

EMILY JANE GOODMAN

PART 17

Index Number : 106425/2010

GUL, ASIA

VS.

LASER COSMETICA LLC.

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his motion to/for _____

FILED PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

APR 19 2011

Replying Affidavits _____

NEW YORK COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon the foregoing papers, it is ordered that this motion *be granted* motion to dismiss the complaint against Defendants The Bloch Group, LLC and Laser Cosmetics, LLC, based solely on the affidavit of Ryan Bloch, both LLC's plaintiff is deeded. Apart from whether *an affidavit can support dismissal which must be based upon DOCUMENTARY evidence which utterly refutes* Plaintiff's contentions (see *Adov. McNick, 61 AD3d 453 [1st Dept 2009]*), the affidavit does not explain why the website of Laser Cosmetics, LLC lists a location at 16 Broadway (where Plaintiff alleges she was treated) and where the phone number is stated. Counsel's statement in reply, challenging the authenticity of the documents, does not obviate the need for an affidavit from a person with knowledge, where the burden is Defendants to bear. *Further* although Ryan Bloch states that The Bloch Group LLC only performs administrative services, it is not clear what these services entail, especially in light of Plaintiff's unrefuted evidence that "Laser Cosmetics" is registered to Plaintiff. *Accordingly, absent discovery, it would be premature to grant this motion*

Dated: 4/11/11


 EMILY JANE GOODMAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG. SETTLE ORDER /JUDG.