

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. :
 :
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Administrative Proceeding
File No. 3-16462

Judge Carol Fox Foelak

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION *IN LIMINE*
TO PRECLUDE THE INTRODUCTION OF DIVISION EXHIBITS 118-123
(LETTERS FROM RESPONDENTS' COUNSEL)**

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

September 12, 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 submit this memorandum of law in support of their motion *in limine* to preclude the Securities and Exchange Commission (“SEC”) Division of Enforcement (the “Division”) from introducing into evidence Exhibits 118-123 from the Division’s August 22, 2016 Amended Exhibit List.

INTRODUCTION

The Division’s Exhibits 118-123 are letters from Respondents’ counsel to the Division, sent between August 2011 and February 2015 concerning various aspects of the Division’s investigation of this matter, including background information on Respondents’ business and letters concerning discovery. Because the letters are from counsel, not from a fact or expert witness, they do not aid in the resolution of the factual issues to be decided at trial. Your Honor should, as a result, exclude them.

ARGUMENT

Pursuant to 5 U.S.C. § 556(d), evidence in administrative proceedings must be “probative.” Amended Rule 320 states that the hearing officer “shall exclude all evidence” that is, *inter alia*, “irrelevant, immaterial, [or] unduly repetitious.”¹ Similarly, the Federal Rules of Evidence provide that “[i]t is elementary that, for evidence to be admissible, it must be relevant to an issue being tried.” *United States v. Hedgepeth*, 418 F.3d 411, 419 (4th Cir. 2005) (citing Fed. R. Evid. 402).

¹ Amended Rule 320 applies in this matter. *See* Final Rule, *Amendments to the Commission’s Rules of Practice*, 81 Fed. Reg. 50,212, 50,230 (July 29, 2016).

Division Exhibits 118-123 do not aid in the resolution of the issues to be decided at trial. They are attorney letters, not the testimony of a fact or expert witness. The Division can seek to elicit the information discussed in the letters from the witnesses at trial and from the underlying documents. Your Honor should therefore exclude the letters. *See, e.g., Sluka v. Landau Uniforms, Inc.*, No. 04 CV 2987, 2006 WL 379176 (D.N.J. Jan. 20, 2006) (granting motion to exclude letter written by counsel).

CONCLUSION

For the foregoing reasons, Respondents respectfully move for an order precluding the Division from introducing into evidence its proposed Exhibits 118-123.

Dated: New York, New York
September 12, 2016

GIBSON, DUNN & CRUTCHER LLP

By: Randy M. Mastro /ms
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