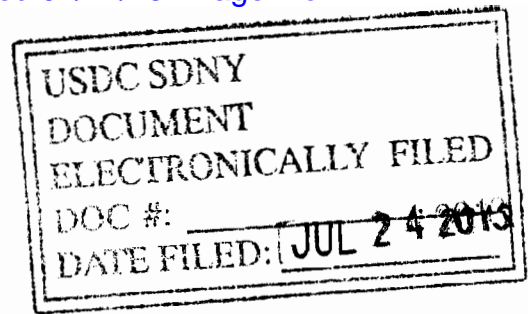


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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EMMANUEL JUSTINIANO, et al.,

Plaintiffs,

-v-

No. 13 Civ. 2332 (LTS)

PHOENIX BEVERAGES, INC., et al.,

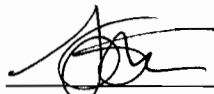
Defendants.

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ORDER

Presently before the Court is Defendants' motion to dismiss Plaintiffs' Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6) or, alternatively, Federal Rule of Civil Procedure 12(d). In support of their motion to dismiss, Defendants rely on matters outside the pleadings, notably the declaration of Rodney Brayman and exhibits attached thereto. The Court thus finds it appropriate to convert Defendants' motion to dismiss to a motion for summary judgment under Federal Rule of Civil Procedure 56. See Fed. R. Civ. P. 12(d) (providing that if a motion to dismiss presents matters outside the pleadings which are not excluded by the court, "the motion must be treated as one for summary judgment [and a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion"). Plaintiffs are directed to file any affidavits or other evidence in support of their opposition to Defendants' motion by August 7, 2013. A courtesy copy of any such filing must be provided to Chambers.

SO ORDERED.

Dated: New York, New York
July 24, 2013



LAURA TAYLOR SWAIN
United States District Judge