

**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 ADMISSION OF ANY PORTIONS  
OF INVESTIGATIVE TESTIMONY  
TRANSCRIPTS WITHOUT THE  
INTRODUCTION OF  
CORRESPONDING PORTIONS OF  
AUDIO RECORDINGS OF THE  
TESTIMONY, AND TO EXCLUDE  
TRANSCRIPTS FOR WHICH AUDIO  
RECORDINGS WERE NOT  
PRESERVED AND PRODUCED**

**Introduction**

The Division of Enforcement (“Division”) respectfully files this opposition to Respondents’ Motion *in Limine* to Preclude the Admission of Any Portion of Investigative Testimony Transcripts Without the Introduction of Corresponding Portions of Audio Recordings of the Testimony, and to Exclude Transcripts for which Audio Recordings were not Preserved and Produced (“Motion”). Respondents essentially ask Your Honor to rule that parties may no longer use written transcripts of investigative testimony prepared by certified court reporters in Commission proceedings, but instead must rely *only* on the backup audio files that some court reporters make. Respondents request is unsupported by the law, common practice, or common sense. While the Division stands ready to discuss particularized concerns Respondents may have about certain portions of investigative testimony, Respondents’ request for a blanket ruling precluding the use of written transcripts should be denied.

## Background

During the investigation of this matter, the Division took on the record testimony from nineteen individuals. Each of those individual's testimony was recorded by a court reporter. Each testimony session resulted in a written transcript, certified by the court reporter to be accurate. *See* Ex. 1 (compilation of certificates from investigative testimony transcripts). The transcripts also contain a proofreader's certificate swearing and affirming that the transcript was the "original, complete, true and accurate transcript that has been compared to the reporting or recording" of the testimony. *See id.*<sup>1</sup>

These proceedings were instituted on March 30, 2015 by the Commission's Order Instituting Proceedings ("OIP"). A week later, on April 6, 2015, the Division produced to Respondents electronic copies of the transcripts of investigative testimony. *See* Ltr. from D. Bliss to C. Gunther, dated April 6, 2015 (attached hereto as Ex. 2.)

On August 17, 2016, Respondents first contacted the Division requesting audio recordings of investigative testimony. *See* Ltr. from R. Mastro to D. Bliss dated Aug. 17, 2016, at 3 (attached hereto as Ex. 3.) Shortly thereafter, on September 6, 2016, the Division provided to Respondents the audio recordings of investigative testimony that were in the possession of the Division's Records Management office. *See* Ltr. from D. Bliss to R. Mastro dated Sept. 6, 2016, attached hereto as Ex. 4.) As explained in that letter, counsel for the Division was

unaware that these recordings existed until we inquired after receiving [Respondents'] August 17, 2016 letter requesting them. These recordings were received and maintained by Enforcement's Records Management office in

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<sup>1</sup> In their Motion, Respondents complain that the certificates are unsigned in the versions the Division previously produced. The Division produced to Respondents the electronic versions of the investigative testimony, in which the certificates are unsigned. The Division is in the process of gathering the hard copy versions of the investigative testimony, which contain signed versions of those certificates, and will produce these versions to Respondents.

Washington D.C. and were never in the possession of investigative or trial staff. The Records Management office does not have audio recordings of all investigative testimony because not all court reporters provided it to that office.

*See id.*<sup>2</sup>

### Argument

#### **I. The “Best Evidence Rule” Does Not Require Introduction of Audio Recordings of Testimony in Lieu of Written Transcripts of Testimony.**

Respondents first argue that the audio recordings of investigative testimony, rather than the written transcripts of that testimony, are the “best evidence” of what the witness said, and thus that the Division should not be permitted to offer written transcripts into evidence or use those transcripts to impeach or refresh the recollection of witnesses. As a threshold matter, the Motion is largely premature, since, as the Division has made clear in prior papers, at this time it does not intend to move the introduction of any non-party investigative testimony transcripts pursuant to Rule 235(a). But even considering Respondents’ argument, as explained below, that argument fails. The Division does not dispute Respondents’ self-evident statement that it is important that transcripts be accurate (*see* Motion at 6), but Respondents have offered nothing more than hyperbolic claims to suggest there are any such inaccuracies. Nor do any of the cases they cite suggest – much less hold – that transcripts of on the record testimony violate the best evidence rule.

Respondents claim that the transcripts are “riddled with obvious errors.” Motion at 6. To support this statement, however, Respondents muster nothing more than two questions and two answers that Respondents claim “appear to be the product of transcription errors.” *Id.* at n.4. While the Division stands ready to discuss with Respondents any particularized issues with the

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<sup>2</sup> The Division understands that, per the terms of the contract with the court reporting service, the court reporting service is only required to maintain the backup audio files for one year.

transcripts, Respondents offer no basis for a wholesale prohibition on the use of the transcripts of investigative testimony at the hearing, including to impeach or refresh the recollection of a witness.

Nor do the cases Respondents cite support their argument that the use of transcripts of on the record testimony – as opposed to audio recordings of that testimony – violates the best evidence rule. For example, in *Dagen v. CFC Grp. Holdings, Ltd.*, the transcripts at issue were uncertified transcripts that the plaintiff created of conversations he surreptitiously recorded by wearing a wire. 2004 WL 830057, \*1 (S.D.N.Y. Apr. 13, 2004). Similarly, in *Molodecki v. Robertson Display, Inc.*, the plaintiff attempted to introduce an affidavit that was a “self-transcribed tape-recorded conversation.” 2002 WL 34421226, \*1 (M.D. Fl. Sept. 10, 2002). And in *In re Piper Capital Mgmt., Inc.*, the parties submitted separate written transcripts of telephone conversations between employees of the respondent and employees of a third party. 2003 WL 22016298, \*13 & n.60 (Aug. 26, 2003). In none of these cases did a court endorse the position Respondents suggest: that transcripts of on the record testimony are inadmissible under the best evidence rule.<sup>3</sup>

To the contrary, courts have held that transcripts *are* the best evidence of on the record testimony. *See, e.g., A.H.D. C. v. City of Fresno, Cal.*, No. CV-F-97-5498OWWSMS, 2000 WL 35810722, at \*14 (E.D. Cal. Aug. 31, 2000) (“A true, certified transcript, including an accurate photocopy of a deposition is the best evidence.”); *U.S. ex rel. King v. Hilton*, 503 F. Supp. 303, 312 (D.N.J. 1979) (“Where the alleged prior inconsistent statement is in the form of testimony taken on a stenographic record, the best evidence is a certified transcript of that record.”); *but cf. U.S. v.*

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<sup>3</sup> Respondents also cite *Pool v. Comm’r of Internal Revenue*. *See* Motion at 7-8. But in *Pool*, the court was simply commenting on the unremarkable proposition that a trier of fact is in a better position to observe the demeanor of a witness than an appellate court reviewing a written record. 251 F.2d 233, 247 & n.28 (9<sup>th</sup> Cir. 1957). *Pool* does not hold – or even suggest – that written transcripts of testimony are inadmissible under the best evidence rule.

*Workinger*, 90 F.3d 1409, 1415 (9<sup>th</sup> Cir. 1996) (stating tape of deposition was “best evidence of its own content,” but finding best evidence rule not violated by admission of transcript of deposition when tape was not available). Indeed, investigative transcripts are routinely admitted as substantive evidence, or used to impeach or refresh recollection, in administrative proceedings. *See, e.g., In the Matter of Mohammed Riad*, Rel. No. 871, 2013 WL 11234082 (Sept. 16, 2013) (admitting portions of four witnesses’ investigative testimony transcripts); *In the Matter of Del Mar Financial Servs., Inc.*, Rel. No. 188, 2001 WL 919968, \*17 (Aug. 14, 2001) (noting the Division attempted to refresh witness recollection using investigative testimony); *In the Matter of Valicenti Advisory Servs., Inc.*, Rel. No. 111, 1997 WL 362000, \*3 (July 2, 1997) (noting the Division attempted to impeach witness by pointing to inconsistencies between trial and investigative testimony).

In sum, Respondents’ argument for exclusion of the transcripts under the best evidence rule is unsupported. The Division should be permitted to examine witnesses the way any lawyer in any court in this country does every day – by referring the witness to the written record of their prior statements if necessary.

## **II. Exclusion of Transcripts for which there are No Audio Files is Unnecessary.**

Respondents also argue that, for those transcripts where the Division’s office of records management was not provided an audio recording by the court reporter, the Division should be sanctioned and barred from using the transcript in any fashion. Respondents arguments are long on rhetoric, but short on substance. The Division’s production of written transcripts of investigative testimony – and the backup audio recordings that it has in its possession – does not violate any law or policy. Respondents’ argument should be rejected.

As a threshold matter, and contrary to the Respondents’ baseless accusations, the Division has not “destroyed” – or otherwise “neglected to adhere to its obligation” to preserve – relevant

evidence. Motion at 1, 3. Rather, as described above, not all court reporters provided the audio recordings of the investigative testimony that they transcribed to the Division's Records Management Office. The Division is unaware of any audio backup recording of testimony being provided to the Division, but later being lost, misplaced, or destroyed. Further, immediately upon receiving Respondents' request for audio recordings, the Division obtained and produced those audio recordings that were in the Division's possession. It is simply not correct to claim, as Respondents repeatedly do in their Motion, that the Division has engaged in any improper or sanctionable conduct.

Nor is it correct to claim that the Division has violated the terms of the Division's Enforcement Manual. (*See* Motion at 8-9.) The portions of the Manual Respondents cite are inapplicable to investigative testimony. For example, Section 3.2.9.3, on which Respondents rely to claim the Division had an obligation to obtain and track the audio backup for the testimony transcripts, applies to audio files (as well as other electronic files) provided *by third parties* during an investigation. *See, e.g.*, Enforcement Manual Section 3.2.9.3 ("The procedures discussed below provide guidance and suggestions on how the Division staff should maintain files and records produced in electronic formats during the course of their investigations. The staff should strive to maintain and preserve all electronic files received from outside parties in an orderly manner during the course of their investigations and should not alter the original media and files."). It does not address investigative testimony, where there is a contemporaneous, official transcript prepared. *Cf. id.* ("Audio and Video Files: If the electronic medium [produced to the staff] contains audio or video files, the staff may have a transcript prepared of each duplicate recording.").

Similarly, Section 3.2.9.8 applies to audio tapes produced *by third parties* during the course of an investigation. *See, e.g.*, Enforcement Manual Section 3.2.9.7 ("The two most widespread

forms of physical evidence in SEC investigations are audiotapes and electronic media hardware, such as computer hard drives.... Whether the staff obtains originals or copies, the staff generally should follow the procedures in Sections 3.2.9.8 ... of the Manual so that this physical evidence is preserved to ensure its authenticity.”), *id.* Section 3.2.9.8 (“Audio recordings are usually produced in one of two ways. For digital recordings, audio recordings are produced as WAV files on CD-ROMs or DVDs. For analog recordings, the recordings are often produced on audio cassette tapes.... Testimony of the recording’s custodian should establish the producing party’s procedures for making and maintaining audio recordings, the procedures used to produce the audio recordings to the SEC and the location of the originals (if copies were produced).”). Again, the section is not addressing investigative testimony with an official, written transcript. *Cf. id.* (“The staff should have transcripts prepared of all audio recordings with evidentiary value.”).<sup>4</sup>

In addition to their baseless claim that the Division violated the Enforcement Manual, the cases cited by Respondents are simply inapposite. *See* Motion at 10. None of those cases deal with the unavailability of an audio tape backup of a written transcript of on-the-record testimony. Rather, the cases address situations where substantive evidence material to litigation – and which was the only evidence of important facts in question – was destroyed. *See Regulatory Fundamentals Group LLC v. Governance Risk Management Compliance, LLC*, 2014 WL 3844796, \*13 (S.D.N.Y. Aug. 5, 2014) (“It is impossible to know with any certainty who received [the destroyed] emails, when, under what circumstances, and what commentary there was about it ...”); *Novick v. Axa Network, LLC*, 2014 WL 5364100, at \*6 (S.D.N.Y. Oct. 22, 2014) (finding

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<sup>4</sup> Respondents also tersely claim that the lack of audio backup for each of the transcripts of investigative testimony somehow violated the Division’s *Brady* and Jencks obligations. This unsupported argument should be rejected. The Division has provided the transcripts of the testimony to Respondents – thus, they have the witnesses’ “substantially verbatim” statements. Moreover, to the extent the witnesses made any *Brady* statements during testimony, those statements are recorded in the written transcript.

that loss of 8 weeks of contemporaneous audio recordings of trading desk employees made during time period relevant to litigation “prevent[ed] [the plaintiff] from discovering facts material to the adjudication of his claims”); *Zhi Chen v. District of Columbia*, 839 F.Supp.2d 7, 14–15 (D.D.C. 2011) (“[I]t is highly likely that the lost security footage would have been relevant to [plaintiff’s] claims in the broader sense; it would have provided the only objective evidence—in contrast to the possibly biased and certainly conflicting testimony of [the plaintiff] and the defendants—of what actually happened on the night in question.”).

Here, by contrast, the written transcripts of the investigative testimony – which Respondents have – show what the witnesses said during that testimony. Indeed, other than Respondents’ bald claims of “error-ridden” transcripts – claims that are unsupported, as noted above – there is nothing to suggest the Respondents are being deprived of any material evidence. Indeed, numerous courts have held that a transcript is an appropriate substitute for an audio recording if that recording is not available to be played at trial. *See, e.g., U.S. v. Flanders*, 752 F.3d 1317, 1336 (11<sup>th</sup> Cir. 2014) (upholding introduction of transcript rather than audio recording of defendant’s statements; “[T]here is no merit to [defendant’s] argument that the reading into evidence of a transcript of his 2007 post-Miranda statements violated the best evidence rule. ... An original is not required if it is lost or destroyed, unless it is unavailable through bad faith. ... A duplicate is admissible to the same extent as an original, unless there is a genuine question of authenticity or it would be unfair to admit the duplicate.”); *Workinger*, 90 F.3d at 1415 (best evidence rule not violated where tape of deposition had been erased prior to trial and transcript of deposition admitted instead).

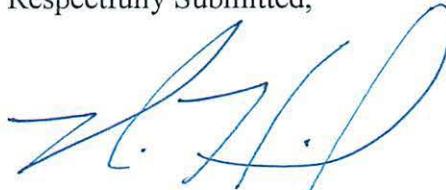
For all of these reasons, Your Honor should reject Respondents' argument that the Division should be precluded from using investigative testimony transcripts for which the Division did not receive backup audio tapes.

**Conclusion**

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

Dated: September 19, 2016

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'D. Bliss', written over a horizontal line.

Dugan Bliss, Esq.  
Nicholas Heinke, Esq.  
Amy Sumner, Esq.  
Mark L. Williams, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
Denver Regional Office  
1961 Stout Street, Ste. 1700  
Denver, CO 80294

**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 ADMISSION OF ANY PORTIONS OF INVESTIGATIVE TESTIMONY TRANSCRIPTS WITHOUT THE INTRODUCTION OF CORRESPONDING PORTIONS OF AUDIO RECORDINGS OF THE TESTIMONY, AND TO EXCLUDE TRANSCRIPTS FOR WHICH AUDIO RECORDINGS WERE NOT PRESERVED AND PRODUCED** was served on the following on this 19<sup>th</sup> day of September, 2016, in the manner indicated below:

Securities and Exchange Commission  
Brent Fields, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
(By Facsimile and original and three copies by UPS)

Hon. Judge Carol Fox Foelak  
100 F Street, N.E.  
Mail Stop 2557  
Washington, D.C. 20549  
(By Email)

Randy M. Mastro, Esq.  
Lawrence J. Zweifach, Esq.  
Barry Goldsmith, Esq.  
Caitlin J. Halligan, Esq.  
Reed Brodsky, Esq.  
Monica K. Loseman, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
(By email pursuant to the parties' agreement)

Susan E. Brune, Esq.  
Brune Law PC  
450 Park Avenue  
New York, NY 10022  
(By email pursuant to the parties' agreement)

Martin J. Auerbach  
Law Firm of Martin J. Auerbach, Esq.  
1330 Avenue of the Americas  
Ste. 1100  
New York, NY 10019  
(By email pursuant to the parties' agreement)

  
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
Patriarch Partners LLC ) File No.  
 ) HO-11665  
 )

WITNESS: JAIME ALDAMA

PAGES: 1-84

PLACE: 200 Vesey Street,  
New York, New York

DATE: Thursday, May 1, 2014

The above entitled matter came on  
for hearing at 2:05 p.m.



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SCOPIST CERTIFICATE

I, JEFFREY SHAPIRO, hereby certify that the foregoing transcript consisting of 84 pages is a complete, true and accurate transcript of the investigative hearing, held on Thursday, May 1, 2014, at Brookfield Plaza, 200 Vesey Street, New York, New York 10281, in the matter of Patriarch Partners, LLC.

I further certify that this proceeding was reported by me and that the foregoing transcript has been scoped by me.

Jeffrey Shapiro  
JEFFREY SHAPIRO (sh)

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
REPORTER'S CERTIFICATE

I, Jeffrey Shapiro, reporter, hereby certify that the foregoing transcript of 84 pages is a complete, true, and accurate transcript of the testimony indicated, held on May 1, 2014, at the Securities and Exchange Commission, Brookfield Plaza, 200 Vesey Street, New York, New York 10281, in the matter of: Patriarch Partners, LLC.

I further certify that this proceeding was recorded by me and that the foregoing transcript was prepared under my direction.

*Jeffrey Shapiro*  
JEFFREY SHAPIRO 

5-15-14  
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PROOFREADER'S CERTIFICATE

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In the Matter of: Patriarch Partners, LLC  
File Number: HO-11665  
Date: May 1, 2014  
Location: Brookfield Plaza  
200 Vesey Street  
New York, New York 10281

This is to certify that I,  
JEFFREY SHAPIRO, the undersigned, do hereby swear and  
affirm that the attached proceedings before the United  
States Securities and Exchange Commission were held  
according to the record, and that this is the original,  
complete, true and accurate transcript that has been  
compared to the reporting or recording accomplished at  
the hearing.

*Jeffrey Shapiro*  
JEFFREY SHAPIRO *(JS)*

5-15-14  
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PROOFREADER'S CERTIFICATE

In the Matter of: PATRIARCH PARTNERS, LLC

Witness: Elvin R. Autry, Jr.

File Number: HO-11665-A

Date: Wednesday, August 8, 2012

Location: Detroit, MI

This is to certify that I, Susan Watkins (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

S. Watkins

8.20.12

(Proofreader's Name)

(Date)

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2 REPORTER'S CERTIFICATE

3  
4 I, Rachel Sunde, reporter, hereby certify that the  
5 foregoing transcript of 120 pages is a complete, true, and  
6 accurate transcript of the testimony, held on August 8, 2012,  
7 at Detroit, Michigan in the matter of: PATRIARCH.

8  
9 I further certify that this proceeding was recorded by me,  
10 and that the foregoing transcript was prepared under my  
11 direction.

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13 DATED: August 9, 2012

14 Official Reporter: R. Sunde/sw

15 Rachel Sunde

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18 Diversified Reporting Services, Inc.  
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PROOFREADER'S CERTIFICATE

In the Matter of: PATRIARCH PARTNERS, LLC  
Witness: Peter Berlant  
File Number: HO-11665-A  
Date: June 18, 2014  
Location: Washington, D.C.

This is to certify that I, Nicholas Wagner,  
(the undersigned), do hereby swear and affirm  
that the attached proceedings before the U.S.  
Securities and Exchange Commission were held  
according to the record and that this is the  
original, complete, true and accurate transcript  
that has been compared to the reporting or recording  
accomplished at the hearing.

          *NW*            
(Proofreader's Name)

          7-1-2014            
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REPORTER'S CERTIFICATE

I, NATASHA USCHOCK, reporter, hereby certify that the foregoing transcript of 93, pages is a complete, true and accurate transcript of the testimony indicated, held on June 18, 2014 at Washington, D.C. in the matter of: PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: 7-1-2014

Official Reporter: Natasha Uschuck / NW  
Diversified Reporting Services, Inc.



PROOFREADER'S CERTIFICATE

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In the Matter of:    Patriarch Partners, LLC  
Witness:               Pamela Lynn Bing  
File Number:         HO-11665-A  
Date:                 Friday, July 20, 2012  
Location:             Phoenix, AZ

This is to certify that I, Susan Watkins (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Susan Watkins

(Proofreader's Name)

7/30/12

(Date)

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2 REPORTER'S CERTIFICATE

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4 I, John P. Lopez, reporter, hereby certify that the  
5 foregoing transcript of 127 pages is a complete, true, and  
6 accurate transcript of the testimony, held on July 20, 2012,  
7 at U.S. ATTORNEY'S OFFICE, 40 North Center Street, Suite  
8 1200, Phoenix, Arizona 85004, in the matter of: PATRIARCH.

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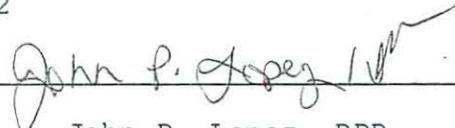
10 I further certify that this proceeding was recorded by me,  
11 and that the foregoing transcript was prepared under my  
12 direction.

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14 DATED: July 22, 2012

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Official Reporter:



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John P. Lopez, RPR

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Certified Reporter 50131

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Diversified Reporting Services, Inc.

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SCOPIST CERTIFICATE

I, JEFFREY SHAPIRO, hereby certify that the foregoing transcript consisting of 72 pages is a complete, true and accurate transcript of the investigative hearing, held on Thursday, May 1, 2014, at Brookfield Plaza, 200 Vesey Street, New York, New York 10281, in the matter of Patriarch Partners, LLC.

I further certify that this proceeding was reported by me and that the foregoing transcript has been scoped by me.

Jeffrey Shapiro  
JEFFREY SHAPIRO

5-15-14

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PROOFREADER'S CERTIFICATE

In the Matter of: Patriarch Partners, LLC  
File Number: HO-11665  
Date: May 1, 2014  
Location: Brookfield Plaza  
200 Vesey Street  
New York, New York 10281

This is to certify that I,  
JEFFREY SHAPIRO, the undersigned, do hereby swear and  
affirm that the attached proceedings before the United  
States Securities and Exchange Commission were held  
according to the record, and that this is the original,  
complete, true and accurate transcript that has been  
compared to the reporting or recording accomplished at  
the hearing.

  
JEFFREY SHAPIRO 

5-15-14  
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
REPORTER'S CERTIFICATE

I, Jeffrey Shapiro, reporter, hereby certify that the foregoing transcript of 72 pages is a complete, true, and accurate transcript of the testimony indicated, held on May 1, 2014, at the Securities and Exchange Commission, Brookfield Plaza, 200 Vesey Street, New York, New York 10281, in the matter of: Patriarch Partners, LLC.

I further certify that this proceeding was recorded by me and that the foregoing transcript was prepared under my direction.

  
JEFFREY SHAPIRO

5-15-14  
Date

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

PATRIARCH PARTNERS, LLC



WITNESS: DAVID CROWLE

PAGES: 1-109

PLACE: Securities and Exchange Commission  
Three World Financial Center - Suite 4300  
New York, New York 10281

DATE: March 17, 2014

The above-entitled matter came on for  
hearing at 9:32 o'clock a.m.

**COPY**

SCOPIST'S CERTIFICATE

1  
2 I, Rena Farber, hereby certify that  
3 the foregoing transcript consisting of 109 pages,  
4 is a complete, true and accurate transcript of the  
5 investigative hearing, held on Monday, March 17,  
6 2014, at 3 World Financial Center, New York, New  
7 York, in the matter of PATRIARCH PARTNERS, LLC.

8 I further certify that this  
9 proceeding was reported by Deborah Moschitto and  
10 that the foregoing transcript has been scoped by  
11 me.

12  
13 Rena Farber  
14 Rena Farber (SR)

13 3-28-14  
14 DATE

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
2 REPORTER'S CERTIFICATE

3 I, Deborah Moschitto, reporter, hereby certify  
4 that the foregoing transcript of 109 pages is a  
5 complete, true, and accurate transcript of the  
6 testimony indicated, held on Monday, March 17,  
7 2014, at 3 World Financial Center, New York, New  
8 York, in the matter of:

9 PATRIARCH PARTNERS, LLC.

10 I further certify that this proceeding was  
11 recorded by me and that the foregoing transcript  
12 was prepared under my direction.

13  
14 3-28-14

15 DATE

16 Deborah Moschitto

17 Official Reporter: Deborah Moschitto  
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PROOFREADER'S CERTIFICATE

In the Matter of: PATRIARCH PARTNERS, LLC

Witness: DAVID CROWLE

File Number: HO-11665/D-3350

Date: MARCH 17, 2014

Location: 3 World Financial Center  
New York, New York

This is to certify that I, Deborah Moschitto, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Deborah Moschitto      3-28-14  
Deborah Moschitto      (SK)      DATE

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**COPY**

In the Matter of: )  
 ) File No. HO-11665-A  
PATRIARCH PARTNERS, LLC )

WITNESS: John H. Ferguson

PAGES: 1 through 201

PLACE: Renaissance Hotel  
Second Floor - Conference Room  
68 Wentworth Street  
Charleston, SC 29401

DATE: Tuesday, July 10, 2012

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:08 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

PROOFREADER'S CERTIFICATE

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In the Matter of: PATRIARCH PARTNERS, LLC

Witness: John H. Ferguson

File Number: HO-11665-A

Date: Tuesday, July 10, 2012

Location: Charleston, SC

This is to certify that I, Susan Watkins (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

S. Watkins

7.20.12

(Proofreader's Name)

(Date)

CERTIFICATE OF REPORTER

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I, Susan Kennedy Crawford, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of July, 2012, at Charleston, Charleston County, South Carolina.

  
\_\_\_\_\_

Susan Kennedy Crawford  
Registered Professional Reporter  
My Commission expires  
May 29, 2013

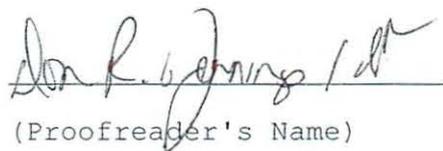


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In the Matter of: PATRIARCH PARTNERS, LLC  
Witness: Christopher Brand Hosford  
File Number: HO-11665-A  
Date: Friday, October 21, 2011  
Location: Charlotte, North Carolina

This is to certify that I, Don R. Jennings (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

  
(Proofreader's Name)

11/3/11  
(Date)

1 STATE OF NORTH CAROLINA )  
2 ) C-E-R-T-I-F-I-C-A-T-I-O-N  
3 COUNTY OF PITT )  
4

5 I, LINDA W. LITTLE, A COURT REPORTER AND NOTARY  
6 PUBLIC IN AND FOR THE AFORESAID COUNTY AND STATE, DO HEREBY  
7 CERTIFY THAT THE FOREGOING PAGES ARE AN ACCURATE TRANSCRIPT  
8 OF THE SEC INVESTIGATION OF MR. BRAND HOSFORD, WHICH WAS  
9 TAKEN BY ME BY STENOMASK, AND TRANSCRIBED BY ME.

10 I FURTHER CERTIFY THAT I AM NOT FINANCIALLY  
11 INTERESTED IN THE OUTCOME OF THIS ACTION, A RELATIVE,  
12 EMPLOYEE, ATTORNEY OR COUNSEL OF ANY OF THE PARTIES, NOR A  
13 RELATIVE OR EMPLOYEE OF SUCH ATTORNEY OR COUNSEL.

14 THIS THE 2ND DAY OF NOVEMBER, 2011.

15 NOTARY PUBLIC NUMBER 200824100039.

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LINDA W. LITTLE

20

COURT REPORTER AND NOTARY PUBLIC

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PROOFREADER'S CERTIFICATE

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In the Matter of: PATRIARCH PARTNERS, LLC  
Witness: Douglas Scott McIlvaine  
File Number: HO-11665-A  
Date: Tuesday, August 21, 2012  
Location: Charleston, SC

This is to certify that I, Susan Watkins (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

S. Watkins

8-30-12

(Proofreader's Name)

(Date)

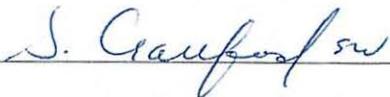
CERTIFICATE OF REPORTER

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I, Susan Kennedy Crawford, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 30th day of August, 2012, at Charleston, Charleston County, South Carolina.



Susan Kennedy Crawford  
Registered Professional  
Reporter  
My Commission expires  
May 29, 2013

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
Patriarch Partners, LLC ) File No. HO-11665  
 ) D-3350  
 )

WITNESS: ANTHONY MCKIERNAN

PAGES: 1-144

PLACE: Securities and Exchange Commission  
Brookfield Place  
200 Vesey Street  
New York, New York 10281-1022

DATE: May 16, 2014

The above-entitled matter came on for  
hearing at 9:35 o'clock a.m.



**COPY**

SCOPIST'S CERTIFICATE

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3 I, Rena Farber, hereby certify that  
4 the foregoing transcript consisting of 144 pages,  
5 is a complete, true and accurate transcript of the  
6 investigative hearing, held on Friday, May 16,  
7 2014, at Brookfield Place, 200 Vesey Street, New  
8 York, New York, in the matter of PATRIARCH  
9 PARTNERS, LLC.

10 I further certify that this  
11 proceeding was reported by Deborah Moschitto and  
12 that the foregoing transcript has been scoped by  
13 me.

14  
15 Rena Farber                      5-28-14  
16 Rena Farber (SF)                      Date

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
REPORTER'S CERTIFICATE

I, Deborah Moschitto, reporter, hereby certify that the foregoing transcript of 144 pages is a complete, true, and accurate transcript of the testimony indicated, held on Friday, May 16, 2014, at Brookfield Place, 200 Vesey Street, New York, New York, in the matter of:

PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was recorded by me and that the foregoing transcript was prepared under my direction.

Deborah Moschitto 5-28-14

Deborah Moschitto (SM) Date

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PROOFREADER'S CERTIFICATE

In the Matter of: PATRIARCH PARTNERS, LLC

Witness: ANTHONY McKiernan

File Numbers: HO-11665 and D-3350

Date: May 16, 2014

Location: Brookfield Place

200 Vesey Street

New York, New York

This is to certify that I, Deborah Moschitto, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Deborah Moschitto      5-28-14  
Deborah Moschitto      (SM)      Date

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: ) **COPY**  
) File No. HO-11665-A  
PATRIARCH PARTNERS, LLC )

WITNESS: Carlos E. Mercado

PAGES: 1 through 112

PLACE: Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

DATE: Wednesday, July 9, 2014

The above entitled matter came on for hearing,  
pursuant to notice, at 9:38 a.m.



Diversified Reporting Services, Inc.

(202) 467 9200

PROOFREADER'S CERTIFICATE

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In the Matter of: PATRIARCH PARTNERS, LLC  
Witness: Carlos E. Mercado  
File Number: HO-11665-A  
Date: Wednesday, July 9, 2014  
Location: Washington, D.C. 20549

This is to certify that I, Donna S. Raya,  
(the undersigned), do hereby swear and affirm that the  
attached proceedings before the U.S. Securities and  
Exchange Commission were held according to the record and  
that this is the original, complete, true and accurate  
transcript that has been compared to the reporting or  
recording accomplished at the hearing.

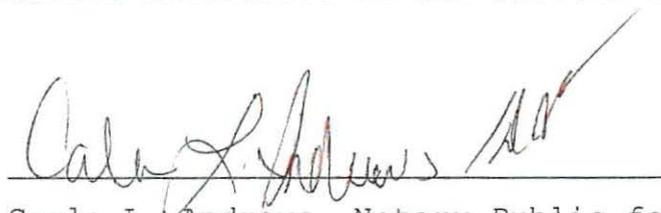
Donna S. Raya  
(Proofreader's Name)

7/23/14  
(Date)

CERTIFICATE OF NOTARY PUBLIC

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I, Carla L. Andrews, the officer before whom the foregoing deposition was taken, do hereby certify that the witness, whose testimony appears in the foregoing deposition was duly sworn by the Notary, that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewritten form under my supervision, that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto nor financially or otherwise interested in the outcome of the action.



Carla L. Andrews, Notary Public for  
the District of Columbia

My Commission Expires: January 14, 2019

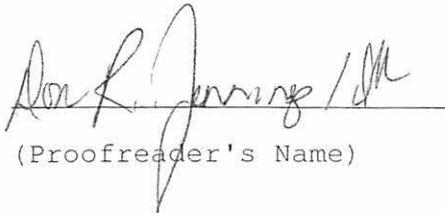


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In the Matter of: PATRIARCH PARTNERS, LLC  
Witness: Patrick Mottley  
File Number: HO-11665-A  
Date: Friday, October 21, 2011  
Location: Charlotte, North Carolina

This is to certify that I, Don R. Jennings (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

  
(Proofreader's Name)

11/3/11  
(Date)

1 STATE OF NORTH CAROLINA )  
 2 ) C-E-R-T-I-F-I-C-A-T-I-O-N  
 3 COUNTY OF PITT )

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I, LINDA W. LITTLE, A COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE AFORESAID COUNTY AND STATE, DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE AN ACCURATE TRANSCRIPT OF THE SEC INVESTIGATION OF PATRICK MOTTLEY, WHICH WAS TAKEN BY ME BY STENOMASK, AND TRANSCRIBED BY ME.

I FURTHER CERTIFY THAT I AM NOT FINANCIALLY INTERESTED IN THE OUTCOME OF THIS ACTION, A RELATIVE, EMPLOYEE, ATTORNEY OR COUNSEL OF ANY OF THE PARTIES, NOR A RELATIVE OR EMPLOYEE OF SUCH ATTORNEY OR COUNSEL.

THIS THE 2ND DAY OF NOVEMBER, 2011.  
 NOTARY PUBLIC NUMBER 200824100039.



LINDA W. LITTLE  
 COURT REPORTER AND NOTARY PUBLIC





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REPORTER'S CERTIFICATE

I, Stuart Karoubas, reporter, hereby certify that the foregoing transcript of 32 pages is a complete, true and accurate transcript of the testimony indicated, held on April 16, 2012, at Chicago, IL in the matter of: PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: 4-27-12

Official Reporter: S Karoubas/SD

Diversified Reporting Services, Inc.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
Patriarch Partners, LLC. ) File No. HO-11665

WITNESS: Raina Patel

PAGES: 1 through 123

PLACE: Securities and Exchange Commission  
3 World Financial Center  
New York, New York 10281

DATE: Tuesday September 27, 2011

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:00 a.m.

**COPY**

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I, Kelly Sellers, hereby certify that the foregoing transcript consisting of 123 pages is a complete, true and accurate transcript of the investigative hearing, held on Tuesday, September 27, 2011 at 3 World Financial Center, New York, New York, in the matter of Patriarch Partners, Inc. I further certify that this proceeding was recorded by Nicole Pino and that the foregoing transcript has been typed and proofread by me.

Kelly Sellers  
Typist/Proofreader 

10-10-11  
Date

## 1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

## 2 REPORTER'S CERTIFICATE

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5 I, Nicole Pino, reporter, hereby certify that the  
6 foregoing transcript of 123 pages is a complete, true, and  
7 accurate transcript of the testimony indicated, held on  
8 September 27, 2011 at Securities and Exchange Commission, 3  
9 World Financial Center, New York, New York 10281, in the  
10 matter of: Patriarch Partners, Inc.

11  
12 I further certify that this proceeding was recorded by me and  
13 that the foregoing transcript was prepared under my  
14 direction.

15  
16 Date: 10-10-11

17  
18 Official Reporter: Nicole Pino (SR)

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20 Diversified Reporting Services, Inc.

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23 Diversified Reporting Services, Inc.

24 Phone (202) 467-9200 Fax: (202) 296-9220

PROOFREADER'S CERTIFICATE

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In the Matter of: Patriarch Partners, LLC.

Witness: Raina Patel

File Number: HO-11665

Date: September 27, 2011

Location: Securities and Exchange Commission

3 World Financial Center

New York, New York 10281

This is to certify that I, Kelly Sellers, the undersigned, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

*Kelly Sellers*  
\_\_\_\_\_

*10-10-11*  
\_\_\_\_\_

Proofreader's Name

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PROOFREADER'S CERTIFICATE

In the Matter of: PATRIARCH PARTNERS, LLC

Witness: WENDY RUTTLE

File Number: HO-11665/D-3350

Date: APRIL 9, 2014

Location: 3 World Financial Center  
New York, New York

This is to certify that I, Deborah Moschitto, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Deborah Moschitto      4-21-14  
Deborah Moschitto                      Date

1  
2 UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
3 REPORTER'S CERTIFICATE  
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5 I, Deborah Moschitto, reporter, hereby certify  
6 that the foregoing transcript of 46 pages is a  
7 complete, true, and accurate transcript of the  
8 testimony indicated, held on Wednesday, April 9,  
9 2014, at 3 World Financial Center, New York, New  
10 York, in the matter of:

11 PATRIARCH PARTNERS, LLC.

12 I further certify that this proceeding was  
13 recorded by me and that the foregoing transcript  
14 was prepared under my direction.  
15

16 Deborah Moschitto      4-21-14  
17 Deborah Moschitto      Date  
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SCOPIST'S CERTIFICATE

I, Rena Farber, hereby certify that the foregoing transcript consisting of 46 pages, is a complete, true and accurate transcript of the investigative hearing, held on Wednesday, April 9, 2014, at 3 World Financial Center, New York, New York, in the matter of PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was reported by Deborah Moschitto and that the foregoing transcript has been scoped by me.

Rena Farber

4-21-14

Rena Farber

Date

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**COPY**

In the Matter of:                    )  
  ) File No. HO-11665-A  
PATRIARCH PARTNERS, LLC )

WITNESS: Lynn Tilton

PAGES: 1 through 247

PLACE: Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C.

DATE: Tuesday, February 12, 2013

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:50 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200



REPORTER'S CERTIFICATE

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I, Gary Euell, reporter, hereby certify that the foregoing transcript of 245 pages is a complete, true and accurate transcript of the testimony indicated, held on February 12, 2013, at Washington, D.C. in the matter of: PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: 2/26/13

Official Reporter: G. Euell/sw

Diversified Reporting Services, Inc.

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**COPY**

In the Matter of: )  
 ) File No. H0-11695-A  
PATRIARCH PARTNERS, LLC )

WITNESS: Lynn Tilton  
PAGES: 1 through 213  
PLACE: Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C.  
DATE: Tuesday, June 24, 2014

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.



Diversified Reporting Services, Inc.

(202) 467-9200

1 DISTRICT OF COLUMBIA, to wit:  
2

3 I, Tiffanie Jones, before whom the foregoing  
4 deposition was taken, do hereby certify that the  
5 within-named witness personally appeared before me at  
6 the time and place here set out, and after having been  
7 duly sworn by me, according to law, was examined by  
8 counsel.

9 I further certify that the examination was  
10 recorded stenographically by me and this transcript is  
11 a true record of the proceedings.

12 I further certify that I am not of counsel to  
13 any party, nor an employee of counsel, nor related to  
14 any party, nor in any way interested in the outcome of  
15 this action.

16   
17 \_\_\_\_\_  
18 Tiffanie Jones, Notary Public *TJ*  
19 For the District of Columbia  
20

21 MY COMMISSION EXPIRES: November 30, 2015  
22  
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PROOFREADER'S CERTIFICATE

In The Matter of:

Witness:

File Number:

Date:

Location:

This is to certify that I, Don R. Jennings,  
(the undersigned), do hereby swear and affirm that the  
attached proceedings before the U.S. Securities and  
Exchange Commission were held according to the record and  
that this is the original, complete, true and accurate  
transcript that has been compared to the reporting or  
recording accomplished at the hearing.

Don R. Jennings

(Proofreader's Name)

7/9/19

(Date)



SCOPIST'S CERTIFICATE

I, Dolores Cavanagh, hereby certify that the foregoing transcript consisting of 193 pages is a complete, true and accurate transcript of the investigative hearing, held on August 3, 2011, at 3 World Financial Center, New York, New York, in the Matter of PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was reported by Robert Bloom and that the foregoing transcript has been scoped by me.

Dolores Cavanagh      8-15-11  
Dolores Cavanagh       Date

1

2 UNITED STATES

3 SECURITIES AND EXCHANGE COMMISSION

4 REPORTER'S CERTIFICATE

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6

7 I, Robert Bloom, reporter, hereby certify that the

8 foregoing transcript of 193 pages is a complete, true and

9 accurate transcript of the testimony indicated, held on

0 August 3, 2011, at 3 World Financial Center, New York, New

1 York, in the Matter of PATRIARCH PARTNERS, LLC.

2 I further certify that this proceeding was

3 reported by me and that the foregoing transcript was

4 prepared under my direction.

5

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8

9 Robert Bloom      8-15-11

0 Robert Bloom      (SN)      Date

DISK

PROOFREADER'S CERTIFICATE

In the Matter of PATRIARCH PARTNERS, LLC

Witness: MERIC TOPBAS

File Number: HO-11665

Date: August 3, 2011

Location: 3 World Financial Center, New York, New York

This is to certify that I, Robert Bloom, the undersigned, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Robert Bloom  
ROBERT BLOOM

8-15-11

Date

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CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 30th day of September, 2012 at Charleston, Charleston County, South Carolina.



Lora L. McDaniel,  
My Commission expires:  
September 18, 2016



UNITED STATES SECURITIES AND EXCHANGE COMMISSION

COPY

In the Matter of: )  
 ) File No. HO-11665-A  
PATRIARCH PARTNERS, LLC )

WITNESS: Scott Whalen  
PAGES: 1 through 287  
PLACE: Securities and Exchange Commission  
Room 1  
100 F Street, NE  
Washington, D.C. 20549  
DATE: Thursday, January 17, 2013

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:24 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

PROOFREADER'S CERTIFICATE

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In the Matter of:    PATRIARCH PARTNERS, LLC  
Witness:                Scott Whalen  
File Number:           HO-11665-A  
Date:                    Thursday, January 17, 2013  
Location:                Washington, D.C.

          This is to certify that I, Donna S. Raya,  
(the undersigned), do hereby swear and affirm  
that the attached proceedings before the U.S.  
Securities and Exchange Commission were held  
according to the record and that this is the  
original, complete, true and accurate transcript  
that has been compared to the reporting or recording  
accomplished at the hearing.

Donna S. Raya  
(Proofreader's Name)

1/31/13  
(Date)

C E R T I F I C A T E

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I, STACEY RAIKES, RPR, a Notary Public within and for the District of Columbia, do hereby certify that the within is a true and accurate transcript of the proceedings taken on January 17, 2013.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of January, 2013.

  
\_\_\_\_\_  
STACEY RAIKES, RPR

My commission expires:  
August 14, 2016



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SCOPIST'S CERTIFICATE

I, Rena Farber, hereby certify that the foregoing transcript consisting of 189 pages, is a complete, true and accurate transcript of the investigative hearing, held on Thursday, April 10, 2014, at 3 World Financial Center, New York, New York, in the matter of PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was reported by Deborah Moschitto and that the foregoing transcript has been scoped by me.

Rena Farber

4/23/14

Rena Farber

Date

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
REPORTER'S CERTIFICATE

I, Deborah Moschitto, reporter, hereby certify that the foregoing transcript of 189 pages is a complete, true, and accurate transcript of the testimony indicated, held on Thursday, April 10, 2014, at 3 World Financial Center, New York, New York, in the matter of:

PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was recorded by me and that the foregoing transcript was prepared under my direction.

Deborah Moschitto  
Deborah Moschitto

4/23/14  
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PROOFREADER'S CERTIFICATE

In the Matter of: PATRIARCH PARTNERS, LLC

Witness: KAREN WU

File Number: HO-11665/D-3350

Date: APRIL 10, 2014

Location: 3 World Financial Center  
New York, New York

This is to certify that I, Deborah Moschitto, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Deborah Moschitto      4/23/14

Deborah Moschitto

Date

SECURITIES AND EXCHANGE COMMISSION  
DENVER REGIONAL OFFICE  
BYRON G. ROGERS FEDERAL BUILDING  
1961 STOUT STREET, SUITE 1700  
DENVER, COLORADO 80249-1961

April 6, 2015

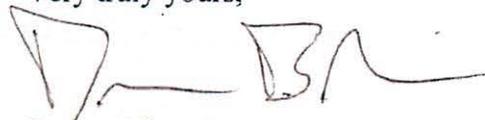
Christopher J. Gunther  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square | New York | 10036-6522  
T: 212.735.3483 | F: 917.777.3483  
[christopher.gunther@skadden.com](mailto:christopher.gunther@skadden.com)

Re: *In the Matter of Lynn Tilton, et al (File No. 3-16462)*

Dear Counsel,

Pursuant to SEC Rule of Practice Section 230(d), documents are available for inspection and copying. These documents include those produced on April 1, 2015, via a hard drive, containing the database of documents related to the investigation of this case. Also, enclosed is a disk containing additional documents subject to production that are not included in the database. This production includes subpoenas, correspondence, e-mail, document production letters, investigative testimony and exhibits, and other documents related to the investigation of this case.

Very truly yours,



Dugan Bliss, Esq.  
Senior Trial Counsel

:nl  
Enclosure



August 17, 2016

VIA E-MAIL (BLISSD@SEC.GOV)

Dugan Bliss, Esq.  
Senior Trial Counsel  
United States Securities and Exchange Commission  
Denver Regional Office  
1961 Stout Street, Suite 1700  
Denver, Colorado 80294-1961

Re: *In the Matter of Lynn Tilton, et al.* (File No. 3-16462)

Dear Mr. Bliss:

I write on behalf of Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents") in the above-referenced matter.

On July 27, 2016, following Respondents' request, Judge Foelak ordered the Division to produce to Respondents by August 15, 2016 any additional material required to be disclosed pursuant to the Jencks Act, 18 U.S.C. § 3500 ("3500 Material"). In an August 15, 2016 email, you wrote in response: "The Division has no further *Jencks* material beyond what was already produced." We believe that statement is erroneous, and that there is a substantial volume of 3500 material the Division possesses and must produce. *See* SEC Rule of Practice 231 (requiring that the Division "produce for inspection and copying *any* statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500") (emphasis supplied); *cf. Donald J. Anthony, Jr., et al.*, Release No. 1171 (Jan. 15, 2014) ("The Division's obligation to produce *Brady* materials is ongoing."). Below we detail that 3500 Material.

First, we assume the Division will produce the 3500 Material promptly. The continued withholding of 3500 Material violates Respondents' due process rights and impairs Respondents' right to fair trial. Given the truncated schedule imposed by Judge Foelak and the extremely limited procedural protections available to Respondents in this administrative proceeding as compared to a federal district court, the prejudice to Respondents from the Division's withholding of Rule 3500 Material is magnified many times. Accordingly, we



# GIBSON DUNN

Dugan Bliss, Esq.  
August 17, 2016  
Page 2

ask for a meet and confer tomorrow – August 18 – at any time. Please confirm to us at your earliest opportunity that you agree to meet and confer on August 18, and suggest a time.

With respect to the 3500 Material the Division must disclose, based on Respondents' investigation of the witnesses on the Division's August 8, 2015 witness list (the "Witness List"), Respondents believe the Division is improperly withholding 3500 Material containing witness statements and/or statements of witnesses transmitted to the Division through counsel for the witnesses. For example, based on a conversation with counsel for a witness on the Witness List, we understand the Division has been in contact with the witness and the witness's counsel about the witness's anticipated testimony at the administrative proceeding, and issued a subpoena for that testimony. Yet the Division has produced no documents reflecting these communications, and did not even provide Respondents with a copy of the subpoena. To the extent the Division's notes of conversations with witnesses' counsel reference the witnesses' statements or anticipated testimony, those notes constitute 3500 Material and must be produced.

Moreover, in addition to its recent subpoenas to MBIA and the Zohar-I fund for testimony and expert reports from the recent bankruptcy proceedings involving that fund, on Tuesday, August 16, the Division sent us the transcripts from the August 9 and 10, 2016 trial in the matter captioned *Zohar CDO 2003-1 v. Patriarch Partners, LLC*. The Division's focus on these post-OIP matters – neither of which is relevant to these proceedings – suggests that it continues to actively communicate with counsel for prospective witnesses, from whom it may have received statements.

If the Division has withheld documents based on a purported privilege, we ask that in our meet and confer you advise us of what privilege(s) the Division is invoking, and describe the relevant documents with sufficient specificity that Respondents can challenge the privilege invocations if necessary. We note, of course, that a witness statement cannot be cloaked as attorney work product by filtering the communication through the witness's counsel rather than by obtaining it from the witness directly, particularly where the forum – by design – precludes Respondents any opportunity to discover information known to a witness prior to the hearing.

Additionally, our review of the Division's investigative file has revealed numerous Division communications that qualify as 3500 Materials. Though not an exhaustive list, Appendix A, attached hereto, describes more than 50 statements that have not been disclosed by the Division and must certainly contain some 3500 Material. Such Material must be produced.

Moreover, in its letter of May 29, 2015 to Respondents, the Division identified 19 investors that it had contacted during the week of May 25, 2015. (*See* Appendix B at 2-3). There were

# GIBSON DUNN

Dugan Bliss, Esq.  
August 17, 2016  
Page 3

no materials in the investigative file relating to 15 of those investors, representatives of four of which are listed on the Division's Witness List. It is simply unreasonable to expect that the Division has no 3500 Material relating to any of these 15 investors, and particularly those actually identified on the Division's Witness List. Material relating to the 15 investors must be produced.

Finally, the Division has not provided Respondents with the audio recordings of any of the witnesses from whom it took investigative testimony. (*See* Appendix C for a complete list of witness testimony). Once again, the Division is required to produced such 3500 Material.

We look forward to hearing from you promptly with a proposed time for our August 18 meet and confer.

Sincerely,



Randy M. Mastro

RMM/pd



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
DENVER REGIONAL OFFICE  
1961 STOUT STREET  
SUITE 1700  
DENVER, COLORADO 80294-1961

DIVISION OF  
ENFORCEMENT

Direct Number: (303) 844.1041  
Facsimile Number: (303) 297.3529

September 6, 2016

**VIA EMAIL and UPS**

Randy M. Mastro, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166

Re: *In the Matter of Lynn Tilton, et al (File No. 3-16462)*

Dear Mr. Mastro:

Pursuant to your request, attached please find copies the following investigative testimony audio recordings:

1. Peter Berlant (6/18/2014)
2. Carlos Mercado (7/9/2014)
3. Patrick Mottley (4/16/2012)
4. Raina Patel (9/23/2011)
5. Lynn Tilton (2/12/2013 and 6/24/2014)
6. Meric Topbas (8/3/2011)

We are producing copies of all recordings that are in the possession of the Division of Enforcement. By way of background, we were unaware that these recordings existed until we inquired after receiving your August 17, 2016 letter requesting them. These recordings were received and maintained by Enforcement's Records Management office in Washington D.C. and were never in the possession of investigative or trial staff. The Records Management office does not have audio recordings of all investigative testimony because not all court reporters provided it to that office.

Sincerely,

Dugan Bliss  
Senior Trial Counsel



cc via email:

Lawrence J. Zweifach, Esq.  
Barry Goldsmith, Esq.  
Caitlin J. Halligan, Esq.  
Reed Brodsky, Esq.  
Monica K. Loseman, Esq  
Lisa Rubin, Esq.  
Susan Brune, Esq.  
Martin J. Auerbach, Esq.  
Nicholas Heinke, Esq.  
Amy Sumner, Esq.  
Mark Williams, Esq.