

**HARD COPY**

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

**COPY**

**ADMINISTRATIVE PROCEEDING  
File No. 3-16462**



**In the Matter of**

**LYNN TILTON;  
PATRIARCH PARTNERS, LLC;  
PATRIARCH PARTNERS VIII, LLC;  
PATRIARCH PARTNERS XIV, LLC;  
AND  
PATRIARCH PARTNERS XV, LLC,**

**Respondents.**

**DIVISION OF ENFORCEMENT'S  
OPPOSITION TO RESPONDENTS'  
MOTION *IN LIMINE* TO PRECLUDE  
THE INTRODUCTION OF DIVISION  
EXHIBITS 118-123 (LETTERS FROM  
RESPONDENTS' COUNSEL)**

**Introduction**

The Division of Enforcement ("Division") respectfully files this opposition to Respondents' Motion *in Limine* to Preclude the Introduction of Division Exhibits 118-123 (Letters from Respondents' Counsel) ("Motion"). These exhibits – which are statements by Respondents' agents – bear on various issues in this proceeding, including Respondent's business model and the Zohar fund investors. The evidence is not "irrelevant, immaterial, unduly repetitious, or unreliable." Am. Rule of Prac. 320(a). Respondents' Motion should be denied.

**Legal Standard**

Under longstanding Commission precedent, law judges are to be inclusive in making evidentiary determinations. *See, e.g., City of Anaheim*, 54 S.E.C. 452, 454 & nn.5-7 (1999) ("Our law judges should be inclusive in making evidentiary determinations. ... '[I]f in doubt, let it in.'"); *accord Charles P. Lawrence*, 43 S.E.C. 607, 612-13 (1967) ("[A]ll evidence which 'can conceivably throw any light upon the controversy' should normally be admitted."). Further, law

judges should be particularly hesitant to exclude evidence on a motion *in limine*, doing so only when “the evidence is clearly inadmissible on all potential grounds.” *In the Matter of Morgan Asset Management, Inc.*, Admin. File No. 3-13847 (Sept. 7, 2010) (quoting *SEC v. U.S. Envtl., Inc.*, 2002 U.S. Dist LEXIS 19701, at \*5-6 (S.D.N.Y. Oct. 16, 2002)).

### **Argument**

Respondents argue that statements made in letters from their counsel to the Division “concerning various aspects of the Division’s investigation of this matter” should be excluded. Motion at 1. Respondents tersely argue that the letters “do not aid in the resolution of the issues to be decided at trial.” *Id.* at 2. Respondents are wrong. The letters provide substantive information about this matter, including, among other things, “background information that Patriarch believes may be helpful in understanding its business model” (Div. Ex. 118 at 1), background information about Ms. Tilton (Div. Ex. 121), information about investors in the Zohar funds (Div. Ex. 119), information about communications with the directors of the Zohar funds (Div. Ex. 120), and information about loan amendments (Div. Ex. 122). These factual matters are at issue in this proceeding. Thus, statements made by Respondents’ counsel in this investigation should not be excluded from evidence.

Moreover, these statements by Respondents’ counsel are not hearsay. *See* Fed. R. Evid. 801(d)(2)(C) & (D); *see also, e.g., U.S. v. Joseph*, 483 F.App’x. 146, 150, 2012 WL 1959306, at \*3 (6<sup>th</sup> Cir. 2012) (“A statement is not hearsay when that statement is offered against a party and ‘was made by a person whom the party authorized to make a statement on the subject.’ Fed. R. Evid. 801(d)(2)(C). An attorney acting under a properly executed power-of-attorney is authorized to make out-of-court admissions on behalf of his client, to the extent that those admissions are directly related to the management of the litigation at issue.”). Thus, even in a federal district court

proceeding, these statements would be admissible against Respondents. There is no reason to exclude them here.

**Conclusion**

For the foregoing reasons, Respondents' Motion should be denied.

Dated: September 19, 2016

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' MOTION *IN LIMINE* TO PRECLUDE THE INTRODUCTION OF DIVISION EXHIBITS 118-123 (LETTERS FROM RESPONDENTS' COUNSEL)** was served on the following on this 19<sup>th</sup> day of September, 2016, in the manner indicated below:

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