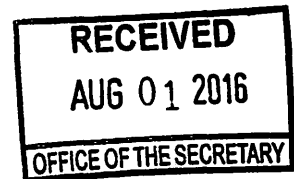


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**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'
EXPEDITED PETITION TO THE
COMMISSION**

The Division of Enforcement ("Division") submits this opposition to Respondents' expedited petition to the Commission, which should be denied.

I. The Division stands ready to proceed to hearing on October 24, 2016 as ordered by the Law Judge, which does not violate Respondents' due process rights.

As noted by Respondents, the parties jointly proposed an early December 2016 hearing date. While the parties were and are all willing to proceed in December, the Law Judge ordered that the hearing begin on October 24, 2016. The Division stands ready to proceed to hearing on that date.

Respondents' due process rights will not be violated if the parties begin trial on October 24, 2016. This matter was initiated on March 30, 2015, and originally set to be heard beginning October 13, 2015. The Second Circuit stayed the proceeding on September 17, 2015, shortly before the hearing was scheduled to commence, and after many phases of the proceeding had been completed, including the exchange of witness and exhibit lists and expert reports. On June 1, 2016, the Second Circuit vacated that stay order, ruling that the "judgment of the district court [dismissing Respondents' case for lack of subject matter jurisdiction] is AFFIRMED, and our stay on further proceedings by the SEC is VACATED." *Tilton et al. v. Securities and Exchange Commission*, No. 15-2103, 2016 WL 3084795 at *11 (2d Cir. June 1, 2016). On June 28, in response to a motion for clarification from the Commission, the Second Circuit confirmed that "the stay is vacated, subject, however, to a continuation of the stay until July 6, 2016, to permit Tilton to file a motion seeking a stay from the Supreme Court and, if such a stay motion is timely filed, until the Supreme Court or a justice thereof has definitely ruled on such a motion." Respondents declined to file such a motion with the Supreme Court, however, so the stay in this case expired on July 6, 2016. Respondents' current counsel noticed their appearances two days later, on July 8.

Respondents' primary argument is that the October 24 hearing date is unfair because they recently elected to retain new counsel. However, this is the second such change in counsel for Respondents (having previously been represented during this proceeding by Skadden, Arps, Slate,

Meagher & Flom, and during the investigation by Williams & Connolly). Respondents knew, as of Second Circuit's June 1 opinion, that the proceeding could soon resume, and they retained new counsel fully aware that nearly all pre-trial procedures had been completed, and the case was ready for trial. Moreover, Susan Brune, an experienced securities litigator, has been counsel for Respondents throughout the entirety of the case; she represented witnesses during investigative testimony, managed Respondents' investigative document productions to the Division, and continues to represent Respondents in the administrative proceeding. Under all these circumstances, Respondents' assertion that their selection of new counsel compels a December 2016 hearing date is without merit.

Respondents also appear to cite the prospective trial evidence as a reason for delay—400 pages of expert reports, nearly 1000 trial exhibits, 24 witnesses designated for trial—but five of the eight experts retained in this matter are their own, that over 700 of the trial exhibits were designated by Respondents themselves, and thirteen of the witnesses identified for trial were identified by Respondents.

It bears noting that this proceeding was stayed just three weeks before the originally-scheduled hearing was to occur, so Respondents had already invested substantial time preparing for trial. But even setting aside that initial preparation, the nearly sixteen-week period between July 6 and October 24—from the expiration of the Second Circuit's stay until the hearing date—comports with the amount of time routinely provided to the parties in administrative hearings. *See Dearlove v. SEC*, 573 F.3d 801, 807 (D.C. Cir. 2009) (no due process violation when respondents provided four months to prepare for administrative hearing); *see also* Tilton Prehearing Order, Administrative Proceedings Rulings Release No. 2647 (May 7, 2015). Moreover, Respondents are not being denied counsel of their choice. Respondents have been represented throughout the

investigation and the administrative proceeding by counsel of their choosing. A desire for more time for counsel to prepare is not the same as a denial of the right to counsel. Ordering a hearing to begin on October 24, 2016 will not infringe on Respondents' due process rights, so Respondents' petition should be denied.

II. The recently-announced amendments to the SEC Rules of Practice.

Respondents also request the Commission to direct that the recently-announced amendments to the SEC Rules of Practice be applied to this proceeding in a manner other than contemplated in the Rules Release itself. That request should be denied. In adopting the amendments to the rules, the Commission expressly considered the question of whether, and to what extent, the amendments should apply to pending proceedings. *See Amendments to the Comm'n's Rules of Prac.*, Rel. No. 34-78319 (July 13, 2016) at 71 (“We solicited comments as to whether the amendments as proposed should be applied, in whole or in part, to proceedings that are pending or have been docketed before or on the effective date ...”), *available at* <https://www.sec.gov/rules/final/2016/34-78319.pdf>. After reasoned consideration, the Commission constructed a schedule of how the amended rules apply. *See Amendments to the Comm'n's Rules of Prac.* at 71-76. Respondents acknowledge as much, *see* Petition at 36 n.12 (noting that the final amended rules contain “the Commission’s specific guidance regarding applicability of the rules to the pending proceedings”), and respondents offer no compelling argument why the Commission should revisit this well-reasoned decision.

For all these reasons, Respondents' petition should be denied.

Dated: July 29, 2016

Respectfully Submitted,

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

Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on this 29th day of July, 2016, in the manner indicated below:

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