UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of, LYNN TILTON PATRIARCH PARTNERS, LLC, PATRIARCH PARTNERS VIII, LLC, PATRIARCH PARTNERS XIV, LLC and PATRIARCH PARTNERS XV, LLC Respondents.	:	Administrative Proceeding File No. 3-16462 Judge Carol Fox Foelak

RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL MBIA TO PRODUCE DOCUMENTS RESPONSIVE TO RESPONDENTS' SUBPOENAS

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Telephone: 212.351.4000
Fax: 212.351.4035

BRUNE LAW P.C.
450 Park Avenue
New York, NY 10022

Counsel for Respondents

October 5, 2016

Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents"), respectfully submit this brief in support of their motion to compel MBIA Insurance Corporation ("MBIA") to produce documents requested by the subpoena issued September 16, 2016 (the "2016 Subpoena"), pursuant to Rule 111 of the SEC Rules of Practice, 17 C.F.R. § 201.100 *et seq.* (the "Rules"), forthwith and not later than October 14, 2016, or to prohibit the Securities and Exchange Commission's ("SEC" or "Commission") Division of Enforcement ("Division") from offering evidence or testimony at the hearing that MBIA was a victim or otherwise suffered financial losses as a result of its relationship with Respondents; in the alternative, Respondents seek an order to the Commission's General Litigation Section to commence a proceeding in the United States District Court for the Southern District of New York to enforce the 2016 Subpoena.

INTRODUCTION

With just 19 days until the hearing in this matter, MBIA refuses to produce documents responsive to Respondents' subpoena that are directly relevant to the Division's theory of the case and necessary for cross examination of its witnesses, including MBIA's President Anthony McKiernan. Instead, MBIA has objected to the subpoena as irrelevant, despite its failure to move to quash or object to the subpoena's issuance, and now MBIA refuses to produce documents responsive to Respondents' narrowly-tailored subpoena. That objection is unwarranted. Indeed, it is particularly ill-founded given Respondents' recent discovery: Division lawyers' handwritten notes and emails reveal that the Division disclosed to MBIA confidential and proprietary information produced by Respondents in response to the Division's investigative subpoena *and also* gave MBIA express permission to use that confidential and proprietary

information against Patriarch in civil litigation so long as MBIA did not disclose the source of the information.

A. MBIA's Role As The Credit Enhancer For Zohar I And Zohar II, And Zohar I Noteholder

During the relevant period, MBIA underwrote financial guaranty insurance on the senior notes in the Zohar I and II Funds. Under the terms of its insurance contracts, if the Funds were unable at maturity to repay the outstanding balance for the Class A notes, MBIA would cover those payments and thereafter stand in the noteholders' shoes to recover from the funds. Through an affiliate, MBIA is also a noteholder in Zohar I. Ultimately, MBIA's exposure to Zohar I and II was roughly $1 billion.

As MBIA's regulator, the New York Department of Financial Services ("DFS"), found in 2011, "[t]he financial crisis and economic downtown of 2007 and 2008, and its effect on the commercial and residential real estate sectors, negatively affected [MBIA's] exposure to the structured finance capital markets," and starting in 2008, MBIA incurred "substantial insurance losses" due, in part, to defaults on mortgage-backed securities pools and certain CDOs. Ex. 1 at 8 (DFS report). MBIA also has, at various times, been at risk of falling into receivership by DFS, a status MBIA narrowly avoided in 2013 through a settlement with Bank of America, causing ratings agencies and DFS to conclude that "the company is unlikely to come under regulatory control during the next 12 months." *Id.* at 9; *see also* Ex. 2 at 15 (MBIA brief describing prior risk of receivership). Against the backdrop of its precarious finances, MBIA—as reflected in the SEC's own productions in this matter—has long feared the impact of its Zohar obligations. Ex. 3 at 4, 8, 9 (MBIA shareholder statements made on Q2 2016 Earnings Call).

Given this history, it is perhaps unsurprising that the SEC-produced evidence shows a concerted campaign by MBIA to: (1) map out a trumped-up case against Ms. Tilton and Patriarch for the SEC staff, using confidential information obtained directly from Ms. Tilton in supposed good-faith "negotiations" to restructure the Zohar Funds and protect investors; (2) gain access from the SEC to indisputably confidential materials produced by Patriarch to the SEC staff, which the SEC staff initially instructed MBIA to destroy after review; (3) secure permission from the SEC staff, once they committed to going forward together, to instead use (and keep) the information gleaned from those confidential materials to "commence litigation" against Patriarch; and (4) further secure the SEC staff's agreement not to reveal to Patriarch that it had disclosed Patriarch's confidential documents to MBIA without giving prior notice to Ms. Tilton and Patriarch of the SEC's intention to do so—all in an effort by MBIA, revealed to the SEC staff but not Ms. Tilton, to "own" for itself all of "Zohar 1." *See* Ex. 9 at SECNOTES000495.

B. The SEC's Investigatory File Reveals MBIA Obtained Respondents' Confidential Information From The Division For Private Use

MBIA began discussions with the Division in 2011, after suing Respondents in the United States District Court for the Southern District of New York for alleged breaches of contract relating to obtaining ratings for certain unfunded junior Zohar I Notes. *See* Reply Brief for Plaintiffs at 16, *Patriarch XV, LLC v. U.S. Bank N.A.*, No. 1:16-cv-07128-JSR (S.D.N.Y. Oct. 2, 2016). MBIA lost that $180 million lawsuit after a complete defense verdict and findings by Judge Robert Sweet that Ms. Tilton had done nothing wrong and MBIA's claims were false. *See MBIA Ins. Corp. v. Patriarch Partners VIII, LLC*, 950 F. Supp. 2d 568 (S.D.N.Y. 2013). As the Division's investigative file reveals, between 2012 and 2013, MBIA shared with the Division its interest in "own[ing the] Zohar I" assets if it could get possession of them. *See* Ex. 9 at

SECNOTES000495 (notes of "call with MBIA counsel . . . . u were seek[ing] to own Zohar 1"). For their part, the SEC lawyers investigating Respondents were interested in MBIA's cooperation and obtaining information from MBIA about the Zohar funds, including "what you were told about these deals." *Id.*

C. MBIA Shared Respondents' Confidential Settlement Communications With The Division

At about the same time, MBIA drew Respondents into a series of discussions with MBIA's Chief Risk Officer and President—and Division witness—Anthony McKiernan, among others, about a potential restructuring of Zohar I. The discussions, which began in late 2012, centered on the possibility of an extension of the maturity date for Zohar I, allowing Respondents to continue to unlock and monetize the value underlying the notes. In early 2013, a term sheet reflecting the agreement was circulated to MBIA. *See* Ex. 10 (Mar. 15, 2013 e-mail from L. Tilton to A. McKiernan).

As these events were unfolding, MBIA communicated on a parallel track with the Division, giving the Division a play-by-play of its discussions with Respondents and revealing MBIA's strategy. Ex. 11 at SECNOTES000721. By April 9, 2013, MBIA was bragging to the Division about its "strategy" of "try[ing] to make her go all in more"—that is, for Ms. Tilton to invest even more of her own capital into the Zohar Funds. Ex. 12 at SECNOTES000664. MBIA representatives also acknowledged on a July 30, 2013 call with the Division staff that, in many respects, the restructuring Ms. Tilton had already proposed "sort of ma[de] sense," and could, therefore, have served the investors' best interests. Ex. 13 at SECNOTES0000728.

By late August 2013, MBIA conveyed to the Division that it had gone so far as to negotiate a tentative agreement with Respondents on three points: an extension of the Zohar I maturity date, a "turbo of Class A notes" (through which amounts earmarked to pay Patriarch's

management fees would instead be used to pay down principal on the Class A notes), and Respondents' waiver of its subordinated management fee going forward. Ex. 11 at SECNOTES000725. The Division surely understood that a restructuring of Zohar I would greatly diminish the chances of their being authorized to bring a case against Respondents. That is because any investor that agreed to a restructuring would have had to implicitly approve of Respondents' continued and past stewardship of the Zohar funds, thereby gutting the Division's potential case.

D. The Division Shared Respondents' Confidential Documents with MBIA

As troubling as it is to see the Division so enmeshed with a commercial party, it is equally troubling that the communications between MBIA and the Division flowed both ways. Just as MBIA fed confidential information to the Division that MBIA deceptively gleaned from Respondents under the guise of good-faith settlement negotiations, the Division reciprocated, supplying MBIA with a wealth of clearly confidential information—information that Respondents provided to the SEC under the rubric of the SEC's investigation. In December 2013 and January 2014, the Division shared nearly 40 of Respondents' confidential financial documents with MBIA—including financial statements, interest payment and accrual listings, balance sheets, and income statements for eight of the Zohar I portfolio companies. *See* Exs. 14 - 15 (Dec. 18, 2013 and Jan. 30, 2014 e-mails between the Division and Susan DiCicco, MBIA's then-counsel). In doing this, the Division knew MBIA badly wanted this information to gain insight into questions such as "what [its Zohar] exposure is." Ex. 11 at SECNOTES000722; *see also id.* (noting MBIA's desire for an "equity valuation for a few of at least 3 top" portfolio companies).

E. The Division Consented To MBIA's Use of Respondents' Confidential Information In Litigation—Even Though Such Consent Violates Federal Regulations And SEC Policy

The Division not only knowingly provided confidential documents to MBIA, but it also expressly authorized MBIA to use the documents for the purpose of targeting Respondents in civil litigation. Ex. 14 (Dec. 17, 2013 e-mail from S. DiCicco to A. Sumner). Indeed, the terms "proposed by the SEC" for MBIA's receipt of these confidential documents—while ostensibly claiming that the documents "should be treated confidentially by MBIA and its counsel"—expressly authorized MBIA to "freely commence litigation against Ms. Tilton, Patriarch," or their affiliates, "based on information MBIA learns in the documents," so long as it does not "cite or attach any of the documents received from the SEC to any complaint while those documents remain confidential and non-public." *Id.* In other words, the Division authorized MBIA to use this confidential information, but only if the Division's fingerprints were never revealed.

Documents in hand, MBIA chose not to allow a restructuring to go forward. Instead, it set its sights on litigating against Ms. Tilton and trying to obtain ownership of the Zohar I collateral, fully understanding the litigation and commercial advantages it was gaining through the SEC's actions.

The information exchange to which MBIA and the Division agreed was not only extremely out of the ordinary, but also contrary to applicable regulations and policy.[1] After all,

---

[1] Multiple regulations and internal SEC rules forbid Division lawyers from sharing information obtained in an investigation with private parties, except in limited circumstances not applicable here. Under Rule 203.2 of the Commission's Rules Relating to Investigations, "[i]nformation or documents obtained by the Commission in the course of any investigation or examination, unless a matter of public record, shall be deemed non-public" unless disclosure falls into one of the enumerated exceptions in Rule 24c-1(b) of the Exchange Act. 17 C.F.R. § 203.2 (West 2016). MBIA—a private party seeking information for its own commercial purposes—does not qualify for any of those exceptions, which include sharing the documents with other law enforcement agencies, self-regulatory organizations governing financial institution conduct, and court-appointed trustees and receivers.

(Cont'd on next page)

the Division had earlier proposed sending to MBIA certain other Patriarch financial documents for discussion purposes only so long as the SEC received a "rep" that the documents would be "use[d] only for purposes of interview and [that MBIA would] destroy [them] after – no copies." Ex. 16 at SECNOTES000715. In the end, however, the Division's decision to give MBIA unfettered access to the documents caused MBIA to forego a restructuring that would have helped all noteholders and instead pursue a strategy of litigation.

F. MBIA's Refusal To Produce Documents Suggests Its Continued Improper Coordination With The Division

On August 9, 2016, Respondents sent a letter to MBIA, requesting that MBIA "confirm . . . that [it] has made a complete production, through the present, of all documents responsive" to a May 2015 subpoena served by Respondents' prior counsel prior to the stay of this proceeding. *See* Ex. 4 (May 27, 2015 Subpoena); Ex. 5 (Aug. 9, 2016 letter from M. Loseman to D. Fischer). Counsel for Respondents also requested confirmation that David Crowle, who was disclosed as a witness on the Division's August 2015 witness list, would be included as a custodian in further productions in response to the 2015 subpoena. *Id.* On August 19, 2016, MBIA responded, invoking an agreement with Respondents' prior counsel on a number of requests in the prior subpoena and insisting that MBIA would neither negotiate further nor produce any documents created after the March 22, 2015 OIP. *See* Ex. 6 (Aug. 19, 2016 letter from J. Hoff to M. Loseman).

(Cont'd from previous page)

See 17 C.F.R. § 240.24c-1 (West 2016). Section 5.1 of the Division's Enforcement Manual reinforces that the Division had no right to gift confidential financial data concerning the portfolio companies to MBIA, stating, "All information obtained or generated by SEC staff during investigations or examinations should be presumed confidential and nonpublic unless disclosure has been specifically authorized. The SEC's rules permit the staff, by delegated authority, to grant access to nonpublic information to domestic and foreign governmental authorities, SROs, and other persons specified in Section 24(c) of the Exchange Act and Rule 24c-1 thereunder. Disclosures of such information to members of the general public *will normally be made only* pursuant to the Freedom of Information Act" (emphasis added).

Given Mr. Crowle's presence on the Division's prior and current witness list, and the importance of documents and communications created after the issuance of the OIP to Respondents' ability to examine MBIA witnesses at the hearing, Respondents had no choice but to request the issuance of a targeted, *second* subpoena to MBIA as well as a subpoena to Mr. McKiernan. Respondents made those requests on September 9, 2016, and Your Honor granted them on September 16, 2016. These subpoenas were served on MBIA's counsel the same day.

Six days later, on September 22, 2016, the Division produced additional documents reflective of its communications with MBIA, *inter alia*, in response to Respondents' subpoena to the SEC. Those documents reveal that since the filing of the OIP, MBIA has been no less invested in the success of the Division's case than it was during the investigation. In fact, MBIA and SEC Division staff communicated more than two dozen times between April 23, 2015 and September 19, 2016. *See, e.g.*, Ex. 23 (Tilton-SEC-A-000000000002) (Apr. 23, 2015 e-mail from A. Tompkins of Cadwalader to A. Sumner); Ex. 24 (Tilton-SEC-A-000000003047) (Sept. 19, 2016 e-mail from J. Hoff of Cadwalader to A. Sumner).[2] Therefore, Respondents continued to pursue discovery from MBIA, especially with respect to its post-OIP conduct.

During a meet and confer on September 27, 2016, counsel for MBIA stated that his clients were not inclined to produce any other documents; he refused to even confirm that MBIA had documents responsive to any of the requests. *See* Rubin Decl. ¶ 11.

---

[2] On June 1, 2015, MBIA's outside counsel even offered to "update" the Division on their "work[] on the issues in the Indenture regarding the May 20th sale date." Ex. 17 (Tilton-SEC-A-000000000256) (e-mail from A. Tompkins to A. Sumner). Just days earlier, that "work" resulted in an agreement, at MBIA's request, to amend the Zohar I Indenture to avoid the required, immediate sale of the collateral on the understanding that MBIA and Patriarch would continue to work toward a restructuring. Instead, no agreement was reached before the maturity date, and Zohar I went into default. The automatic result of the default was that certain Patriarch entities and affiliates, which would have been entitled to a *pari passu* distribution of sale proceeds, were instead subordinated to MBIA's right to repayment first. *See* Ex. 18 § 2 (Zohar I Fifth Supplemental Indenture).

Therefore, as a show of good faith and to avoid imposing any undue burden on MBIA, on October 3, 2016, Respondents sent MBIA a written proposal outlining the following narrowed requests:

- All Documents reflecting any Communications, including but not limited to interviews, telephone calls and other meetings or discussions, with the SEC relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings.[3] (Request No. 1.)

- Any and all communications concerning or relating to the Division of Enforcement's provision of documents to you on or about December 18, 2014 and January 30, 2014, or any other documents provided to you by the Division in connection with the investigation or this proceeding, including but not limited to internal communication, and communications with others on the Division's list, the Trustee or the subsequent collateral manager. (Request Nos. 1, 2, 5, 6.)

- All communications between January 3, 2011 and the present with those entities listed in Request No. 2 concerning or relating to the effect of the SEC investigation or the Administrative Proceeding on a) Your rights and responsibilities as Credit Enhancer or the Controlling Party for Zohar I and Zohar II, b) any potential restructuring or extension of maturity of Zohar I and Zohar II, and c) the sale of any Zohar I or Zohar II obligors or Collateral. (Request No. 2.)

- Any and all recordings of communications between You and Ms. Tilton or any other employee or representative of Respondents. (Request No. 6.)

- Any common interest or joint defense agreement with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds related in any way to Respondents or the Zohar Funds. (Request No. 3)

- All Communications and Documents related to the Zohar Funds, Zohar Notes, Patriarch, or Respondents for custodian David Crowle. (Request No. 6.)[4]

See Ex. 8 (Oct. 3, 2016 email from M. Loseman to J. Hoff).

---

[3] Respondents' e-mail specified that this request encompasses communications between January 3, 2011 (the first day we believe the Division contacted MBIA) and the present between MBIA, on the one hand, and any member of the Division of Enforcement or any other employee, agents or representative of the SEC (including, for example, any communications with the consulting firm Charles River & Associates), on the other hand, relating to the investigation or this proceeding.

[4] Respondents indicated their understanding that such documents for Mr. McKiernan have already been produced and that MBIA may no longer possess such documents for Mr. Crowle given that his employment with MBIA ended some time ago, and asked MBIA to confirm these details.

Respondents made clear that with the hearing then three weeks away, they would be forced to move to compel October 5 if MBIA continued its refusal to produce documents responsive to the narrowed requests. *See* Ex. 8 (Oct. 3, 2016 e-mail from M. Loseman to J. Hoff). The next day, however, counsel for MBIA stated that he was out for religious observance, that his client was also unavailable, and that they would endeavor to respond Thursday, October 6. *See* Ex. 8 (Oct. 4, 2016 e-mail from J. Hoff to M. Loseman). While counsel recognizes the short timeframe faced by MBIA (and Respondents), especially given the intervening holiday, certain Respondents are also plaintiffs in a litigation against MBIA in the United States District Court for the Southern District of New York concerning the attempted September 15, 2016 sale of the Zohar I collateral at MBIA's express direction. Although that sale was temporarily restrained on September 14, 2016, *see* Ex. 21 (Order to Show Cause), the parties have been engaged in expedited discovery and briefing for a preliminary injunction hearing this coming Monday, October 10. Indeed, the same counsel for MBIA has been in communication with the undersigned firm October 5, and even participated in a telephonic conference with the federal judge overseeing that matter this morning. Therefore, as Respondents advised MBIA, we bring this motion today given the immediacy of the upcoming hearing.

ARGUMENT

Pursuant to Rule 111 of the Commission's Rules of Practice, the "hearing officer shall have the authority to do all things necessary and appropriate to discharge . . . her duties . . . . including but not limited to . . . (h) . . . considering and ruling upon all procedural and other motions . . ." 17 C.F.R. § 201.111. That authority includes the ability to order a non-party's production of materials pursuant to a duly authorized and issued subpoena. Indeed, respondents to SEC administrative proceedings have successfully moved to compel a non-party's production

of materials pursuant to subpoena issued by an ALJ. *See, e.g.*, *In re Piper Capital Mgmt.*, Admin. Proceedings Rulings Release No. 582, 1999 WL 166082 (ALJ Mar. 18, 1999) (granting motion to compel production of documents from non-party).

MBIA should not be permitted to run out the clock on Respondents' targeted subpoena, especially as it has been narrowed through Respondents' October 3, 2016 e-mail and as outlined above.

First, as Your Honor has previously held in this matter, where "information sought is directly relevant to the Division's proposed evidence and necessary for cross-examination," document discovery is warranted. *In re Lynn Tilton*, Admin. Proceedings Rulings Release No. 4153 (ALJ Sept. 14, 2016), *available at* https://www.sec.gov/alj/aljorders/2016/ap-4153.pdf. Here, the materials sought through the 2016 Subpoena to MBIA are highly relevant to Respondents' preparation of their defense, including with respect to the SEC's extensive communications with MBIA and provision to MBIA of confidential and proprietary financial information produced by Respondents. Nonetheless, MBIA refuses to produce communications related to the documents the Division bestowed on MBIA and MBIA, in turn, shared with the Division (such as the confidential term sheet reflecting Ms. Tilton's initial restructuring proposal)—documents that will reveal the full scope of MBIA's influence on the Division's case and the evolution of its theory. *See* Ex. 7 (2016 Subpoena, Request Nos. 1, 2, 5, 6); *see also* Ex. 13 at SECNOTES000726.

More fundamentally, the evidence Respondents seek from MBIA is necessary for their examination of MBIA witnesses. who may have a financial interest or seek to advance MBIA's litigation objectives through testifying in support of the Division's claims. The SEC has identified Mr. McKiernan as a likely witness. *See* Ex. 20 (Division's Aug. 22, 2016 Witness

List); *see also* Rubin Decl. ¶ 24. It is therefore essential that Respondents obtain any documents in MBIA's possession that shed light on the veracity of these witnesses' expected testimony and their prior dealings not only with the Division and Patriarch, but also with other Zohar noteholders, several of whom are expected to testify as well. Yet MBIA also refuses to produce communications with other noteholders in the Zohar Funds related to the effect of the investigation or this proceeding on (a) MBIA's rights and responsibilities related to Zohar I and Zohar II, (b) any potential restructuring or extension of maturity of Zohar I and Zohar II, and (c) the sale of any Zohar I or Zohar II obligors or Collateral. *See* Ex. 7 (2016 Subpoena, Request No. 2).

Further, MBIA has never resisted any of Respondents' requests in the 2016 Subpoena as burdensome or otherwise unfair. Nor has it moved to *quash* on any grounds. It has simply refused to produce the documents, apparently believing that by stalling, it can altogether avoid producing documents that likely run the gamut from mildly embarrassing to highly damaging. Given MBIA's communications with the Division, it is no surprise that MBIA refuses to produce communications with the SEC related to the investigation that led to this proceeding. *See* Ex. 7 (2016 Subpoena, Request No. 1). Nothing, however, justifies an outright refusal to produce documents in response to a subpoena issued by Your Honor. Indeed, no other third party has objected to producing documents reflective of its communications with the SEC relating to the SEC's investigation, whether or not the communications pre- or post-date the OIP. Similarly, Värde—another likely Division witness—has produced its common interest agreement with other Zohar noteholders, but MBIA refuses to reveal whether it has such an agreement with others in relation to this matter or other Zohar-related litigation, much less produce it. *See id.* (2016 Subpoena, Request No. 2).

Whether or not MBIA is again acting in concert with the Division, Your Honor should not tolerate MBIA's gamesmanship, especially given the extensive prior dealings between MBIA and the Division. And any belated claims that production of the documents sought here would be unduly burdensome to MBIA should be rejected, particularly given the circumstances and respective equities. In the ongoing preliminary injunction proceeding referenced above, *see supra* § B, MBIA produced nearly 3,500 pages in nine days on order of the court. *See* Rubin Decl. ¶ 27. MBIA is clearly capable of producing Zohar-related documents on an expedited basis when it chooses to—or is forced to. *See* Ex. 22 (Sept. 20, 2016 Order). But here, where there has been even the slightest assertion of hardship from compliance with the 2016 Subpoena, MBIA should not now be allowed to avoid producing documents that would reveal the full scope of their coordination with the Division's investigation against Respondents. Therefore, MBIA should be ordered to produce documents responsive to Respondents' narrowed requests forthwith and not later than October 14, 2016, or the Division should be ordered prohibited from offering evidence or testimony in this proceeding that MBIA was a victim or otherwise suffered financial losses as a result of its relationship with Respondents.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Your Honor order MBIA to produce to Respondents the limited categories of documents requested by Respondents' October 3, 2016 email, which further narrows the requests in the 2016 Subpoena, forthwith and not later than October 14, 2016, or that Your Honor order the Division prohibited from offering evidence or testimony in this proceeding that MBIA was a victim or otherwise suffered financial losses as a result of its relationship with Respondents. In the alternative, Respondents respectfully request that Your Honor order the Commission's General Litigation

section to immediately commence a proceeding in the United States District Court for the Southern District of New York to enforce the 2016 Subpoena.

Dated: New York, New York
October 5, 2016

GIBSON, DUNN & CRUTCHER LLP

By: Randy M Mastro /LAR

Randy M. Mastro
Reed Brodsky
Barry Goldsmith
Caitlin J. Halligan
Mark A. Kirsch
Monica Loseman
Lawrence J. Zweifach
Lisa H. Rubin

200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Fax: 212.351.4035

Susan E. Brune
BRUNE LAW P.C.
450 Park Avenue
New York, NY 10022

Counsel for Respondents