

2016 WL 3006096  
Supreme Court, Appellate Division, First  
Department.  
THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE  
DIVISION, FIRST DEPARTMENT.

Dr. Steven Rosenfeld, Plaintiff–Respondent,  
v.  
Joel Schreiber, Defendant, Dr. Samuel Waksal, et  
al., Defendants–Appellants.

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|  
ENTERED: MAY 26, 2016

**Attorneys and Law Firms**

Kasowitz Benson Torres & Friedman LLP, New York  
(Christopher P. Johnson of counsel), for appellants.

Meissner Associates, Nyack (Stuart D. Meissner of  
counsel), for respondent.

Friedman, J.P., Acosta, Saxe, Gische, Webber, JJ.

**Opinion**

Order, Supreme Court, New York County (Jeffrey K.  
Oing, J.), entered June 9, 2015, which, to the extent  
appealed from as limited by the briefs, denied defendants  
Dr. Samuel Waksal, Kadmon Capital, LLC, and Kadmon  
Corporation, LLC’s motion to dismiss the complaint as  
against them on statute of frauds grounds, unanimously

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affirmed, with costs.

Plaintiff alleges that he and defendant Dr. Samuel  
Waksal, individually and as promoter of defendants  
Kadmon Capital, LLC, and Kadmon Corporation, LLC,  
entered into a written agreement pursuant to which he  
would raise \$50 million from investors for a joint venture  
and would receive a 6% equity interest in the joint venture  
as compensation.

The allegations that the parties entered into a written  
agreement signed by both plaintiff and Waksal and setting  
forth all the parties’ material contractual obligations are  
sufficient to satisfy the statute of frauds at this stage of the  
litigation (*see Saivest Empreendimentos Imobiliarios E.  
Participacoes, Ltda v Elman Invs., Inc.*, 117 AD3d 447  
[1st Dept 2014]; *see also Chapman, Spira & Carson, LLC  
v Helix BioPharma Corp.*, 115 AD3d 526, 528 [1st Dept  
2014] ). The documentary evidence submitted by  
defendants does not conclusively establish that no  
agreement existed (*see Leon v. Martinez*, 84 N.Y.2d 83,  
88 [1994] ).

We have considered defendants’ remaining contentions  
and find them unavailing.

CLERK

**All Citations**

--- N.Y.S.3d ----, 2016 WL 3006096, 2016 N.Y. Slip Op.  
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