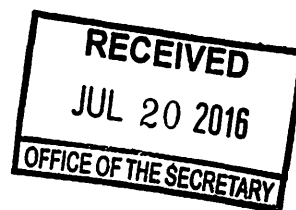


HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



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

MOTION REQUESTING THAT THE HEARING OFFICER ASK THE CHIEF ADMINISTRATIVE LAW JUDGE TO SUBMIT A MOTION TO THE COMMISSION REQUESTING AN EXTENSION OF THE TIME PERIOD FOR FILING THE INITIAL DECISION IN THIS MATTER

Upon the accompanying Memorandum of Law dated July 19, 2016, the papers filed herewith in support of Respondents' Motion for Reconsideration and Adjournment or, In the Alternative, for Certification for Interlocutory Review, and the record of proceedings herein, Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC move this Court, pursuant to Rule 360(a)(3) of the Securities and Exchange Commission's Rules of Practice, 17 C.F.R. § 201.100 et seq., to consult with Chief Administrative Law Judge Brenda Murray and ask her to exercise her discretion to submit a motion to the Commission requesting an extension of the 300-day deadline for the issuance of an initial decision in this proceeding.

Dated: New York, New York
July 19, 2016

GIBSON, DUNN & CRUTCHER LLP

By: Randy M. Mastro

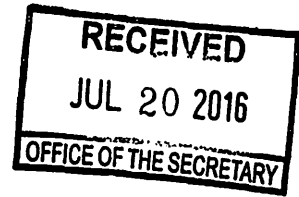
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HARD COPY



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of, :
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LYNN TILTON :
PATRIARCH PARTNERS, LLC, :
PATRIARCH PARTNERS VIII, LLC, :
PATRIARCH PARTNERS XIV, LLC and :
PATRIARCH PARTNERS XV, LLC :
 :
Respondents. :
----- X

Administrative Proceeding
File No. 3-16462

Judge Carol Fox Foelak

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION
REQUESTING THAT YOUR HONOR ASK THE CHIEF ADMINISTRATIVE LAW
JUDGE TO SUBMIT A MOTION TO THE COMMISSION REQUESTING
AN EXTENSION OF THE TIME PERIOD FOR FILING THE INITIAL DECISION
IN THIS MATTER**

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Counsel for Respondents

July 19, 2016

Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, “Patriarch” or “Respondents”), respectfully move this Court, pursuant to Rule 360(a)(3) of the Securities and Exchange Commission’s Rules of Practice, 17 C.F.R. § 201.100 et seq. (the “Rules”), to consult with Chief Administrative Law Judge Brenda Murray and ask her to exercise her discretion to submit a motion to the Commission requesting an extension of the 300-day deadline for the issuance of an initial decision in this proceeding. Respondents respectfully request a ruling by Thursday, July 21, as time is of the essence and Respondents intend to move the Commission directly for an order extending the 300-day deadline after that date.¹

INTRODUCTION

The 300-day deadline in this matter will expire on November 12, 2016, excluding the period of the Second Circuit stay. This Court has declined to enter the proposed hearing date of December 2016 submitted by the parties on consent, and has instead ordered that the parties proceed to a hearing in September. In its letters of July 18 & 19, SEC Division counsel asserts that if the hearing is to commence in September, it must start on September 6 because lead counsel is getting married on October 1, the Division believes the trial will take three weeks and, the Division claims, four investor witnesses are only available in early September.² As explained in Respondents’ Memorandum of Law In Support of Respondents’ Motion for

¹ Respondents are also moving, under separate motion and support, for reconsideration of Your Honor’s July 15, 2016 Order (Release No. 3990) (the “Order”), or, in the alternative, for interlocutory review of the Order.

² Division counsel says nothing about these witnesses’ availability to testify after September and previously consented to a December trial date, presumably because they are all available in subsequent months.

Reconsideration and Adjournment or, In the Alternative, For Interlocutory Review

(“Reconsideration Br.”), which is incorporated herein, this truncated schedule will substantially prejudice Respondents’ defense, and deny them a fundamentally fair hearing. Indeed, it will “not be possible [for this Court] to issue the initial decision” before the Commission’s 300-day deadline expires (*see* Rule 360) while at the same time fulfilling its “obligation to ensure that [these] administrative proceedings are conducted fairly in furtherance of the search for the truth and a just determination of the outcome.” *In re Blizzard*, Release No. 2032 (Apr. 24, 2002) at 2. In accordance with the basic requirements of “due process,” *id.* at 2 n.9, Respondents respectfully submit that the proper course of conduct—if Your Honor believes a hearing officer does not have the authority to extend the 300-day deadline itself—is for Your Honor to seek from the Commission, through the Chief Administrative Law Judge, a moderate extension of the deadline.

Extension of the 300-day deadline will enable the Commission to rectify this grave error before it infects this Court’s initial decision, necessitating reversal and potential retrial. Respondents accordingly believe that the Commission will grant the extension, if a request is presented to the Commission by the Chief Administrative Law Judge, as “additional time is necessary [and] appropriate in the public interest.” Rule 360(a)(3).

For all of these reasons, and those set forth in the Reconsideration Brief, Respondents respectfully request that Your Honor ask Chief Administrative Law Judge Murray to submit a motion requesting that the Commission extend the 300-day deadline in this proceeding. Respondents also intend to move the Commission directly for an order extending the 300-day deadline in order to accommodate a schedule that affords Respondents a full and fair opportunity to be heard in these proceedings.

LEGAL STANDARDS

Pursuant to Rule 360, a hearing officer must issue the initial decision within the time period set by the Commission in its order instituting proceedings—here, 300 days. However:

In the event that the hearing officer presiding over the proceeding determines that it will not be possible to issue the initial decision within the specified period of time, the hearing officer should consult with the Chief Administrative Law Judge. Following such consultation, the Chief Administrative Law Judge may determine, in his or her discretion, to submit a motion to the Commission requesting an extension of the time period for filing the initial decision.

Rule 360(a)(3). If the Commission “determines that additional time is necessary or appropriate in the public interest, the Commission shall issue an order extending the time period for filing the initial decision.” *Id.*

ARGUMENT

The 300-day deadline in this matter will expire on November 12, 2016, excluding the period of the Second Circuit stay. It will “not be possible [for this Court] to issue the initial decision” before this deadline expires (*see* Rule 360) while at the same time fulfilling its “obligation to ensure that [these] administrative proceedings are conducted fairly in furtherance of the search for the truth and a just determination of the outcome.” *In re Blizzard*, Release No. 2032 (Apr. 24, 2002) at 2. In accordance with the basic requirements of “due process,” *id.* at 2 n.9, Respondents file this motion asking that Your Honor consult with the Chief Administrative Law Judge and request that she submit a motion to the Commission requesting an extension of the 300-day deadline. *See also id.* (“[A] fair trial in a fair tribunal is a basic requirement of due process that applies in the context of administrative proceedings”) (citing cases).

Respondents understand that such requests are not routine and usually made after completion of the hearing and submission of the matter for decision. Respondents also understand that such requests are usually made by hearing officers at their own initiative, not at

the request of a party. But in light of the extraordinary circumstances presented here—including the Second Circuit stay issued only weeks before the original hearing date and lifted without advance notice more than 9 months later, and the severe prejudice to Respondents’ case if they are forced to proceed with a hearing in September—Respondents believe such a motion, and an extension of the 300-day deadline, is warranted. Indeed, ensuring that both sides have adequate time to prepare and present their case is imperative in light of two highly unusual aspects of this case: the adoption of amendments to the Rules that were voted on by the Commission shortly after the stay of this proceeding imposed by the Second Circuit was lifted, along with the ongoing challenge to the constitutionality of the proceeding itself.

If the schedule as presently ordered stands, Respondents will be substantially prejudiced for multiple independent reasons, including that (a) the undersigned counsel entered its appearance in this case less than two weeks ago and cannot fairly be expected to be ready to provide the fullest possible defense seven weeks or less from now, particularly given the size of the case record, the extraordinary complexity of the issues presented by the Government’s case, and the number of anticipated witnesses, including multiple expert witnesses; (b) key participants and witnesses, including expert witnesses, are not available for a September 2016 hearing, which is not surprising given that the Second Circuit’s stay of these proceedings extended for nearly ten months and was lifted, without advance notice, less than two weeks ago; (c) Respondents intend to file a number of pre-trial motions, the resolution of which could materially impact the scope and nature of the evidence, including witness testimony, that is admissible at trial; and (d) the parties jointly requested a December 2016 hearing date, in joint recognition that the interests of justice weigh strongly in favor of that date. *See* Reconsideration Br. 9-17.

If no extension is granted, and the hearing is held in early September—seven weeks or less from now, and less than 10 weeks after substitution of counsel and the lifting of the Second Circuit’s stay in this long-running, complex case—Respondents will not receive a fair hearing or be able adequately to defend themselves in this enforcement proceeding the government has been investigating and preparing for years. *See In re Blizzard*, Release No. 2032 (Apr. 24, 2002) at 2 (“[A] fair trial in a fair tribunal is a basic requirement of due process that applies in the context of administrative proceedings”) (citing cases); Reconsideration Br. 17-21. This is not due process.

And it would impinge on Respondents’ right to the counsel of its choice to effectively punish Respondents for changing lawyers recently, for the first time, in these proceedings in which the stakes for Respondents are profound. *See* Reconsideration Br. 8-9. In particular, although Respondents are charged civilly, not criminally, they are being accused of committing securities fraud, the Division seeks a penalty of over \$200 million dollars, and they may be barred permanently from securities work—each a severe sanction that triggers due process protections.

Not surprisingly—and appropriately—the Commission frequently grants requests for extensions made by the Chief Administrative Law Judge on behalf of ALJs when an ALJ is unable to issue a decision within the timeline required under Rule 360. It has done so due to the length and complexity of the proceedings and conflicts with other pending matters, *e.g.*, *Donald J. Anthony, Jr., et al.*, Release No. 74139 (Jan. 26, 2015) (two extensions); to allow the ALJ additional time to review voluminous exhibits and conduct additional research, *Lawrence M. Labine*, Release No. 74883 (May 6, 2015) (two extensions); “because of the size of th[e] particular record and the Office workload,” *In the Matter of John P. Flannery & James D.*

Hopkins, Release No. 3242 (July 18, 2011); and even because the law clerk assigned to assist the ALJ in the preparation of the initial decision broke his elbow, *In the Matter of Michael R. Pelosi*, Release No. 3307 (Oct. 24, 2011).

Surely if these kinds of workload issues are sufficient to justify a request for an extension, then the extraordinary circumstances presented by this case compel such a request. Respondents implore Your Honor not to let the 300-day deadline override the profound fundamental fairness concerns raised by the circumstances presented here. If Your Honor believes hearing officers do not have the authority to extend the 300-day deadline themselves, Respondents respectfully submit that the appropriate course of conduct is to seek, through Chief Administrative Law Judge Murray, a moderate extension of the deadline from the Commission.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Your Honor ask the Chief Administrative Law Judge to exercise her discretion to request that the Commission extend the 300-day deadline in this proceeding.

Dated: New York, New York
July 19, 2016

GIBSON, DUNN & CRUTCHER LLP

By: Randy M. Mastro

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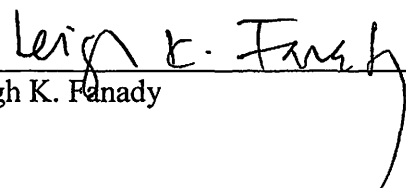
CERTIFICATE OF SERVICE

I hereby certify that I served true and correct copies of 1) Respondents' Motion for Reconsideration and Adjournment or, in the Alternative, for Certification for Interlocutory Review and a memorandum of law in support thereof; 2) the Declaration of Lisa H. Rubin in Support of Respondents' Motion for Reconsideration and Adjournment, or, in the Alternative, for Certification for Interlocutory Review; and 3) Respondents' Motion Requesting the Your Honor Ask the Chief Administrative Law Judge to Submit a Motion to the Commission Requesting an Extension of the Time Period for Filing the Initial Decision in This Matter and a memorandum of law in support thereof, on this 19th day of July, 2016, on the following people and in the manner indicated below:

United States 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 Federal Express)

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

Dugan Bliss, Esq.
Division of Enforcement
Securities and Exchange Commission
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Leigh K. Fenady