

**HARD COPY**

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

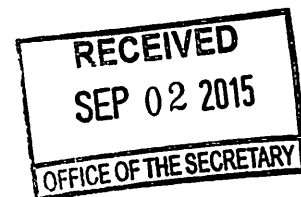
In the Matter of

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

Hon. Judge Carol Fox Foelak



**RESPONDENTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO  
ADJOURN THE TRIAL**

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, NY 10036

BRUNE & RICHARD LLP  
One Battery Park Plaza  
New York, NY 10004

September 1, 2015

*Counsel for Respondents*

## **PRELIMINARY STATEMENT**

Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC and Patriarch Partners XV, LLC (collectively "Patriarch") respectfully submit this reply in further support of their motion to adjourn the trial date.

## **ARGUMENT**

The Division offers no affirmative reason why the trial must proceed on October 13, as currently scheduled. Instead, the Division attacks the two bases of Patriarch's motion. The Division's arguments fail, and the Court should grant an adjournment.

### **I. THE SECOND CIRCUIT DESERVES A REASONABLE TIME TO RULE**

Oral argument before the Second Circuit is now scheduled for September 16. The Division's position is that trial should proceed in the absence of an injunction. But Patriarch's point is that the Circuit should be afforded a reasonable period to consider the case, especially when the only two federal courts to address the Appointments Clause claim both found a likely constitutional violation that could not be remedied after the fact. In other contexts, agency proceedings have been postponed pending important decisions of the federal courts. Just last Friday, Chief Judge Murray issued her eighth stay of a proceeding first instituted on July 2013. *See In re: Steven A. Cohen*, Rel. No. 3075, File No. 3-15382 (Aug. 28, 2015) (U.S. Attorney sought continued stay pending application for *certiorari* in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014)); *see In re: Michael S. Steinberg*, Rel. No. 4008, File No. 3-15925 (Jan. 27, 2015) (Commission found pendency of *Newman* appeal before Circuit was "'good cause' to postpone the briefing schedule"). A circuit court does not ordinarily decide an appeal within a few weeks of oral argument. The Second Circuit deserves more time.

## II. PATRIARCH COULD NOT REASONABLY SUBPOENA FIFTEEN ENTITIES

The Division contends that Patriarch unreasonably delayed in seeking documents from investor witnesses. The argument is baseless. The Division does not – and cannot – dispute that on May 29, 2015, it disclosed to Patriarch for the first time the names of fifteen investor entities not contacted by the Division prior to the OIP. The Division's theory is that Patriarch, at that point, should have asked Your Honor to sign fifteen subpoenas *duces tecum* (in addition to the five subpoenas Patriarch requested for entities included in the Division's investigative file) and should have undertaken third-party document demands from all fifteen entities. Then, when the Division chose to list just four of those entities on its witness list on August 7, Patriarch would be prepared to address the four and could simply discard the efforts made with respect to the remaining eleven entities. This scenario is simply unreasonable. Not only would Patriarch have wasted a tremendous amount of time and effort, but also eleven entities would have been subjected to third-party document production for no good reason.

The Division also argues that subpoenas signed by Your Honor for the four new investor entities have return dates of September 4, 2015, more than a month before trial. But documents seldom arrive by return dates, as the Division well knows, particularly from third parties who have been dragged into proceedings at the eleventh hour. To date, despite its best efforts, Patriarch has received only a partial document production from just one of the four subpoena recipients. Two of the subpoenaed parties already have threatened motions to quash. And when documents do arrive, Patriarch needs time to review them in order to make meaningful use of them. It is telling that the Division chose four investor witnesses without obtaining any documents from them. As it feared from the outset of this case, Patriarch will be left sandbagged if not afforded the time required to obtain the documents necessary to confront these investor witnesses.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court  
adjourn the trial.

Dated: September 1, 2015  
New York, New York

Respectfully Submitted,

By: Chris Gunther

David M. Zornow  
Christopher J. Gunther  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, NY 10036

Susan E. Brune  
MaryAnn Sung  
BRUNE & RICHARD LLP  
One Battery Park Plaza  
New York, NY 10004

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served on the following on this 1st day of September, 2015, in the manner indicated below:

Securities and Exchange Commission  
Office of the Secretary  
Attn: Secretary of the Commission Brent J. Fields  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
Fax: (202) 772-9324  
(By Facsimile and original and three copies by FedEx)

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

Dugan Bliss, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
Denver Regional Office  
1961 Stout Street, Ste. 1700  
Denver, CO 80294  
(By Email pursuant to the parties' agreement)



Matthew T. Warren

**FACSIMILE CERTIFICATION**

I hereby certify that the enclosed filing was transmitted via facsimile on September 1, 2015 to the Office of the Secretary at the number (202) 772-9324.



Matthew T. Warren