm.).

Plaintiffs appealed this decision with regard to defendants Taittinger, S.A., CFT, Anne-Claire Taittinger, Claude Taittinger, Jean Taittinger, Michel Taittinger, Baccarat S.A. and ODDO

et Cie. Plaintiffs did not appeal the dismissal of their case against Patrice De Margerie.

On October 29, 2002, the Appellate Division affirmed the dismissal as to 36 of the 38 defendants (Edelman v Taittinger, S.A., 298 AD2d 301 [1st Dept 2002]). With respect to Taittinger, S.A. and CFT, however, the Appellate Division granted plaintiffs the right to take jurisdictional discovery as to whether those defendants were doing business in New York, pursuant to CPLR 301. Specifically, that court permitted plaintiffs to take discovery on "whether the complex corporate relationships involved the parents' exercise of control over their subsidiaries" (Id. at 302). The Appellate Division determined that discovery was properly denied as to the individual Taittinger family members and as to the other corporate defendants, because there was no basis for claiming that discovery would yield facts relating to their doing business in New York (Id.). It further determined that there was no basis for discovery as to any of the defendants under CPLR 302 (Id.). While noting that the courts could not reach the forum non conveniens defense until it resolved the jurisdiction issue, the Appellate Division went on to state that, under the totality of the circumstances, "New York does not appear to be a convenient forum since the contacts with this jurisdiction are tenuous at best" (Id. at 303). It reasoned that the wrongs flowed from conduct in France, the documents and witnesses are in France and the court would likely need to apply French law. It further discounted plaintiffs' argument regarding procedural differences between the courts in France and here, and concluded that the other factors "militate strongly against retention of this action in New York" (Id.).

The remaining parties thereupon commenced jurisdictional discovery that took over two years.

On June 15, 2004, plaintiffs cross-moved to amend the complaint to include additional

defendants. On August 5, 2004, this court granted the cross motion to amend.

The Motions to Dismiss

Upon completion of the jurisdictional discovery, defendants Taittinger, S.A. and CFT move to dismiss this action for lack of personal jurisdiction, pursuant to CPLR 301, and on the grounds of forum non conveniens, that plaintiffs must assert the claims derivatively and that the decisions in the French litigations have res judicata or collateral estoppel effect barring the claims. These defendants aver that discovery has shown that there is no basis to conclude that they are doing business in New York under CPLR 301. They urge that the evidence shows that they have no continuous or systematic presence in New York. They contend that Kobrand, a company that basically buys Taittinger champagne from Taittinger, S.A. in France and brings it to the U.S. to distribute it to its various distributors, is simply an independent distributor, not an agent, or a consignee of Taittinger, S.A. or CFT. They assert that their participation in an international wine exposition in 2002, infrequent visits by Taittinger representatives to New York to meet with Kobrand, maintenance of a website accessible in the U.S., and Taittinger, S.A.'s 83% ownership of Domaine Carneros', a California winery, alone or together, do not support CPLR 301 jurisdiction.

Taittinger, S.A. and CFT further urge that there is no basis to assert jurisdiction over them through SDI.'s subsidiaries in New York - Baccarat USA, Concorde USA, and Annick Goutal, Inc. USA - because those subsidiaries are not agents or mere departments of Taittinger, S.A. or CFT.

On their forum non conveniens defense, Taittinger, S.A. and CFT maintain that the contacts with New York are tenuous at best. They assert that the plaintiffs actually holding the shares at issue are nonresidents, as are all the defendants; the transactions occurred in France; there are duplicate, contemporaneous proceedings in the French courts, arising out of the same facts and

transactions; French law applies; relevant documents and witnesses are in France; and the case would unnecessarily burden this court.

With respect to the remaining defenses, Taittinger, S.A. and CFT assert that these claims are derivative claims, because the alleged wrongs were to SDL shareholders, not the plaintiffs individually. Finally, res judicata and collateral estoppel bar the claims based the claims on the issues raised and decided against plaintiffs in the first French proceeding against Taittinger, S.A.

Defendants Anne-Claire Taittinger, Claude Taittinger and Patrice De Margerie, who originally obtained dismissal for lack of personal jurisdiction, again move to dismiss on the same grounds as Taittinger, S.A. and CFT, but also assert that the amended complaint is untimely. With regard to the lack of personal jurisdiction, they contend that the amended complaint does not cure the deficiencies that led this court and the Appellate Division to dismiss the original complaint against them. As with the original complaint, plaintiffs concede that these defendants reside and work in France. The additional allegation that Anne-Claire Taittinger and Patrice De Margerie travel to New York to promote the business of Baccarat, S.A. and Concorde is insufficient, because there is no allegation that they are conducting that business individually, as opposed to in their capacity as officers of certain French companies. As to the timeliness issue, these defendants contend that the claims all concern conduct that occurred in 1997 and early 1998, more than six years prior to the filing of the amended complaint – whether that filing was deemed to have occurred upon plaintiffs' cross motion made on June 15, 2004, or upon this court's grant of the cross motion on August 5, 2004. They assert that the tolling provision in CPLR 205 (a) for the termination of an action does not apply here where the dismissal was for lack of personal jurisdiction. They further contend that there is no basis to apply the relation back doctrine. They

also join in the forum non conveniens, derivative claims and res judicata/collateral estoppel arguments of the other defendants.

Defendant Baccarat S.A., dismissed originally for lack of personal jurisdiction, is seeking dismissal of the amended complaint on the same ground. Baccarat maintains that the decision by this court and the Appellate Division, holding that there was no jurisdiction over it and no basis even for jurisdictional discovery, are law of the case and res judicata. Baccarat also contends that the amended complaint fails to state a claim against it, alleging only two statements to the effect that it has a subsidiary with a New York office, and that the individual defendants travel to New York to promote the business of Baccarat. Baccarat contends that this amended complaint fails to allege that Baccarat engaged in any wrongdoing. It joins in the other defendants' arguments on forum non conveniens.

Defendant Concorde, the only new defendant with respect to the amended complaint, similarly asserts that there are no allegations of wrongdoing against it in the amended complaint, and so the court should dismiss against Concorde for failure to state a claim. It contends that the statute of limitations for the claims has expired, and there is no basis for the application of the relation back doctrine. Finally, it, too, joins in the forum non conveniens arguments.

DISCUSSION

The court grants defendants' motions to dismiss and dismisses the amended complaint. The threshold issue in these motions is whether this court has personal jurisdiction over the different defendants. The prior motion and appeal has limited the issue of personal jurisdiction over defendants Taittinger, S.A. and CFT and granted jurisdictional discovery only on the issue of whether these defendants were doing business in New York. The courts rejected long-arm

jurisdiction under CPLR 302 and the pleadings in the amended complaint also fail to raise any basis for jurisdiction under that provision.

To defeat a motion to dismiss for lack of personal jurisdiction, plaintiffs need only make a prima facie showing (see Hoffritz for Cutlery, Inc. v Amajac, Ltd., 763 F2d 55, 57 [2d Cir 1985]). However, the parties have engaged in substantial jurisdictional discovery, and neither party has requested an evidentiary hearing or trial. Therefore, plaintiffs must substantiate their jurisdictional allegations with reference to the evidence, and the moving defendants must present proof refuting the plaintiffs' jurisdictional allegations in order to prevail (see Sankaran v Club Mediterranee, S.A., 1998 WL 433780 [SD NY 1998]). As discussed below, plaintiffs have failed to support their allegations, and defendants have met their burden with undisputed proof.

CPLR 301 confers general jurisdiction over any foreign corporation "doing business" within the jurisdiction, regardless of whether the cause of action arises out of that transaction or business (Landoil Resources Corp. v Alexander & Alexander Servs., Inc., 77 NY2d 28 [1990]; Laufer v Ostrow, 55 NY2d 305 [1982]). The corporate defendant must be doing business in the state at the time plaintiffs commence the action (Lancaster v Colonial Motor Freight Line, Inc., 177 AD2d 152 [1st Dept 1992]) and not occasionally or casually, "but with a fair measure of permanence and continuity" (Tauza v Susquehanna Coal Co., 220 NY 259, 267 [1917]; accord Laufer v Ostrow, supra). The test is a practical one: "is the aggregate of the corporation's activities in the State such that it may be said to be 'present' in the State" (Laufer v Ostrow, 55 NY2d at 310, quoting Tauza v Susquehanna Coal Co., 220 NY at 267). In addition, under constitutional requirements of due process, the quality and nature of the corporation's contacts must be sufficient to make it reasonable and just, according to traditional notions of fair play and substantial justice,

to require it to defend an action in the state (International Shoe Co. v Washington, 326 US 310, 316 [1945]).

The factors, under both analyses include the existence of an office; the presence of employees; the solicitation of business; and the presence of bank accounts or other property in the state (Hoffritz for Cutlery, Inc. v Amajac, Ltd., 763 F2d 55, supra; see Bryant v Finnish Natl. Airline, 15 NY2d 426, 432 [1965]).

In this case, the court finds that there is no CPLR 301 jurisdiction over defendants Taittinger, S.A., CFT, individual defendants Anne-Claire Taittinger, Claude Taittinger, Patrice De Margerie, Baccarat S.A., or Concorde. First, with respect to defendants Taittinger, S.A. and CFT, plaintiffs have failed to present any evidence of these factors. Instead, Taittinger, S.A. and CFT have presented uncontroverted evidence that neither of them has any offices, bank accounts, investment accounts, property or employees in New York, and that neither entity pays taxes here (see exhibit 20 to Klein Affirm., Deposition of Pierre Emmanuel Taittinger [PET], dated October 24, 2003, at 45-47, 54-55; exhibit 21 to Klein Affirm., Court Dep., at 28, 44, 115-17; exhibit 22 to Klein Affirm., Deposition of Claude Taittinger [CT], dated October 28, 2003, at 146-48; exhibit 23 to Klein Affirm., Deposition of Michel Taittinger [MT], dated October 31, 2003, at 42-43).

In the absence of these factors, plaintiffs have asserted various theories for CPLR 301 jurisdiction over these two defendants. First, plaintiffs contend that there is jurisdiction over Taittinger, S.A. through Kobrand, a non-party that distributes Taittinger, S.A.'s products in New York. Plaintiffs urge that the Taittinger consigns its products to Kobrand, that does not have to pay Taittinger until it receives payment from its own distributor Peerless, and that Kobrand does not accept any risk. Thus, plaintiffs maintain that Taittinger, S.A. is making direct sales in New York

through Kobrand. Plaintiffs further assert that Kobrand is Taittinger's New York agent and that Kobrand's sales of the products of Taittinger, S.A. and of Domaine Carneros, a California winery of which Taittinger, S.A. is 83% shareholder, in New York are attributable to Taittinger, S.A. Plaintiffs point to evidence that Taittinger dictates the ex-cellars price of the product that Kobrand orders; that Taittinger, S.A. pays for a 10% marketing budget for all distributors of its products; that it works with Kobrand on its marketing plan; that certain Taittinger executives travel to New York around once a year; and that Taittinger accepts jurisdiction in New York under its operating agreement with Kobrand.

It is well-established that the mere sale of a manufacturer's products through an independent distributor, however substantial, is insufficient to justify the exercise of jurisdiction under CPLR 301 (see Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d 426, 433 [1972]; Jurlique, Inc. v Austral Biolab Pty., Ltd., 187 AD2d 637 [2d Dept 1992] [presence of New York distributor not enough for CPLR 301]; Jazini v Nissan Motor Co., 148 F3d 181, 184 [2d Cir 1998][foreign manufacturer not doing business simply because it sells product through New York distributor]; McShan v Omega Louis Brandt et Frere, S.A., 536 F2d 516, 517-18 [2d Cir 1976] [sales, even if substantial, of foreign manufacturer's goods through independent agency, does not make manufacturer subject to CPLR 301 jurisdiction]). Contrary to plaintiffs' allegations, that are completely unsupported by reference to any documents or deposition testimony, Kobrand is an independent distributor of Taittinger, S.A.'s products and is not an agent of these defendants. The exclusive distribution agreement between Kobrand and Taittinger, S.A. clearly states that:

> KOBRAND shall have no right to act as agent for TAITTINGER in any respect whatsoever . . . [nor incur] any liabilities whatsoever on TAITTINGER'S behalf, or otherwise establish or impose any

obligation or liability against TAITTINGER.

Exhibit 24 to Klein Affirm., at T 1000074-75. Michael Quinttus, the senior vice-president and the director of the supply relations department at Kobrand, attested at his deposition that Kobrand does not have the authority to enter into agreements or make sales commitments on Taittinger, S.A.'s behalf, and that it must buy the champagne from Taittinger, S.A. before it can sell it to another distributor (exhibit O to Plaintiffs' Statement of Jurisdiction, Deposition of Michael Quinttus, dated February 24, 2004, at 31). He stated that Kobrand establishes its own marketing activities, and there is normally no discussion with Taittinger, S.A. about them (Id. at 108). He further attested that Kobrand does not consult with Taittinger, S.A. about the price Kobrand sells the products, that Kobrand selects its own distributors to distribute the Taittinger products in the U.S. and that it does not consult with Taittinger, S.A. about the selections (Id. at 89; see Court Dep., at 49-50).

Defendants present further proof that while Taittinger, S.A. gives Kobrand a 10% discount to be used for marketing the products, Kobrand determines, on its own, how and to whom the Taittinger champagne is marketed in New York (PET Dep., at 140, Court Dep., at 101), and Kobrand determines the price it charges to its own customers (PET Dep., at 110; Court Dep., at 69). In fact, Claude Taittinger, the chief executive officer of Taittinger, S.A., stated specifically that Kobrand is free to dispose of the advertising funds as it deems fit (CT Dep., at 123). This proof of the separate and independent nature of Kobrand and the lack of Taittinger, S.A.'s control over Kobrand's activities, defeats any argument that Taittinger, S.A. was doing business in New York through Kobrand.

Standard Wine & Liquor Co. v Bombay Spirits Co. (20 NY2d 13 [1967]), that defendants

rely upon, is factually similar and disposes of plaintiffs' theory that Kobrand is Taittinger, S.A.'s agent. In Standard Wine, the Court of Appeals held that an independent distributor was not an agent of a foreign liquor manufacturer. The defendant, Bombay Spirits Co., had no offices, bank accounts, phone listings or warehouses in New York (Id. at 16). It had given the exclusive right to distribute its products in the U.S. to Penrose, a Pennsylvania distributor. Penrose bought the goods from Bombay F.O.B. Great Britain, imported them into the U.S. and sold them at a profit to liquor wholesalers and distributors (Id.). The Court of Appeals found no basis for the assertion of jurisdiction over Bombay (Id. at 17). The court specifically concluded that the record was clear that Penrose "dealt independently of Bombay and was not the latter's agent" (Id.). The Court dismissed the fact that Penrose acted as Bombay's agent in filings with the State Liquor Authority (Id.).

Similarly, here, Kobrand has been given the exclusive right to distribute Taittinger, S.A.'s champagne in the U.S. Kobrand buys the product from Taittinger, S.A. FOB France, imports it to the U.S. and sells the champagne at a profit to wholesalers and distributors. Kobrand takes the risk of loss in transit (exhibit O to Plaintiffs' Statement of Jurisdiction, Quinttus Dep., at 110-11), maintains its own inventory and cannot return the product if it is not sold. It deals independently with Taittinger, S.A., and is not its agent.

Plaintiffs argue that Kobrand is a consignee of Taittinger, S.A. Plaintiffs point to the terms "Ship and Consign to" on the preprinted "Purchase Order" form Kobrand used when purchasing champagne from Taittinger, S.A. (exhibit Q to Plaintiffs' Statement of Jurisdiction) and that Kobrand's distributors in certain instances pay Kobrand before Kobrand pays Taittinger, S.A.

This argument is unpersuasive. Mr Quinttus clearly testified that, in all instances, Kobrand

takes title to Taittinger, S.A.'s product when it leaves Taittinger's warehouse in France (exhibit O to Plaintiffs' Statement of Jurisdiction, Quinttus Dep., at 110-11). He explained that there are three ways in which Kobrand distributes Taittinger champagne. The first involves Kobrand purchasing the product from Taittinger, storing it in Kobrand's Beaune, France warehouse and then distributing it to its customers in the U.S. (Id. at 30). The second involves Kobrand purchasing the champagne and transporting it through agents Kobrand hires to Kobrand's warehouse in New Jersey (Id. at 25). The third involves a purchase of a large quantity, enough for a full shipping container direct from Taittinger, S.A. In that situation, Kobrand buys the champagne from Taittinger, S.A., arranges and pays for a freight forwarder to go to Taittinger, pick up the goods and deliver them directly to Kobrand's buyer (Id. at 29-31, 42-48). Mr. Quinttus testified unequivocally that Kobrand takes title and possession of the products when they become loaded onto the truck at Taittinger, S.A. in France. After that, Kobrand bears the risk of loss (Id. at 110-11). The testimony of Pierre Emmanuel Taittinger corroborates this testimony. Pierre Emmanuel Taittinger also stated that Kobrand takes delivery and title to Taittinger champagne in France (exhibit 20 to Klein Affirm., at 151; see also exhibit 21 to Klein Affirm., Court Dep., at 99 [Taittinger does not accept champagne back from Kobrand], 48 [Kobrand is independent, it buys the product, pays for it and owns it]). These undisputed facts defeat any claim that there is a consignee-consignor relationship (see Rahanian v Ahdout, 258 AD2d 156, 157 [1st Dept 1999]).

Plaintiffs next contend that doing business jurisdiction is proper based on the solicitation plus theory. Plaintiffs support their argument by asserting that Taittinger, S.A. had significant New York sales, that plaintiffs estimate at approximately $5 million in sales in 2000, with no evidentiary citation; that Taittinger, S.A. has sold champagne in New York through Kobrand for

fifty years; that its principals travel here regularly to confer with Kobrand and to attend Vinexpo and trade shows; that Taittinger, S.A. pays for advertising; and that it has two websites, one American and one French.

Under the solicitation plus theory, a foreign manufacturer's solicitation of business alone will not justify a finding of corporate presence in New York (Laufer v Ostrow, 55 NY2d at 310; Miller v Surf Props., Inc., 4 NY2d 475 [1958]). The defendant must engage in substantial solicitation and additional activities of substance within the jurisdiction (Laufer v Ostrow, supra). Thus, a "*foreign supplier* of goods or services for whom an *independent* agency solicits orders from New York purchasers is not present in New York and may not be sued here, however substantial in amount the resulting orders" (Id. at 311 [emphasis in original]; see Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d 426, supra [foreign car manufacturer not subject to jurisdiction based on solicitation through independent franchised wholesale distributors], supra; Miller v Surf Props., Inc., supra). Activities of substance can include, for example, evidence of the foreign defendant's financial or commercial dealings in New York or proof that the defendant is holding itself out as operating in New York (see Bryant v Finnish Natl. Airline, 15 NY2d at 432 [office, employees and bank account in New York]; Elish v St. Louis Southwestern Ry. Co., 305 NY 267, 270 [1953] [financial transactions and directors meetings, offices and officers in New York]).

Here, neither Taittinger, S.A. nor CFT maintain any office, showroom, or bank accounts, nor do they hold any board meetings in New York. The once or twice yearly periodic trips by Taittinger, S.A. representatives to meet with Kobrand are plainly insufficient to sustain jurisdiction over Taittinger, S.A. (see Chamberlain v Jiminy Peak, 176 AD2d 1109 [3d Dept 1991] [periodic

visits to New York are not sufficiently continuous and systematic]; Pacamor Bearings, Inc. v Molon Motors & Coil, Inc., 102 AD2d 355 [3d Dept 1984] [sales manager's eight trips to New York, 10% to 13% gross sales from New York buyers, and lending heavy engineering support to New York buyer are not enough]). Taittinger, S.A.'s participation in Vinexpo in 2002 is insufficient, because it is the defendant's contacts at the time the action was commenced, in this case in 2000, that are relevant. Moreover, attendance at trade shows is not sufficient to confer jurisdiction (see Berner v Ben Kaufman Sales Co., 1994 WL 363935 [SD NY 1994]; ICC Primex Plastics Corp. v LA/ES Laminati Estrusi Termoplastici S.P.A., 775 F Supp 650 [SD NY 1991] [minimal visits to customers or trade shows is not enough]; cf. Kines v Rescue Sys., Inc., 1997 WL 188931 [SD NY 1997] [conduct of business during trade shows warranted jurisdictional discovery]).

Plaintiffs' reliance upon Haddad Bros. Inc. v Little Things Mean A Lot, Inc. (2000 WL 1099866 [SD NY 2000]), is misplaced, as the facts are clearly distinguishable. In Haddad Bros., the foreign defendant maintained a showroom in New York, run by a sales representative of defendant, its name was listed on the door at the showroom and in the building directory as well as in the New York telephone book (Id. at *1). The defendant displayed its merchandise in the lobby of the building, sent catalogs and order forms to potential customers and regularly attended trade shows in New York. It also had a website offering products for sale to New York customers through its online store (Id. at *2). Based on these contacts, the court found that defendant satisfied the solicitation plus test, because it solicited substantial business and processed orders through its corporate showroom here (Id. at *5; see also Fashion Fragrance & Cosmetics v Croddick, 2003 WL 342273 [SD NY 2003] [defendant subject to jurisdiction because it had New

York City location at which it collected cash and handled accounts receivables, and principal attended business functions in New York]). Here, in contrast, Taittinger, S.A. does not have a corporate showroom or any other offices in New York, nor does it have any employees, or telephone listings, and its website does not permit any ordering. Thus, there is no basis for jurisdiction over either Taittinger, S.A. or CFT under the solicitation plus theory.

Plaintiffs next assert that Taittinger, S.A. and CFT are present in New York because they have subsidiaries - Baccarat USA, Concorde USA, and Annick Goutal, Inc. USA - that are in New York and that, though plaintiffs admit are "technically wholly owned subsidiaries of their French parents," are allegedly all mere departments of the entire Taittinger group. Plaintiffs assert that Taittinger, S.A. and CFT dominate all 275 Taittinger family companies, including these New York subsidiaries. They claim that these companies operate on an integrated basis with no true distinctions and that Claude Taittinger, Anne-Claire Taittinger and Patrice De Margerie control them all. They urge that these New York subsidiaries perform all the New York functions that the parent companies would have to perform, and, therefore, the parents, Taittinger, S.A. and CFT, are doing business in New York through these subsidiaries.

"Where, as here, the claim is that the foreign corporation is present in New York state because of the activities there of its subsidiary, the presence of the subsidiary alone does not establish the parent's presence in the state" (Jazini v Nissan Motor Co., 148 F3d at 184 [citation omitted]). In order for the court to have personal jurisdiction over the parent in New York, the subsidiary must either be an "agent" (Frummer v Hilton Hotels Intl., Inc., 19 NY2d 533, cert denied 389 US 923 [1967]), or a "mere department" (Taca Intl. Airlines, S.A. v Rolls-Royce of England, Ltd., 15 NY2d 97 [1965]) of the foreign parent.

Under the theory that a subsidiary is an agent of the parent, the plaintiff must show that the New York subsidiary "does all the business which [the foreign parent corporation] could do were it here by its own officials" (Frummer v Hilton Hotels Intl., Inc., 19 NY2d at 537). This means that the local subsidiary must represent such a significant part of the business that the foreign parent would have to send its own employees to New York were the subsidiary not conducting affairs on its parents' behalf (Ontel Prods., Inc. v Project Strategies Corp., 899 F Supp 1144, 1147 [SD NY 1995]). The fact of common ownership "gives rise to a valid inference as to the broad scope of the agency" (Frummer v Hilton Hotels Intl., Inc., 19 NY2d at 538).

Here, not only is the proof of common ownership insufficient, there is no proof that Baccarat USA, Concorde USA and Annick Goutal, Inc. USA are doing all of the business Taittinger, S.A. and CFT could do were they acting here through their own officers. First, each of these subsidiaries are related to Taittinger, S.A. and CFT through SDL. A chart plaintiffs developed (exhibit 27 to Klein Affirm.) indicates that SDL owns 51% of Baccarat SA, that in turn owns 100% of Baccarat USA Inc.; that SDL owns 99% of the Concorde Group, that apparently owns Concorde USA; and that SDL owns 99% of Anick Goutal S.A., that in turn owns 99% of Anick Goutal, Inc. USA. Thus, it is SDL, not Taittinger, S.A. or CFT, that is the grandparent of these subsidiaries. Plaintiffs want to take this one and two steps further to Taittinger, S.A. and CFT. However, as the chart also shows, the public owns 58% of SDL, Taittinger owns only 37% of the shares and CFT owns only 35% of Taittinger, S.A. (Id.).

More importantly, there is no evidence in the record that any of these subsidiaries of SDL acted as an agent of either Taittinger, S.A. or CFT. It is undisputed that these subsidiaries are in completely different lines of business than Taittinger, S.A or CFT. Taittinger, S.A. produces

champagne. CFT is a French holding company that manages shares held by certain French citizens and provides certain services for Taittinger, S.A. and SDL. SDL's subsidiaries, in contrast, sell crystal (Baccarat USA), hotel services (Concorde USA), and perfume (Annick Goutal, Inc. USA). There is no support in the record for any claim that CFT or Taittinger, S.A. rely on these SDL subsidiaries to perform CFT's or Taittinger, S.A.'s functions. Plaintiffs' attempt to overcome this glaring inadequacy in their argument by relying on the "aura of luxury" surrounding Taittinger champagne and the products of these SDL subsidiaries, is unconvincing. There is no basis to connect these disparate products for purposes of assessing parent-grandchild liability under an agency theory of personal jurisdiction. That certain Taittinger family members, like Claude Taittinger, Anne-Claire Taittinger and Patrice De Margerie, may sit on certain boards of these subsidiaries, alone is insufficient to find jurisdiction over Taittinger, S.A. and CFT (cf. Taca Intl. Airlines, S.A. v Rolls-Royce of England, Ltd., 15 NY2d 97, supra [while grandparent, parent and subsidiary shared personnel and directors, there was significant additional evidence that the parent companies determined the policies of the subsidiary, trained all employees of subsidiary, wrote and published all of subsidiary's literature, and all income of the subsidiary went to parent and then grandparent, appearing on their balance sheets]). Defendants present undisputed evidence that Taittinger, S.A. employees did not work for SDL, Baccarat USA, Concorde USA, or Annick Goutal, Inc.. USA (exhibit A to Plaintiffs' Statement of Jurisdiction, Claude Taittinger Dep., at 158). Moreover, there is no proof of financial dependence. Taittinger, S.A. did not guarantee any loans of Baccarat USA, Concorde USA, or Annick Goutal, Inc. USA (Id. at 59).

Similarly, with respect to plaintiffs' allegation that there is jurisdiction over Taittinger, S.A. based on its 83% ownership of Domaine Carneros, the California winery, that has an employee

who works in New York (exhibit F to Plaintiffs' Statement of Jurisdiction, Court Dep. at 92), the court finds an insufficient nexus on which to base jurisdiction. The presence of an employee of a California corporation does not create jurisdiction in New York over a related, but independently managed, foreign corporation (see Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d 426, supra; Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d 117, 120 [2d Cir 1984] [when activities of parent show disregard for separate corporate existence of the subsidiary, the court may exercise jurisdiction]). Plaintiffs fail to present any indicia of Taittinger, S.A. control over Domaine Carneros. While the products (wine and champagne) are somewhat more similar than those of the SDL subsidiaries, there is no evidence that Taittinger, S.A. controlled Domaine Carneros' executives and activities or ignored the separate existence of the companies, sufficient to find that Taittinger, S.A. is doing business in New York through one Domaine Carneros' employee.

Plaintiffs' argument that the subsidiaries - Baccarat USA, Concorde USA and Annick Goutal, Inc. USA - are "mere departments" of Taittinger, S.A. and CFT, also is unconvincing. To determine whether a subsidiary is a mere department of the parent, a court considers four factors. The first, that is essential, is common ownership (Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d at 432; Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d at 120). "[N]early identical ownership interests must exist before one corporation can be considered a department of another corporation for jurisdictional purposes" (Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d at 120). Here, the evidence shows that this crucial element is missing. Plaintiffs concede that the public owns 58% of SDL and that SDL owns each of these subsidiaries, not Taittinger, S.A. or CFT (exhibit 27 to Klein Affirm.). Thus,

there is no identical ownership interest.

The remaining three elements include the degree to which the subsidiary is financially dependent on the parent, the degree to which the parent selects the subsidiary's executive personnel and fails to observe corporate formalities and the degree to which the parent exercises control over the subsidiary's operational and marketing policies (Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d at 120-122). There is no evidence of any of these factors between Taittinger, S.A. and CFT and any of SDL's New York subsidiaries. The overlap of directors between these entities is not enough to find that the subsidiaries are mere departments of these defendants (see Porter v LSB Indus., 192 AD2d 205 [4th Dept 1993] [subsidiary not mere department even though some overlap of officers and directors of two entities]). Plaintiffs have failed to present any proof of the "pervasive control over the subsidiary that the 'mere department' standard requires" (Jazini v Nissan Motor Co., 148 F3d at 185). Therefore, this court lacks jurisdiction over defendants Taittinger, S.A. and CFT.

As to the individual defendants Claude Taittinger, Anne-Claire Taittinger, and Patrice De Margerie, as this court and the Appellate Division already found with regard to the original complaint, there also is no basis for this court to exercise personal jurisdiction over them. These defendants all live and work in France. That they may travel occasionally to New York on behalf of the French companies they work for, fails to provide a basis for personal jurisdiction over them. First, these visits were insufficient for jurisdiction over Taittinger, S.A., and, thus, they could not be sufficient for doing business jurisdiction over these individuals. Second, there is no proof that these individual defendants were engaged in any activity on their own behalf in New York. A defendant does not subject him or herself "individually, to the CPLR 301 jurisdiction of our courts,

however, unless he [or she] is doing business in our State individually" (Laufer v Ostrow, 55 NY2d at 313 (citations omitted). Thus, the court dismisses the amended complaint against the individual defendants for lack of personal jurisdiction.

Defendant Baccarat, S.A.'s motion to dismiss also is granted. As I determined with regard to the original complaint, and as the Appellate Division affirmed, this court lacks personal jurisdiction over this defendant. Baccarat, S.A. is a French corporation with offices in France. As discussed with respect to defendants Taittinger, S.A and CFT, the allegations in the amended complaint that Baccarat, S.A. has a wholly owned subsidiary, Baccarat USA, that has an office in New York, without more, is insufficient. Plaintiffs have conducted substantial jurisdictional discovery. Yet, they fail to come forward with proof of the type of control necessary to demonstrate that Baccarat USA was a mere department or simply an agent of Baccarat, S.A. Plaintiffs do not support their jurisdiction argument in their memorandum of law by recitation to documentary or deposition evidence. Their Statement of Undisputed Jurisdictional Facts refers to such evidence, but the testimony they cite does not support the proposition for which they cite it. Therefore, plaintiffs have failed to demonstrate that this court has personal jurisdiction over Baccarat, S.A.

Moreover, even if this court were to find that Baccarat, S.A. was doing business here, the amended complaint fails to state a claim against it. It contains no substantive allegations against Baccarat, S.A. It alleges only that Baccarat, S.A. has a subsidiary with a New York office. Without any allegations of wrongdoing, plaintiffs fail to asserts any claims against Baccarat, S.A.

Similarly, with regard to the defendant Societe Des Hotels Concorde, the amended complaint makes the same factual allegations, that it has a subsidiary, Concorde USA, with a New

York office. Again, the complaint fails to assert any wrongdoing on the part of this defendant. Therefore, the court dismisses the amended complaint against Societe Des Hotels Concorde for failure to state a cause of action.

Finally, the court finds that, even if it has personal jurisdiction over these defendants, it would grant the motions on the ground of forum non conveniens. It is well-settled that New York courts "need not entertain causes of action lacking a substantial nexus with New York" (Martin v Mieth, 35 NY2d 414, 418 [1974]). The doctrine of forum non conveniens codified in CPLR 327 (a), "permits a court to stay or dismiss such actions where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere" (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 478-79 [1984], cert denied 469 US 1108 [1985]). The central focus of the forum non conveniens inquiry is to ensure that trial will be convenient and will best serve the ends of justice (see Piper Aircraft Co. v Reyno, 454 US 235 [1981]; Capital Currency Exch., N.V. v National Westminster Bank PLC, 155 F3d 603 [2d Cir 1998], cert denied 526 US 1067 [1999]). If the balance of conveniences indicates that trial in plaintiff's chosen forum would be unnecessarily burdensome for the defendant or the court, then dismissal is proper (see Piper Aircraft Co. v Reyno, supra).

New York courts consider the availability of an adequate alternative forum and certain other private and public interest factors when evaluating New York's nexus to a particular action and when deciding whether to dismiss an action on the ground of forum non conveniens (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, supra). Although not every factor is necessarily articulated in every case, collectively the courts consider and balance the following factors: situs of the underlying transaction; residency of the parties; the potential hardship to the defendant; the

location of the documents; the location of a majority of the witnesses; the existence of an adequate alternative forum; and the burden on the New York courts (see Islamic Republic of Iran v Pahlavi, 62 NY2d 474, supra; World Point Trading PTE, Ltd. v Credito Italiano, 225 AD2d 153 [1st Dept 1996]; Evdokias v Oppenheimer, 123 AD2d 598 [2d Dept 1986]). A motion to dismiss on forum non conveniens grounds is subject to the trial court's discretion. No one factor is controlling (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, supra; see also Matter of New York City Asbestos Litigation v Rapid-American Corp., 239 AD2d 303 [1st Dept 1997]).

Here, echoing the prior ruling of this court with regard to the earlier motion to dismiss, the Appellate Division recognized that "under the totality of the circumstances, New York does not appear to be a convenient forum since the contacts with this jurisdiction are tenuous at best" (Edelman v Taittinger, S.A., 298 AD2d at 303; see Transcript of August 8, 2001, Proceedings Before This Court, at 59). All of the critical acts giving rise to plaintiffs' claims occurred in France. The claims rest on allegations of mismanagement of SDL, a French corporation, that French officers and directors managed, in which plaintiffs chose to invest, in France. All of the alleged wrongs emanate from conduct, or defendants' alleged failure to act, in France. It is clear that most, if not all, of the witnesses and documents are in France. Indeed, France has the paramount interest in resolving disputes among shareholders vying for control over French entities. New York, on the other hand, lacks sufficient interest in this dispute. In addition, plaintiffs' claims about the management of SDL, and their efforts to gain control over it, are already the subject of review in the French courts in one pending and four previous litigated actions that plaintiffs brought. New York courts have routinely dismissed actions arising out of similar circumstances on forum non conveniens grounds (see Gonzalez v Lebensversicherung AG, 304 AD2d 427 [1st Dept

2003], lv denied 1 NY3d 506 [2004] [New York not convenient forum for action in which parties entered into contract in Spain, and entities, persons, and events predominantly situated there]; Tilleke & Gibbins Intl., Ltd. v Baker & McKenzie, 302 AD2d 328 [1st Dept 2003] [New York not convenient forum where plaintiff, defendant's Thai affiliate, and most of material witnesses were in Thailand and Thai law governed the contracts]; Banco do Estado de Sao Paolo, S.A. v Mendes Jr. Intl. Co., 249 AD2d 137, 138 [1st Dept 1998] [dismissal appropriate on forum non conveniens ground where underlying events and circumstances occurred in Brazil, witnesses were in Brazil, Brazilian law applied and inquiry into complex relationships between industry and Brazilian government was necessary]).

Further, as the Appellate Division recognized, the resolution of certain issues will depend on the application of French law, another factor that militates against accepting the litigation here (see Shiboleth v Yerushalmi, 268 AD2d 300 [1st Dept 2000]). The prior related litigations pending in France also tip the balance in favor of dismissal, because of the undue burden this places on New York courts and the risk of conflicting results (World Point Trading PTE, Ltd. v Credito Italiano, 225 AD2d at 161 [where case pending in Italy, attendant risk of conflicting rulings weighed in favor of dismissal]; see also A & M Exports, Ltd. v Meridien Intl. Bank, Ltd., 207 AD2d 741 [1st Dept 1994]). That two of the plaintiffs, Mr. Edelman and A.B. Edelman Management Co., Inc. are New York residents, does not outweigh the balance of the other relevant Pahlavi factors, clearly favoring dismissal (see Union Bancaire Privee v Nasser, 300 AD2d 49 [1st Dept 2002] [forum non conveniens doctrine warranted litigating in Brazil where witnesses, records and transactions at issue were predominantly situated]), particularly because the remainder of the plaintiffs and the defendants, the parties primarily involved in the transactions and alleged

wrongdoings, are all nonresidents. Therefore, upon balancing the appropriate factors, defendants have sustained their burden of showing that the end of justice and the convenience of the parties are best served if this action is heard in France.

Accordingly, it is

ORDERED that the motions to dismiss of defendants Taittinger, S.A., Compagne Financiere Taittinger, Claude Taittinger, Anne-Claire Taittinger, Patrice De Margerie, Baccarat, S.A., and Societe Des Hotel Concorde are granted and the amended complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: March 13 2006

ENTER:

J.S.C.

FILED
MAR 15 2006
COUNTY CLERK'S OFFICE
NEW YORK

Exhibit 3

AGREEMENT

OF

LIMITED PARTNERSHIP

OF

MUSEUM PARTNERS, L.P.

AGREEMENT OF LIMITED PARTNERSHIP (the "Agreement"), dated as of December , 1996, by and among Asher B. Edelman, as general partner (the "General Partner") and all the parties who sign copies of this Agreement to become Limited Partners. The General Partner and the persons who sign as Limited Partners are sometimes collectively referred to as the "Partners" and individually as a "Partner".)

The parties hereto, desiring to form a limited partnership under the Delaware Revised Uniform Limited Partnership Act on the terms and conditions set forth herein, hereby agree as follows:

SECTION I

General

1.1 **Formation**. The parties hereto hereby form, on the day and year first above written, a limited partnership (the "Partnership") pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act. The General Partner shall cause the due filing in the office of the Secretary of State of the State of Delaware a Certificate of Limited Partnership for the Partnership.

1.2 **Name**. The name of the Partnership shall be Museum Partners, L.P.. The General Partner may change the name of the Partnership as he may determine appropriate, and shall provide notice thereof to the Limited Partners as promptly as possible following any such determination.

1.3 **Term**. The Partnership shall commence on the date of the filing of the Certificate of Limited Partnership referred to in Section 1.1 (the "Commencement Date"). The Partnership

shall continue until dissolved and terminated as provided in Section VIII.

1.4 **Business Location**. The principal place of business of the Partnership shall be c/o Bayard (Luxembourg) Administration Ltd. , Residence Centre du St. Esprit, 1 Rue du St. Esprit, L-1475 Luxembourg, LUXEMBOURG or at such other location as the General Partner, in his discretion, from time to time may determine, provided that notice thereof is furnished to the Limited Partners as promptly as possible following any such determination. The General Partner may establish other places of business of the Partnership when and where required by the Partnership's business.

1.5 **Registered Office and Agent**. The address of the Partnership's registered office in the State of Delaware shall be 15 East North Street, Dover, Delaware. The name of the Partnership's registered agent for service of process in the State of Delaware shall be Vanguard Corporate Services, Ltd. whose address is 15 East North Street, Dover, Delaware 19901.

1.6 **General Partners**. The General Partner of the Partnership shall be Asher B. Edelman and any other person who shall become an additional or successor general partner pursuant to the terms of this Agreement with the consent of the General Partner. The General Partner may also be a Limited Partner of the Partnership.

1.7 **Limited Partners**. The Limited Partners shall be those parties who sign copies of this Agreement to become Limited Partners. The General Partner shall have the right to admit additional Limited Partners to the Partnership, each of whom shall, upon his admission, execute an appropriate supplement to or counterpart of this Agreement pursuant to which he agrees to be bound by all the conditions and terms set forth herein, and such other instruments and documents as the General Partner shall determine.

SECTION II

Purposes and Powers

The purposes of the Partnership are to acquire, on margin or otherwise, and by open market purchase, privately negotiated purchase or otherwise, securities of every nature and description (including options) of a specific entity, the name and business of which each Limited Partner acknowledges he is familiar, and any affiliated entities (the "Securities"); to hold, sell, exchange, transfer, vote and otherwise exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Securities and other assets owned by the Partnership; to borrow money in furtherance of the foregoing purposes and, subject to applicable margin regulations, secure the payment of such or other obligations of the Partnership by hypothecation or pledge of all or part of the assets of the Partnership; to purchase, hold, sell and otherwise deal in currencies and futures contracts relating thereto (and options thereon) to the

extent the General Partner deems it appropriate with respect to the Securities; and to enter into, make and perform all contracts and undertakings, engage in all activities and transactions, and to exercise any and all strategic initiatives, as the General Partner may deem necessary or advisable to achieve capital appreciation in the carrying out of the foregoing purposes. The Partnership may act directly or in conjunction with others, through joint ventures, partnerships or otherwise, in carrying out the foregoing purposes. The Partnership shall have all such powers as are necessary or convenient to carry out the purposes of the Partnership.

SECTION III

Capital Contributions and Capital Accounts

3.1 **Partners' Contributions**. The Partners shall contribute to the capital of the Partnership upon execution and delivery of this Agreement cash in the amount set forth opposite their names on Schedule A hereto. Neither the General Partner nor any Limited Partner shall have any further liability for any additional capital contributions to the capital of the Partnership.

3.2 **Accounting Periods**. The first accounting period (an "Accounting Period") hereunder shall commence on the Commencement Date and each subsequent Accounting Period shall commence immediately after the close of the next preceding Accounting Period. Each Accounting Period hereunder shall close at the close of business on the first to occur of (a) the date immediately prior to the effective date of the admission of an additional Limited or General Partner or the acceptance of any capital contributions pursuant to Section 3.1(b) hereof, (b) a Withdrawal Date (as defined in Section 7.2(a) hereof), (c) the date of a distribution pursuant to Section VI hereof, or (d) the date on which the Partnership shall terminate.

3.3 **Capital Accounts**. A capital account (a "Capital Account") shall be established on the books of the Partnership for each Partner. The Capital Account of each Partner shall be in an amount equal to (a) the Capital Account of such Partner as of the end of the immediately preceding Accounting Period (after taking into account allocations of profits and loss pursuant to Section V hereof and adjustments to such Capital Account pursuant to Section VI hereof) or, in the case of the first Accounting Period for such Partner, the amount of such Partner's capital contribution to the Partnership as set forth in Schedule A hereto, plus (b) the amount of any capital contribution or additional capital contribution to the Partnership by such Partner as of the beginning of such Accounting Period, less (c) the amount, if any, of any distributions made to such Partner pursuant to Section 6.1 hereof.

3.4 **Limitation on Liability**. No Limited Partner shall be liable for any of the debts of the Partnership, except to the extent of his capital contribution. Notwithstanding the foregoing, a Limited Partner receiving a distribution in accordance with this Agreement in part or full return of his capital contribution shall be liable to the Partnership for any sum, not in excess of such amount returned, plus interest, necessary to discharge the liabilities of the Partnership to creditors who

extended credit or whose claims arose before such distribution, excluding creditors whose claims are represented by debt for which neither the Partnership nor any Partner has any personal liability.

3.5 Miscellaneous. A Partner shall not be entitled to withdraw any part of his capital contribution or to receive any distribution from the Partnership, except as specifically provided in this Agreement, and no Partner shall be entitled to make any additional capital contribution to the Partnership other than as provided herein. Loans by any Partner to the Partnership shall not be considered contributions to the capital of the Partnership.

3.6 No Interest on Contributions. No interest shall be paid on the capital contributed to the Partnership.

SECTION IV

Control and Management

4.1 Power and Duties of the General Partners.

(a) Except as otherwise expressly provided herein, the General Partner shall have full and exclusive power and authority on behalf of the Partnership to manage, control, administer and operate the business and affairs of the Partnership and to do or cause to be done any and all acts deemed by such General Partner to be necessary or appropriate thereto, and the scope of such power and authority shall encompass all matters in any way connected with such business or incident thereto.

(b) In addition to and in furtherance of the foregoing, the General Partner shall possess all of the power and authority of a general partner in a partnership without limited partners as is provided under the laws of the State of Delaware. No person dealing with the Partnership shall be required to inquire into the power and authority of the General Partner to take any action or make any decisions. The signature of the General Partner upon any and all instruments, contracts, stock powers, proxies, loan agreements, promissory notes and other documents shall be sufficient to bind the Partnership in respect thereof and no third person need look to the application of funds or authority to act or require joinder of any other party.

4.2 Limited Partners' Actions and Cooperation.

(a) The Limited Partners shall take no part in the conduct or control of the Partnership business and shall have no right or authority to act for or to bind the Partnership. The exercise of any of the rights and powers of the Limited Partners pursuant to the terms of this Agreement shall not be deemed taking part in the day-to-day affairs of the Partnership or the exercise of control over Partnership affairs.

(b) Each Limited Partner shall furnish the General Partner with such information as he may from time to time reasonably request, and shall otherwise cooperate with the General Partner, to enable the General Partner and the Partnership to comply with applicable laws (including, without limitation, applicable securities laws) in the conduct of its business.

(c) Each Limited Partner represents that he is acquiring his limited partnership interest in the Partnership for his own account, for investment, and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended (the "Act").. Any Limited Partner receiving a distribution in kind of securities from the Partnership will so represent with respect to the securities so received and will execute such documents as the General Partner may reasonably request to insure compliance with the Act.

4.3 **Services to Partnership; Affiliated Transactions.**

(a) Any Partner may engage in or possess an interest in other business ventures of any nature or description, independently or with others. In addition, each Partner shall have the right to be a principal in and devote time, attention and resources to other business ventures during the term of this Agreement. Without limiting the generality of the foregoing, the Limited Partners acknowledge that the General Partner and other entities and persons affiliated with the General Partner may now own and hereafter acquire and dispose of Securities of the same issuer and class as the Securities owned by the Partnership. Neither the Partnership nor any Partner shall have any rights in or to any such independent ventures or the income or profits derived therefrom.

(b) The General Partner shall not be paid a salary.

4.4 **Exculpation and Indemnification.** The General Partner shall not be liable, responsible or accountable in damages or otherwise to any Limited Partner for any act or omission performed or omitted by him in good faith and within the scope of this Agreement. The Partnership (but not any Partner) shall indemnify and hold harmless the General Partner from any loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any act or failure to act by him if such act or failure to act is in good faith and within the scope of this Agreement.

4.5 **Expenses; Reimbursement of and Payments to the General Partners.** Except as otherwise provided in this Agreement, the Partnership shall be responsible for paying all direct costs and expenses relating to the formation and operation of the Partnership, including, without limitation, legal expenses, accounting expenses, fees of agents and consultants, financing fees, debt service payments and other costs and expenses relating to the purposes of the Partnership. In the event that any such costs and expenses have been or hereafter are paid by the General Partner on behalf of the Partnership, then, except as expressly provided herein to the contrary, the General Partner shall be entitled to be reimbursed for such payment from the Partnership.

4.6 **Temporary Investments.** Pending disbursements of funds of the Partnership for

purchase of Securities, such funds shall be invested in money market funds, short-term government securities, deposits in brokerage accounts, certificates of deposit or time or demand deposits in commercial banks, bankers acceptances, commercial paper, repurchase agreements in respect of government securities, and other money market instruments or investments.

SECTION V

Allocation of Income, Gains and Losses

5.1 **Allocation of Profits and Losses**. The net profits and net losses of the Partnership for each Accounting Period shall be determined as of the end of such Accounting Period by the General Partner. For purposes of such determination, account shall be taken of unrealized gains and unrealized losses in the value of the assets of the Partnership in accordance with Section 10.4.

5.2 **Adjustments to Capital Accounts**. The net profits and net losses of the Partnership shall be credited or charged, as the case may be, to the Capital Accounts of the Partners as of the end of each Accounting Period, and among them pro rata to such Capital Accounts.

5.3 **Allocations for Tax Purposes**. All items of income, deduction, gain, loss or credit of the Partnership for each fiscal year (or part thereof) of the Partnership as determined for United States Federal income tax purposes, shall be allocated (except as provided in Section 7.2(d) hereof) among the Partners in such manner as to reflect equitably the amounts credited or charged, or to be credited or charged, to each Partner's Capital Account pursuant to Section 5.2 hereof and amounts distributed or to be distributed pursuant to Section VI hereof.

SECTION VI

Distributions

6.1 **Allocations of Distributions**. After providing for satisfaction of the current debts and obligations of the Partnership and such reserves for working capital and contingencies as the General Partner deems appropriate in his discretion, the General Partner may, in his discretion, make distributions in cash or in kind to the partners, pro rata to their Capital Accounts; provided, however, that if by operation of the foregoing provisions of this Section 6.1 a Limited Partner shall be entitled to receive an amount in excess of his capital contributions (reduced by previous distributions) plus the Preferred Return of such Limited Partner as defined in Section 6.2 hereof (the "Excess"), such Limited Partner's Capital Account shall be reduced, and the General Partner's Capital Account shall be increased, by 25% of the amount of such Excess and distributions shall be made in accordance with Capital Accounts, as so adjusted.

6.2 **Preferred Return**. The Preferred Return of a Limited Partner shall be the return the Limited Partner would have received if an amount equal to his capital contributions had been invested at 6% per annum.

6.3 **Distributions in Kind**. If any assets of the Partnership shall be distributed in kind, such assets shall be valued pursuant to Section 10.4 and shall be distributed to the Partners in the same proportions as such Partners would have been entitled to distributions under Section 6.1.

6.4 **Property**. No Partners shall be entitled to demand and receive property other than cash in return for his capital contributions to the Partnership, and, to the maximum extent permissible under applicable law, each Partner hereby waives all right to partition any property of the Partnership.

6.5 **No Priorities among Partners**. No Partner shall have any priority over any other Partner as to the return of his contributions to the capital of the Partnership or as to compensation by way of income.

SECTION VII

Dispositions of Interests of Partners; Withdrawals

7.1 **Restriction on Transfers**. No Partner shall assign, transfer or encumber, in whole or in part, his interest in the Partnership, except with the prior written consent of the General Partner, which consent shall be within his sole and absolute discretion, and no approved assignee shall have the right to become a substituted Partner with respect to an interest so assigned without the prior written consent of the General Partner, which consent shall be within his sole and absolute discretion.

7.2 **Withdrawal of Limited Partner**.

(a) A Limited Partner may not withdraw from the Partnership prior to June 30, 1998, unless extended by the General Partner, in his discretion, to December 31, 1998. The General Partner, in his sole and absolute discretion, with or without cause, may require any Limited Partner to withdraw from the Partnership upon written notice to that effect to such Limited Partner at least 10 days prior to the effective date of such withdrawal, which notice shall specify the date of such withdrawal (the "Withdrawal Date"). The withdrawal of a Limited Partner shall not dissolve the Partnership.

(b) In the event of the giving of notice of withdrawal to a Limited Partner, the interest of such Limited Partner shall continue at the risk of the Partnership business until the Withdrawal Date or earlier termination of the Partnership. If the Partnership is continued after the Withdrawal

Date, such Limited Partner shall be entitled to receive within 30 days thereafter, in accordance with this Section 7.2, the value of such Limited Partner's interest in the Partnership as of the applicable Withdrawal Date. The interest of a Limited Partner who has been notified of withdrawal shall not be included in calculating the interest of the Partners or Limited Partners required to take action under any provision of this Agreement.

(c) The value of a withdrawing Limited Partner's interest in the Partnership shall be that amount that the Limited Partner would have received had the Partnership been dissolved as of the Withdrawal Date, its debts and liabilities paid or provided for and its assets distributed in the order of priority set forth in Section 8.3. Such value shall be determined in the manner provided in Section 10.4. The value of such withdrawing Limited Partner's interest may be paid in cash, securities valued (pursuant to Section 10.4) as of the date of payment, or any combination thereof, in the sole discretion of the General Partner.

(d) To the extent that a net gain is realized by the Partnership upon the sale of securities, and the proceeds of such sale are designated in the books and records of the Partnership as being used to effect payment of a withdrawing Limited Partner's interest, such net gain shall be specially allocated for Federal income tax purposes (i) first to such withdrawing Limited Partner up to an amount equal to the difference between the value of his interest in the Partnership and his "tax basis" for Federal income tax purposes in his interest in the Partnership, as of the Withdrawal Date and (ii) to the extent of any remaining net gains, to all Partners who were Partners as of the Withdrawal Date, other than such withdrawing Limited Partner, in accordance with Section V.

(e) The right of any withdrawing Limited Partner to have distributed the value of his interest in the Partnership pursuant to this Section 7.2 is subject to the provisions of Sec. 17-607 of the Delaware Revised Uniform Limited Partnership Act, and reserves for contingencies. The unused portion of any reserve shall be distributed, with interest at the rate actually earned thereon pursuant to the investment thereof by the General Partner in any authorized investment under Section 4.6 hereof, after the General Partner shall have determined that the need therefor shall have ceased.

SECTION VIII

Dissolution and Termination

8.1 Dissolution. The Partnership shall be dissolved and its business wound up upon the earliest to occur of:

(a) the election of the General Partner to so dissolve and wind up;

(b) subject to continuation as provided in Section 8.2, the death, incompetency,

dissolution, insolvency or bankruptcy of the General Partner;

(c) the sale of all or substantially all of the assets of the Partnership; or

(d) June 30, 1998, unless extended by the General Partner, in his discretion, to December 31, 1998.

8.2 **Continuation**. The General Partner agrees to serve as General Partner of the Partnership until the Partnership is terminated without reconstitution as provided below. Upon the occurrence of an event of dissolution set forth in Section 8.1(b), then the business of the Partnership shall be continued on the terms and conditions of this Agreement if, within 90 days after such event, all of the Limited Partners shall designate one or more persons to be substituted as general partner(s). In the event that the Limited Partners elect so to continue the Partnership with one or more new general partners, such new general partner(s) shall succeed to all of the powers, privileges and obligations (but not the interests) of the General Partner hereunder.

8.3 **Winding Up**. Upon any dissolution requiring the winding up of the business of the Partnership, the General Partner or such other person as is winding up the business of the Partnership shall, out of the Partnership assets, make distributions in the following manner and order;

(a) to creditors, including Partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Partnership (whether by payment or by establishment of reserves) other than liabilities for distributions to Partners under Section. 17-601 or 17-604 of the Delaware Revised Uniform Limited Partnership Act; and

(b) to the Partners in accordance with Section VI hereof.

All distributions made pursuant to this Agreement shall be made in cash, securities or other assets of the Partnership, or any combination thereof, as the General Partner may in his discretion determine.

SECTION IX

Death, Incompetency, Etc. of a Limited Partner

The death, incompetency, bankruptcy or dissolution of a Limited Partner shall not cause a dissolution of the Partnership. Upon the death, adjudicated incompetency or bankruptcy of any Limited Partner who is an individual, or upon the dissolution or bankruptcy of any Limited Partner which is a corporation or other entity, the rights of such Limited Partner to share in the profits and losses of the Partnership, to receive distributions of Partnership funds and to assign his or its Partnership interests pursuant to this Agreement shall devolve upon his or its personal

representative, guardian or successor in interest, as the case may be, (or, upon the death of one whose interest is held in joint tenancy, to his surviving joint tenant), subject to the terms and conditions of this Agreement. The estate of a deceased or bankrupt Limited Partner or such a surviving joint tenant, as the case may be, shall be liable for all the obligations of such Limited Partner. In no event shall such personal representative, guardian, successor in interest or surviving joint tenant become a substitute Limited Partner except in accordance with Section 7.1.

SECTION X

Accounting

10.1 Fiscal Year. The fiscal year of the Partnership shall be the calendar year.

10.2 Records. The General Partner, at the expense of the Partnership, shall keep, or cause to be kept, full and accurate records of all transactions of the Partnership in accordance with generally accepted accounting principles. All of such books of account shall, at all times, be maintained in the principal office of the Partnership, and shall be open during reasonable business hours for inspection and examination by the Limited Partners and their authorized representatives, who shall have the right to make copies thereof.

10.3 Tax Filings. The General Partner, at the expense of the Partnership, shall prepare and file, or cause the accountant of the Partnership to prepare and file, any required tax and information returns for each tax year of the Partnership.

10.4 Valuation. For purposes of this Agreement, (a) every asset of the Partnership other than securities shall be valued at its fair market value in the judgment of the General Partner, as of the date as of which such valuation is to be made (the "Valuation Date"), unless this Agreement shall specifically provide a different method for valuing a particular asset in specified circumstances; and (b) securities held by the Partnership shall be valued as of the Valuation Date at an amount per share equal to the last sales price of the securities on the largest national securities exchange on which the securities are listed or traded. Liabilities shall be determined in accordance with generally accepted accounting principles.

SECTION XI

Reports and Statements

11.1 Tax Information. Within 75 days after the end of each fiscal year of the Partnership, the General Partner, at the expense of the Partnership, shall cause to be delivered to each Limited Partner the following:

(a) such information as shall be necessary (including a statement for that fiscal year of each Limited Partner's share of net income, net gains, net losses and other items of the Partnership) for the preparation of his tax returns; and

(b) a copy of all income tax and information returns to be filed by the Partnership for that fiscal year of the Partnership.

11.2 **Financial Information**.

Within 120 days after the end of each fiscal year of the Partnership, the General Partner shall cause to be delivered to each of the Limited Partners financial statements of the Partnership for such fiscal year, prepared at the expense of the Partnership, which statements (a) shall set forth, as at the end of and for such fiscal year, (i) a profit and loss statement and a balance sheet of the Partnership; and (ii) such other information as, in the judgment of the General Partner, shall be reasonably necessary for the Partners to be advised of the financial status and results of operations of the Partnership.

SECTION XII

Power of Attorney

Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner, and each successor general partner, as long as such person is acting as general partner, as his true and lawful attorney, to make, sign, execute, acknowledge, swear to and file with respect to the Partnership:

(a) such Certificate of Limited Partnership and other documents as may be required by law or pursuant to the provisions of this Agreement, and such Certificate of Limited Partnership and other documents as may be required to reconstitute and continue the business of the Partnership in accordance with the provisions of this Agreement;

(b) all papers which may be deemed necessary or desirable to effect the winding-up and termination of the Partnership (including, but not limited to, a certificate of cancellation of the Certificate of Limited Partnership);

(c) documents of transfer of a Limited Partner's interest and all other instruments to effect such transfer, but only if there has been compliance with the applicable provisions of this Agreement;

(d) all filings or other reports with respect to the Partnership required to be made under applicable securities laws, and

(e) all amendments to this Agreement and the Certificate of Limited Partnership adopted in accordance with Section 14.2, and all documents relating to such amendments, but only if there has been compliance with the applicable provisions of this Agreement.

The foregoing appointments are coupled with an interest.

The General Partner shall supply to each Limited Partner a copy of any document filed pursuant to this Section XII.

SECTION XIII

Notices

Whenever any notice or other communication is required or permitted to be given under any provision of this Agreement, such notice or other communication shall be (i) if between Partners within and without the United States, by telefax, telegram or cable, and shall be deemed to have been given when received and shall be promptly confirmed by mail, postage prepaid; or (ii) if between Partners within the United States, in writing, and shall be deemed to have been given when delivered by personal delivery or five days after the date mailed, postage prepaid, in each case addressed to the person or persons to whom such notice or other communication is to be given at the notice address specified for such person or persons in Schedule A hereto (or at such other address as shall be stated in a notice similarly given).

SECTION XIV

Miscellaneous

14.1 Binding Effect. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their legal representatives, successors and permitted assigns.

14.2 Amendments. No amendment, modification or waiver of this Agreement, or any part hereof, shall be valid or effective unless in writing and duly signed by the General Partner with the consent of a Majority-in-Interest of the Limited Partners; provided, however, that, (i) without the consent of the Limited Partners, the General Partner may amend this Agreement to comply with Delaware law, to change the name of the Partnership, its address or that of any Limited Partner, to change its registered agent or to reflect the admission or withdrawal of a Partner; and (ii) without the consent of a particular Limited Partner, no modification or amendment to this Agreement shall increase such Limited Partner's obligation to make capital

contributions to the partnership, modify adversely his right to withdraw provided herein, or amend this Section 14.2 with respect to him. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other condition or subsequent breach, whether of like or different nature. As used herein, a "Majority-in-Interest of the Limited Partners" shall mean Limited Partners whose Capital Accounts constitute more than 50% of the aggregate value of the Capital Accounts of all Limited Partner.

14.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely within such State.

14.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

AGREEMENT

OF

LIMITED PARTNERSHIP

OF

MUSEUM PARTNERS, L.P.

AGREEMENT

OF

LIMITED PARTNERSHIP

OF

MUSEUM PARTNERS, L.P.

Index

IN WITNESS WHEREOF, the parties hereto have subscribed and sworn to this Agreement of Limited Partnership on the day and year first above written.

GENERAL PARTNER:

_____
Asher B. Edelman

LIMITED PARTNER:

_____
Name:

_____
Title of Authorized Signatory

_____
Social Security Number

_____
Federal I.D. Number

Date:_____

SCHEDULE A

LIMITED PARTNER NAME AND ADDRESS	CAPITAL CONTRIBUTION

Exhibit 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HOLDRUM INVESTMENTS N.V. ***individually and derivatively on behalf of*** **MUSEUM PARTNERS L.P.** :

PlaintiffS, : **ANSWER AND COUNTERCLAIMS**

-against- :

ASHER B. EDELMAN : **Index No. 650950/2011**

Defendant.

Defendant, Asher B. Edelman, ("Edelman") by his attorneys, Meier Franzino & Scher, LLP, as and for his answer to the Second Amended Complaint responds as follows:

1. Denies information sufficient to form a belief as to the allegations contained in paragraph one.
2. Admits the allegations contained in paragraph two.
3. Admits the allegations contained in paragraph three.
4. Denies the allegations contained in paragraphs four through one hundred twenty-three.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. The Second Amended Complaint fails to state cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. The Second Amended Complaint is barred by the doctrines of laches, waiver, ratification and estoppel.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. The Second Amended Complaint is barred by the culpable conduct of plaintiff.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

8. The Second Amended Complaint is barred by novation.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

9. The Second Amended Complaint is barred by payment.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

10. The Second Amended Complaint is barred by the unclean hands of plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

11. The Second Amended Complaint is barred by plaintiff's own deceitful conduct.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

12. The Second Amended Complaint is barred by the partnership agreement by and between plaintiff and Museum Partners, L.P ("Partnership Agreement").

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

13. The Second Amended Complaint is barred by the concept of indemnification included in the Partnership Agreement.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

14. The Second Amended Complaint is barred by the business judgment rule.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

15. The Second Amended Complaint is barred by plaintiff's own failure to formally request that the Partnership be dissolved.

AS AND FOR A FIRST COUNTERCLAIM

16. On or about December 1996, plaintiff became a limited partner in Museum Partners, L.P, ("Museum") which was founded by general partner, defendant Asher B. Edelman ("Edelman"). The purpose of the Partnership Agreement was:

> [T]o acquire, on margin or otherwise, and by open market purchase, privately negotiated purchase or otherwise, securities of every nature and description (including options) of a specific entity, the name and business of which each Limited Partner acknowledges he is familiar, and any affiliated entities ("the Securities"); to hold, sell, exchange, transfer, vote and otherwise exercise all rights, powers privileges and other incidents of ownership or possession with respect to the Securities or other assets owned by the Partnership; to borrow money in furtherance of the foregoing purposes and, subject to the applicable margin regulations, secure payment of such other obligations of the Partnership by hypothecation or pledge of all or part of the assets of the Partnership; to purchase, hold, sell and otherwise deal in currencies and future contracts relating thereto (and options thereon), to the extent the General Partner deems it appropriate with respect to the Securities; and to enter into, make and perform all contracts and undertakings, engage in all activities and transactions, and to exercise any and all strategic initiatives, as the General Partner may deem necessary or advisable to achieve capital appreciation in the carrying out of the foregoing purposes... The Partnership shall have all such powers as are necessary to carry out the purposes of the Partnership.

17. The Partnership Agreement further provides as follows:

> [T]he General Partner shall have full and exclusive power and authority on behalf of the Partnership to manage, control, administer and operate the business and affairs of the Partnership and to do or cause to be done any and all acts deemed by such General Partner to be necessary or appropriate thereto, and the scope of such power and authority shall encompass all matters in any way connected with such business or incident thereto.

18. Further, "In addition to and in furtherance of the foregoing, the General Partner shall possess all of the power and authority of a general partner in a partnership without limited partners as is provided under the laws of the State of Delaware..."

19. Moreover, the Partnership Agreement states as follows:

> The General Partner shall not be liable, responsible or accountable in damages or otherwise to any Limited Partner for any act or omission performed or omitted by him in good faith and within the scope of this Agreement. The Partnership (but not any Partner) shall indemnify and hold harmless the General Partner from any loss, damage liability, cost or expense (including reasonable attorneys' fees) arising out of any act or failure to act by him if such act or failure to act is in good faith and within the scope of this Agreement.

LIMITED PARTNERS WITHDRAW

20. On or about February 26, 2007, several of the limited partners withdrew from Museum following the settlement of a lawsuit ("limited partners' lawsuit")

21. At all times hereinafter mentioned, plaintiff was fully aware of the pending lawsuit by certain limited partners and given a full and fair opportunity to participate in the settlement of the other claims by certain other limited partners.

22. Plaintiff specifically chose not to participate in the settlement and remain as a limited partner.

23. There was no finding of malfeasance by defendant with regard to the limited partners' lawsuit or the settlement thereof.

24. By the settlement of the limited partners' lawsuit, plaintiff was on full and fair notice that defendant intended to continue any and all litigation against the Taittingers and any and all related matters thereof.

25. Given this full and fair knowledge by plaintiff and the clear language of the Partnership Agreement, plaintiff cannot complain of any actions taken by defendant with regard to litigation subsequent to the dismissal of the limited partners' lawsuit.

26. On or about March, 2011, plaintiff and defendant agreed that defendant would purchase plaintiff's partnership interest for a designated sum.

27. To this end, defendant paid plaintiff $10,000 as an initial payment for the partnership interest.

28. Had the parties not agreed that defendant would purchase plaintiff's partnership interest, defendant would not have caused $10,000 to be wired to plaintiff.

29. Plaintiff accepted the $10,000 but proceeded to initiate this instant lawsuit shortly thereafter- never intending to sell the partnership interest as the parties had agreed.

30. Plaintiff acted fraudulently and deceitfully in accepting the $10,000 down payment and then proceeding to initiate this instant lawsuit.

31. Solely as a result of plaintiff's fraud and deceit in accepting the $10,000 with no intention of proceeding with the sale of the partnership interest, defendant had incurred damages thereof including but not limited to $10,000 and his legal expenses, costs and disbursements of this action and interest thereon.

AS AND FOR A SECOND COUNTERCLAIM

32. Defendant repeats and realleges all of the allegations contained in paragraphs one through thirty-one as though fully set forth herein.

33. Pursuant to the Partnership Agreement, defendant is entitled to reasonable legal fees incurred in defending against this action.

34. Thus far, defendant has incurred approximately $30,000 in legal fees in defending against this frivolous action.

35. Since defendant agreed to purchase plaintiff's partnership interest in March 2011, any and all legal fees incurred by defendant in defending against this frivolous action are recoverable by defendant as per the Partnership Agreement.

36. Defendant is, therefore, damaged in the amount of $30,000 plus interest thereon, costs and disbursements of this action which expenses and legal fees continue to accrue.

AS AND FOR ATHIRD COUNTERCLAIM

37. Defendant repeats and realleges all of the allegations contained in paragraphs one through thirty-six as though fully set forth herein.

38. As a limited partner in Museum, plaintiff owed a duty of loyalty and respect to defendant as general partner.

39. By deceit, plaintiff lead defendant to believe that the sale of the partnership interest to defendant was imminent and that any and all potential claims by plaintiff against defendant would be resolved in this fashion.

40. Accordingly, defendant paid plaintiff $10,000 based upon the representations and warranties by plaintiff that the partnership interest would be sold.

41. Plaintiff had no intention of selling the partnership interest but instead used the $10,000 as a down payment for this litigation.

42. By acting with fraud and deceit towards the general partner herein, defendant, plaintiff breached his fiduciary duties toward defendant and is liable therefore.

43. Defendant has incurred damages in an amount to be determined by this Court, plus interest thereon, legal fees and costs and disbursements of this action.

WHEREFORE, defendants demands judgment dismissing the Second Amended Complaint with prejudice plus the costs and disbursements of this action and legal fees incurred therefore and judgment on the counterclaims as follows:

a. On the First Counterclaim, a sum to be determined by this Court, plus interest thereon, costs and disbursements of this action and legal fees.

b. On the Second Counterclaim, the sum of $30,000 plus interest thereon, the costs and disbursements of this action, interest thereon and legal fees.

c. On the Third Counterclaim, a sum to be determined by this Court, plus interest thereon, the costs and disbursements of this action and legal fees.

Dated: New York, New York
March 7, 2012

MEIER FRANZINO & SCHER, LLP.

By: _____

Davida S. Scher
Attorney for Defendant
570 Lexington Avenue, 26th Floor
New York, New York 10022
(212)759-9770

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

HOLDRUM INVESTMENTS N.V. *individually and derivatively on behalf of* **MUSEUM PARTNERS L.P.** :

NOTICE OF E-FILING

Plaintiffs, :

-against- :

ASHER B. EDELMAN : **Index No. 650950/2011**

Defendant.

----------x

NOTICE OF FILING IN ELECTRONICALLY-FILED CASE

To: jeffdavisesq@gmail.com

PLEASE TAKE NOTICE that, pursuant to Section 202.5-b(g) of the Uniform Rules for the Trial Courts, the undersigned hereby gives notice to All E-Mail Addresses of Record in the above-captioned case that the undersigned filed in the electronic List of Papers Filed in this case, on the date and at the time listed below, the following documents:

- **ANSWER AND COUNTERCLAIMS**

(Filed at approximately 1:15 PM on the 7th day of March 2012)

Parties hereby notified may access the filing on the FBEM website at the following address: https://iapps.courts.state.ny.us/fbem/mainframe.html.

Daniel Harris

Sworn to before me this
7th day of March 2012

Notary Public

DAVIDA S. SCHER
Notary Public, State of New York
No. 02SC5055328
Qualified in Westchester County
Commission Expires February 5, 2014