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.

Index No. 650950-2011

Plaintiffs,

-against-

ASHER B. EDELMAN

Defendant.

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MEMORANDUM OF LAW IN FURTHER SUPPORT OF

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Davis & Friedman LLP
80 Maiden Lane, Suite 2205
New York, N.Y. 10038
(347) 494 1529

PRELIMINARY STATEMENT

The Defendant makes three critical arguments which for the reasons set forth herein must fail:

1. First, the Defendant argues that this Court lacks the power to render a judgment dissolving the Partnership. As the Plaintiff amply demonstrates the Defendant's arguments are directly contradicted by case-law that has developed over the past 40 years.
2. Second, the Defendant argues that the Partnership has been extended by operation of §15-406 of the Delaware Revised Uniform Partnership Act. Again, as the Plaintiff will demonstrate that statutory provision is inapplicable because the Plaintiff is not a "participating partner", and the Plaintiff consented to the extension of the Partnership for an express limited purpose which has since expired.
3. Third, the Defendant argues that the Plaintiff is not entitled to an accounting and even goes so far as to state there is no basis in statute for the Plaintiff's demand for an accounting. Again, the Defendant misstates the law and as such his arguments fail.

POINT I

PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON THE SEVENTH CAUSE OF ACTION SEEKING THE DISSOLUTION AND WINDING UP OF THE COMPANY.

This Court has ample authority to grant a decree of dissolution pursuant to Delaware Law

§ 17-802 states: "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."

First, contrary to what the Defendant has asserted, there is nothing in the above cited statute that lends itself to the conclusion that the Court of Chancery is the **only** court that can enter a

decree of judicial dissolution. The Statute merely says that the Court of Chancery **may** decree dissolution. As a matter of simple statutory interpretation the Courts of the State of New York are not precluded from applying Delaware law and decreeing the dissolution of a limited partnership pursuant to §17-802. The Court certainly has the capability.

Second, there is ample support in case-law for the contention that a New York Court can grant a judgment of dissolution for a Delaware partnership. An action for dissolution (as is essentially the nature of this action) is deemed an internal dispute of a corporation. The **obsolete** view was that the internal affairs of foreign corporations were not to be litigated in courts of a state other than that of incorporation. *Langfelder v. Universal Laboratories,* 293 N.Y. 200, 56 N.E.2d 550 (1944) (*motion denied,* 293 N.Y. 767, 57 N.E.2d 844); *See also, Cohn v. Mishkoff Costello Co.,* 256 N.Y. 102, 175 N.E. 529 (1931). In *Langfelder,* plaintiffs sought dissolution of a Delaware corporation rather than give their assent to a merger with another Delaware corporation. The court declined to exercise jurisdiction, even though it was undisputed that the "foreign" corporation was principally operated in New York. The court reasoned:

> "... [I]t is well settled that jurisdiction in any case will be declined either in the absence of jurisdiction in the strict sense, or where a determination of the rights of the litigants involves regulation and management of the internal affairs of the corporation ..." 293 NY at 204, 56 N.E.2d 550.

The rule followed in *Langfelder* and *Cohn* has been subject to substantial modification in more recent cases, however. For instance one federal appeals court has stated:

> "Though courts will not ordinarily interfere with the internal affairs of foreign corporations, they have jurisdiction to do so in the exercise of a sound

discretion ..." *Bellvue Gardens v. Hill*, 297 F.2d 185 at 187 (D.C.Cir., 1961) (Burger, J.)

Bellvue, like the case at bar, involved an action for dissolution of a Delaware Corporation brought by a minority shareholder. The court noted its inherent power in equity to liquidate a corporation where an abuse of trust is present (as is alleged here). *Id.*

This trend in the direction of expanding jurisdiction over foreign corporations was noted by the First Department in New York in **1964**. *Bryant v. Finnish National Airline*, 22 A.D.2d 16, 253 N.Y.S.2d 215 (1st Dept., 1964). While earlier courts had considered themselves jurisdictionally barred from entertaining lawsuits involving the internal affairs of foreign corporations (See *Langfelder* and *Cohn, supra*), the more recent view was to regard the issue as one of convenience and discretion. See *Samuelson v. Starr*, 28 Misc.2d 479, 213 N.Y.S.2d 889 (Sup.Ct., Queens Co., 1961). In fact the Court in Samuelson noted:

> "It would appear that '[d]efendants confuse the doctrine of *forum non conveniens* with lack of jurisdiction. While it is a generally accepted rule of law that the courts of one state *will not take* jurisdiction of controversies affecting the internal affairs of a corporation organized under the laws of another state' (citing Rogers v. Guaranty Trust Co., 288 U.S. 123, 130, 53 S.Ct. 295, 298, 77 L.Ed. 652, 89 A.L.R. 720), 'close scrutiny of the controlling authorities make it clear that such refusal is based on considerations of convenience and expediency rather than of power.' Citing Levy v. Pacific Eastern Corp., 153 Misc. 488, 489, 490, 275 N.Y.S. 291, 295

In as far back as 1970, the First Department entertained a proceeding to dissolve a foreign corporation under the common-law standard. *Tosi v. Pastene & Co., Inc.,* 34 A.D.2d 520, 308 N.Y.S.2d 472 (1st Dept.1970). More recently, it has been held that a corporation incorporated under the laws of another state can nevertheless have "internal" disputes resolved in the courts of this state. *Broida v. Bancroft,* 103 A.D.2d 88, 478 N.Y.S.2d 333 (2nd Dept.1984) (shareholders' derivative action against foreign corporation). The court in *Broida* noted that jurisdiction to resolve the internal disputes of foreign corporations may be far more readily exercised where the corporation's contacts with New York are substantial. *Id.* at 92, 478 N.Y.S.2d 333.

Applying these principles to the case at bar, it is worth noting that Museum Partners LP is a foreign entity in name only. Assuming (as we must for purposes of the underlying motion) that the allegations in the complaint are true, the Partnership's sole contact with the State of Delaware is its incorporation. All or most of the Partnership's assets, employees, offices, operations and its single general Partner (the Defendant) are based in New York. These factors render it doubtful that this litigation could be effectively undertaken in a Delaware court, and strongly suggest that this Court, in its discretion, should adjudicate the dispute between these parties and render a decision as to the dissolution of the partnership.

Moreover, the fact that the relief nominally sought (i.e., dissolution and forfeiture of the corporate charter) is not expressly (as per statute) within the power of the Court does not bar the Court from rendering a judgment of dissolution or awarding a lesser or alternative relief in this action. Whether the Plaintiff's cause of action is considered statutory or common-law, there is ample authority for this Court to fashion a remedy, short of dissolution, which will attain substantial justice between the parties. *Tosi, supra. See also* Gimpel v. Bolstein, 125 Misc.2d 45, 477 N.Y.S.2d 1014 (Sup.Ct., Queens Co., 1984); BCL Section 1118.

The Defendant's objection to a dissolution proceeding in New York in essence constitutes an untimely and improper objection to venue

Generally an action or a special proceeding for judicial dissolution under the corporation laws must be brought in the supreme court in the judicial district in which the office of the corporation is located at the time of service on the corporation of a summons in such action or of the presentation to the court of the petition in such special proceeding. However the failure to comply with this requirement is not a jurisdictional defect but involves only a question of venue which is waived if objection thereto is not timely raised by the parties, and the judgment entered in the proceeding brought in an improper county is not void for lack of jurisdiction. See Application of Elishewitz Hat Co., 42 Misc. 2d 51, 247 N.Y.S.2d 806 (Sup 1964)(petitioners for dissolution could not, having brought the proceeding in Kings County, be heard after judgment was entered therein to object to the court's jurisdiction on the ground that they themselves had brought the proceeding in an improper county).

In this case, there is no question that the Defendant has consented to New York as the proper venue for this proceeding. As such any objections to this Court rendering a decision as to any of the cause of action before it is improper and untimely.

The Partnership no longer serves any legitimate or intended purpose.

Time and time again the Defendant fails to address the fact that the Partnership no longer serves any purpose. Therefore any discussion about whether the Plaintiff acquiesced to the continuation of the Partnership is ultimately beside the point.

§ 17-802 clearly provides that the Court can enter a decree of dissolution where "it is not reasonably practicable to carry on the business in conformity with the Partnership agreement".

While the Plaintiff has set forth ample basis for why it is not "reasonably practicable" to carry on the Partnership in conformity with the Partnership Agreement (as the Partnership is not acting pursuant to either the original or limited extended purpose) the Defendant has failed to set forth even a single reason as to why the Partnership should continue or what legitimate purpose the Partnership may still hold. What is the present purpose of the Partnership?

As the Plaintiff noted in the underlying moving papers the Partnership was extended for the **specific, sole and limited purpose** of pursing litigation against the Taittinger family. It is uncontested that said litigation failed and all appeals have been denied. The Partnership therefore no longer serves any purpose and the general Partner (the Defendant) must now wind down the affairs of the Partnership and return the contributions of the limited Partners pursuant to DRUPLA § 17-804.

Again the Defendant fails to refute the contention that the Partnership was extended for the **specific, sole and limited purpose** of pursing litigation against the Taittinger family, nor does the Defendant offer a single reason as to why the Partnership may still hold a legitimate purpose.

Section 15-406 of the Delaware Revised Uniform Partnership Act is inapplicable because the Plaintiff is (1) not an "active" partner and (2) the Plaintiff only expressly consented to a ***limited*** *extended purpose of the Partnership*

The Defendant cites §15-406 of the Delaware Revised Uniform Partnership Act as the only basis for extending the Partnership purpose. The Defendant's reliance on said statute is misguided and the facts of this case do not lend itself to its applicability.

First, §15-406 unequivocally requires that the Partner who acquiesced to the continuation of the partnership be one that "habitually acted in the business or affairs" of the partnership. In this

case, the Plaintiff is a limited partner which by its very definition means that it is not involved in the business or affairs of the partnership, let alone "habitually".

Second, as stated in the Verified Amended Complaint and the Affidavit of Theodore K. Thornton annexed hereto, the Plaintiff never acquiesced to the continuation of the Partnership except for the very limited purpose of pursing litigation against the Taittinger family.

It is uncontested that said litigation failed and all appeals have been denied. Therefore the partnership no longer serves any of its originally intended purposes nor does it maintain an ongoing legitimate purpose.

POINT II

THE PLAINTIFF IS ENTITLED TO AN ACCOUNTING

A partner's right to an accounting is well embedded in the current and prior statutory scheme. For instance under the prior statutory scheme, Section 43 of the Delaware Uniform Partnership Law ("DUPL") provides that "[t]he right to an account of his interest shall accrue to any partner ... at the date of dissolution, in the absence of any agreement to the contrary." In addition, Section 21 (6 *Del. C.* § 1521) entitled "Partner accountable as a fiduciary" provides that every partner "must account to the partnership for any benefit, and hold as trustee for it any profits, derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property." Furthermore, Section 22 of DUPL (6 *Del. C.* § 1522) gives a partner the right to a formal accounting as to partnership affairs: (1) if he is wrongfully excluded from the partnership business by his copartners; (2) if the right to an accounting is granted by the agreement; (3) [a]s provided by [Section 21] of this title; (4) when such an action is just and reasonable.

Even the current Delaware Revised Uniform Partnership Act § 15-405 (the more current law governing partnerships) furthers the long history of preserving a partner's right to an accounting:

> A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.
>
> A partner may maintain an action against the partnership or another partner for legal or equitable relief, **with or without an accounting as to partnership business**, to:
>
> enforce the partner's rights under the partnership agreement;
>
> enforce the partner's rights under this chapter, including:
>
> the partner's rights under Sections 15-401, 15-403 or 15-404;
>
> (ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 15-701 or enforce any other right under Subchapter VI or VII; or
>
> (iii) the partner's right to compel a dissolution and winding up of the partnership business under Section 15-801 or enforce any other right under Subchapter VIII; or
>
> (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.
>
> (c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.
>
> (d) A partner may bring a derivative action in the Court of Chancery in the right of a partnership to recover a judgment in the partnership's favor.
>
> (e) In a derivative action, the plaintiff must be a partner at the time of bringing the action and:
>
> At the time of the transaction of which the partner complains; or
>
> The partner's status as a partner had devolved upon the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

(f) In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the partnership or the reason for not making the effort.

(g) 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, from any recovery in any such action or from a partnership.

The underlying action is derivative in nature. Plaintiff has an unqualified right to an accounting pursuant to § 15-405(b). Furthermore there is nothing in the statute that limits the Court's ability to grant the Plaintiff's demand for said accounting.

POINT III

THE PLAINTIFF'S MOTION IS PROPER UNDER NEW YORK LAW AND THE CIVIL PRACTICE LAW AND RULES

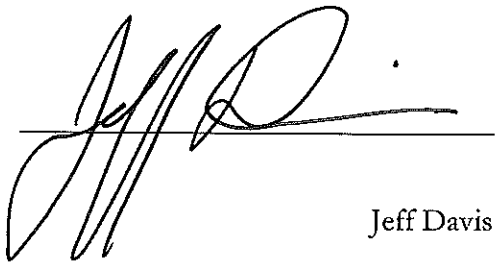
The Defendant contends that New York Law is not the proper procedural law to govern this case. Remarkable. First, this case has always been substantively governed by Delaware law but procedurally (having been brought in New York as the agreed upon and proper venue) governed by New York Law and the Civil Practice Law and Rules. What makes the Defendant's objection to the Plaintiff's decision to bring its motion to dismiss under New York Law remarkable, audacious, and ultimately disingenuous is the very fact that that the Defendant brought not one but **two motions before this Court pursuant to the CPLR** and even brought its cross motion now pursuant to New York Law. See the Defendant's Notice of Motion (001) to Dismiss, Notice of Motion (002) to Dismiss and Notice of Cross Motion (003) annexed hereto as **Exhibit "1"**. All three motions have been brought by the Defendant pursuant to the CPLR. How can the Defendant now for the first time in the year and half since this litigation has been commenced, object to New York Law as the proper procedural law? In a word the Defendant's objection is duplicitous.

CONCLUSION

For all the foregoing reasons it is respectfully requested that the Plaintiff's motion for summary judgment be granted and the Defendant's cross motion for summary judgment be denied.

Dated: New York, N.Y.

October 10, 2012



Jeff Davis

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.

Index No. 650950-2011

Plaintiffs,

AFFIDAVIT

-against-

ASHER B. EDELMAN

Defendant.

----------X

THEODORE K THORNTON being duly sworn deposes and says as follows:

1. I am a principal of the Plaintiff HOLDRUM INVESTMENTS NV and as such I set forth this affidavit on personal knowledge.
2. It has been to my great mis-fortune that I chose to invest with Mr. Asher Edelman ("Edelman") in the mid 1990's. This mistake has cost me great losses firstly as a result of the failure of Edelman's investment strategy, and secondly as a result of Edelman's breach of fiduciary duty i.e. use of my funds for his personal benefit, without my permission, and refusal to return my funds when they were due.
3. During the 1990's, Edelman pursued the strategy of attempting to intimidate the Board of Directors of Societe de Louvre (a French conglomerate) into breaking up the company and selling units in order to maximize shareholder value. This effort was thwarted by the controlling shareholders (the Tattinger family) and the French courts, which continually sided with the Tattingers. Edelman abandoned this strategy and returned most, but not all, of the funds of the Partnership (Museum Partners) to the partners. This distribution was not at any significant gain or loss, except for the time value of money.

4. As of 1998, the Partnership should have been dissolved according to its terms, but Edelman continued on. This path was challenged by various partners, and Edelman settled out of court with these partners, returning their funds.

5. With the roughly $2 million of cash funds Edelman retained, Edelman pursued various lawsuits in the New York courts against principals of the Tattinger family. I consented to the continuation of the partnership for this limited purpose. After all litigation against the Tattinger Family failed, Edelman pursued legal action against Starwood Group. Edelman alleged that Starwood Group used confidential information that Edelman had shown to Starwood in order to capitalize upon Edelman's information and ultimately conclude a highly profitable deal with Societe de Louvre as Edelman had recommended. Nonetheless, all of these lawsuits failed.

6. I followed the progress of these lawsuits with interest, as I believed that they had merit and that some successful settlement might be achieved. I communicated regularly with Edelman in order to monitor the suits. It was understood that I was on board with continuing the partnership for the limited purpose of pursuing the lawsuits. This activity continued from about 2000 to 2010. Virtually all of my communications with Edelman were telephonic. Edelman consistently avoided the use of emails. I have come to believe that this was his deliberate strategy in order to minimize the risk that his malfeasance would become documented.

7. Later in this period, I asked Edelman's in-house accountant, Mr. Irving Garfinkle, in what bank the Partnership held the cash of the Partnership. This cash should have been about $2 million. Mr. Garfinkle told me that the funds were not in any bank, but that Edelman personally had the cash. I told Mr. Garfinkle that this constituted a violation of law, and a breach of Edelman's fiduciary duty to the Partners. I advised Mr. Garfinkle that the funds

should be segregated and not commingled with Edelman's assets. Mr. Garfinkle told me that I should not worry because "Edelman was good for it" (or some such similar language). I did not approve of this reply. Edelman later represented to me that his net worth was $30 million. I do not believe this. It is possible that his gross assets were close to $30 million (primarily his NYC town house and his art portfolio), however, he was also highly leveraged and illiquid. Upon information and belief his extreme illiquidity is what drove him to abuse the Partnership's funds. In any event, Edelman's net worth and his illiquidity are irrelevant to the allegation and fact of his malfeasance. His net worth may, however, be relevant to the appropriate damages.

8. Later, I discussed this matter with Edelman several times and advised him that he was clearly in violation of law for having breached his fiduciary duty to the Partners. Edelman did not respect my assertion that his act was a violation of law and a breach of his duty to the Partners such as myself. Edelman's attitude on this matter was flippant.

9. At some point during 2010 (approximately), the final suit was being pursued against Starwood Group. Having lost at lower court level, Edelman was seeking leave to appeal to the Appellate Court. This was the last and only remaining action that could possibly be pursued. It was the end of the road. I monitored this matter closely with Edelman. Most importantly, I advised Edelman that if the leave to appeal was denied, then Edelman should return all of the cash to the Partners immediately as the Partnership no longer would have any legitimate business to continue. I also informed Edelman that I had an exciting investment that I wanted to pursue with my funds and that I needed the return of my funds immediately in order to achieve the deadline for investing in this new, exciting investment fund. If the funds of the Partnership had been properly segregated, then there should have been, and would have been no difficulty in immediately returning the funds to the Partners,

but, of course, the funds were not properly segregated and as a result I missed out on a promising investment opportunity.

10. In September of 2010, upon my calling Edelman, he informed me that the request for leave to appeal had been denied in July, nearly 3 months prior. Edelman told me that his lawyers had "forgotten" to inform him. I found this statement to be highly dubious and not credible.
11. I told Edelman that I needed my funds immediately in order to achieve the deadline of my targeted investment. This new investment was Firebird Mongolia Fund. Because Edelman did not then return my funds timely, I did not achieve this new investment and the Fund closed to new money late in 2010. Thus, on the approximately $190 thousand which I would have invested in the Fund would now be worth approximately $340 thousand, I have missed a profit of about $150 thousand. This loss is a direct consequence of Edelman's malfeasance.
12. From late 2010 onward, I continually pressed Edelman for all of my funds. Edelman continually promised to get me my money, and yet, amazingly, none of it ever showed up. In early 2011, he promised me a payment of $50 thousand, and only $10 thousand showed up. At that point, I filed suit for my funds, as he had left me no choice. It was obvious to me that he was just stalling me, lying to me, and abusing my trust while calling me his "friend." It is equally obvious to me that the reason that Edelman was not paying me immediately is that the Partnership's funds were tied up in his art portfolio, which is highly illiquid and would have required a distressed sale to raise the necessary $1.2 million to pay off the other Partners, including myself for about $190 thousand. The $1.2 million figure represents about 60% of the gross $2.0 million of cash, as Edelman himself is about 40% of the Partnership, according to the tax returns of the Partnership.

13. The Partnership tax returns of three years that Edelman has provided prove that Edelman had personal possession of the funds of the Partners. The tax returns do NOT show significant cash in the bank, as the line on the Federal Tax Form provides. Instead, the Partnership tax return shows the primary asset on a line entitled "Reserve for litigation expense." In accounting terminology, a "reserve" is a liability, not an asset. If it is not cash, but an asset, then it might reasonably be a "prepaid expense." However, it is obvious that Edelman has not prepaid litigation expense. The logical conclusion to be drawn is that this line title for the asset is a contrivance to cover the truth that Edelman has taken the Partnership's funds, commingled them with his own and used them to finance his personal business and assets, such as his art portfolio. There is a line on the Partnership tax form for "Due from General Partner," and indeed Edelman shows a small figure on this line. Unfortunately, this small figure comes well short of including the full amount owed by Edelman to the partners, so one must conclude that the Partnership's presentation of the balance sheet of the Partnership is untrue. Edelman is the sole General Partner of the Partnership and signed the Partnership return under penalty of perjury. He is therefore the only person responsible and the only person who had the power to remove funds from the Partnership. Having concluded, above, that the Partnership's presentation of the balance sheet of the Partnership is untrue, one must also conclude that, by signing the tax return, Edelman substantially mis-represented the truth of the assets of the Partnership.

14. Edelman has alleged that I have not cooperated with discovery. This is not true. The fact is that there are no emails that I have. This is for two reasons. Firstly, as I said, Edelman conducted the great majority of our communications telephonically. Secondly, I have had several computers, computer crashes, changes of software, etc. all of which have resulted in

my loss of email files. Finally, if there were any relevant emails, then Edelman or Mr. Garfinkle would also have them. Yet, the only email that Edelman has quoted is one in which I ask for all of my money back, pronto. Any other emails that he has from me probably support my position strongly, which is why Edelman conveniently does not quote them.

WHEREFORE it is respectfully requested that the Plaintiff's motion for summary judgment be granted and the Defendant's motion for summary judgment be denied in its entirety.

Dated; October 10, 2012

New York, N.Y.

By: _____

Theodore K. Thornton

SWORN TO BEFORE ME ON THIS 10TH DAY OF OCTOBER 2012

_____

NOTARY PUBLIC

ROBERT J. GUINEY
Notary Public, State of New York
#01GU6006166
Qualified in Franklin County
My Commission Expires June 8, 2014

Exhibit 1

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.** :

PlaintiffS, : **NOTICE OF MOTION**

-against- :

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

Defendant.

----------x

PLEASE TAKE NOTICE that the undersigned attorneys for defendant Asher B. Edelman will move this Court in Room 130, at the courthouse thereof located at 60 Centre Street, New York, New York, on the 30th day of June, 2011, at 9:30 a.m. or as soon thereafter as counsel may be heard, for a order pursuant to CPLR 3211 dismissing the Verified Complaint by plaintiffs, Holdrum Investments N.V. and Museum Partners L.P., and to such other and further relief as this Court deems just and proper.

This is a breach of fiduciary duties action.

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned by hand at least seven days before the return date of this motion.

Dated: New York, New York
May 24, 2011

MEIER FRANZINO & SCHER, LLP.

BY _____

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

TO: Jeff Davis, Esq.
Law Office of Jeff Davis, Esq.
Attorneys for Plaintiffs
301 East 79th Street, Suite 14F
New York, New York 10075
(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.** :

PlaintiffS, : **NOTICE OF MOTION**

-against- :

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

Defendant.

----------x

PLEASE TAKE NOTICE that the undersigned attorneys for defendant Asher B. Edelman will move this Court in Room 130, at the courthouse thereof located at 60 Centre Street, New York, New York, on the 9th day of November, 2011, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to CPLR 3211 dismissing the Amended Verified Complaint by plaintiffs, Holdrum Investments N.V. and Museum Partners L.P. for failure to state a cause of action and for attorney's fees, and to such other and further relief as this Court deems just and proper.

This is a breach of fiduciary duties action.

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned by hand at least seven days before the return date of this motion.

Dated: New York, New York
October 7, 2011

MEIER FRANZINO & SCHER, LLP.

BY _____

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

TO: Jeff Davis, Esq.
Law Office of Jeff Davis, Esq.
Attorneys for Plaintiffs
80 Maiden Lane, Suite 2205
New York, New York 10038
(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.

Plaintiffs,

-against-

ASHER B. EDELMAN

Defendant.

----------X

Index No. 650950-2011

NOTICE OF CROSS MOTION

SIR/MADAM:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Jeff Davis, Esq., duly affirmed to on November 9, 2011, the affidavit of Theodore Thornton, Memorandum of Law in Opposition of Defendant's Motion to Dismiss and in Support of Cross Motion to Amend the Complaint, and upon all the pleadings and proceedings heretofore and herein, the undersigned will move this Court in **Part**_____ room 60 thereof, at the Court house located at 60 Centre Street in the City of New York, County of New York, State of New York, on the 9th **day of November 2011, at 9:30 a.m.** of that date or as soon thereafter as counsel can be heard for an order Granting plaintiff's motion to amend the complaint; and For such other and further relief as the Court may deem just and proper under the circumstances.

Pursuant to N.Y. C.P.L.R. 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

DATED: November 9, 2011
NEW YORK, N.Y.

JEFF DAVIS, ESQ.
80 Maiden Lane Suite 2205
NEW YORK, N.Y. 10038
347-494-1529

To: Meir Franzino & Scher, LLP
Attorneys for the defendant
570 Lexington Ave., 26th Fl.
New York, NY 10022

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.

Index No. 650950-2011

Plaintiffs,

-against-

ASHER B. EDELMAN

Defendant.

----------X

OPPOSITION TO DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT

Davis & Friedman LLP
Attorneys for Plaintiff
80 Maiden Lane, Suite 2205, New York, N.Y. 10038
Tel: (212) 430 5968 Fax: (718) 228 9125

AFFIRMATION OF SERVICE

The undersigned also hereby affirms under penalty of perjury pursuant to CPLR 2106 that the following is true and correct. I am not a party to the action. I am over the age of eighteen years and maintain an office in the County of New York, City and State of New York. On October 11, 2012 I served the above referenced papers by electronic mail and by mailing the same in a sealed envelope with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York, to the following address:

Meir Franzino & Scher
570 Lexington Avenue, 26th Floor
New York, N.Y. 10022
(212) 759 9770
(212) 644 2298

Date 10/11/12

Signature