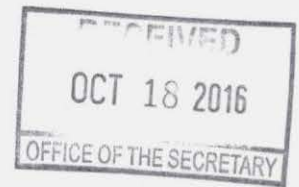


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION TO COMPEL
THE OFFICE OF LITIGATION AND ADMINISTRATIVE PRACTICE TO PRODUCE
DOCUMENTS RESPONSIVE TO RESPONDENTS' SUBPOENAS**

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October 17, 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 the Office of Litigation and Administrative Practice (“OLAP”) to produce documents requested by the subpoenas issued September 1, 2016, pursuant to Rule 111 of the SEC Rules of Practice, 17 C.F.R. § 201.100 *et seq.* (the “Rules”) and Your Honor’s Order of September 1, 2016, forthwith and not later than October 19, 2016.

ARGUMENT

After numerous meet-and-confers with Respondents, OLAP continues to withhold documents that Your Honor, on September 1, 2016, directed OLAP to produce to Respondents by September 14, 2016. These “inter-agency” communications, *Lynn Tilton*, Admin. Proc. Rulings Release No. 4116, at 2 (ALJ Sept. 1, 2016), must be immediately produced, given that the hearing in this matter is set to commence in less than one week.

OLAP’s failure to produce responsive documents directly contravenes Your Honor’s September 1, 2016 Order. There, Your Honor held that, since “no particularized showing as to the law enforcement privilege’s applicability has been made,” OLAP could not withhold documents on the basis of the law enforcement privilege. *Id.* at 2. The only exception permitted by the Order would apply if “the Division and/or OLAP submit[ted] a timely motion to quash establishing the privilege’s applicability to any discoverable material.” *Id.* at 2-3. Neither the Division nor OLAP ever submitted a motion to quash or to modify. Yet in its privilege log, which it produced to Respondents for the first time on October 14, 2016, OLAP repeatedly cites—in direct contravention of Your Honor’s Order—the “law enforcement privilege” as a basis for withholding responsive documents. Declaration of Mary Beth Maloney, dated October 17, 2016 (“Maloney Decl.”) Ex. 2.

More generally, Your Honor squarely rejected OLAP's and the Division's argument that "inter-agency" communications are privileged, holding, *e.g.*, that "[t]he material specified in Items 1, 2, and 6 (to the extent it relates to communications between Commission personnel and outside entities or persons) is discoverable and should be produced to Respondents." *Id.* (further explaining that the "law enforcement privilege" does not apply to OLAP's documents revealing "inter-agency" communications between distinct "Government entities"). Yet OLAP refuses to turn over its inter-agency communications, citing the "deliberative process privilege." Maloney Decl. Ex. 2. The "deliberative process privilege" is not a catch-all cover for communications between agencies. If it were, Your Honor's September 1, 2016 Order, which directed OLAP to disclose such inter-agency communications, would be rendered a nullity.

Moreover, "the party asserting a privilege bears the burden of establishing all of its essential elements," *Putnam Invest. Mgmt, LLC*, Admin. Proc. Rulings Release No. 613, 2004 WL 1175274, at *2 (ALJ Mar. 26, 2004), and here, OLAP has made no showing regarding the most important element of the deliberative process privilege—namely, that the communications were prepared in order to assist an agency decision-maker in arriving at his decision, *cf. SEC v. Yorkville Advisors, LLC*, 2014 WL 11351908 (S.D.N.Y. May 27, 2014) (quoting *Toney-Dick v. Doar*, 2013 WL 5549921 (S.D.N.Y. Oct. 3, 2013)). Granted, OLAP has in some cases baldly asserted that the communications are predecisional and deliberative. *See, e.g.*, Maloney Decl. Ex. 1. But it has never explained why this is so—not to Your Honor, and not to Respondents during any of the numerous meet-and-confers between OLAP and Respondents.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Your Honor compel OLAP to produce documents requested by the subpoenas issued September 1, 2016, as modified by Your Honor's September 1, 2016 Order, forthwith and not later than October 19, 2016.

Dated: New York, New York
October 17, 2016

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