

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

RECEIVED
OCT 07 2016
OFFICE OF THE SECRETARY


-----	X	
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	

DECLARATION OF MONICA K. LOSEMAN IN SUPPORT OF RESPONDENTS' MOTION TO COMPEL THE DISCLOSURE OF THE IDENTITIES OF THE AUTHORS OF THE DIVISION'S HANDWRITTEN NOTES

I, Monica K. Loseman, under penalty of perjury, affirm as follows:

1. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP, attorneys for the above-referenced Respondents. I submit this declaration in support of Respondents' Motion to Compel the Disclosure of the Identities of the Authors of the Division's Handwritten Notes.
2. Attached hereto as Exhibit 1 is a true and correct copy of a letter from Respondents' counsel to the Securities and Exchange Commission Division of Enforcement, dated October 3, 2016, and attachments thereto.
3. Attached hereto as Exhibit 2 is a true and correct copy of an email from the Securities and Exchange Commission Division of Enforcement to Respondents' counsel, dated October 4, 2016.

Dated: New York, New York
October 5, 2016



Monica K. Loseman

October 3, 2016

VIA EXPRESS MAIL AND ELECTRONIC MAIL

Dugan Bliss, Esq.
Senior Trial Counsel
United States Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Suite 1700
Denver, Colorado 80294-1961

Re: *In the Matter of Lynn Tilton, et al.* (File No. 3-16462)

Dear Mr. Bliss:

I write on behalf of Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, “Respondents”) in connection with the above-referenced matter regarding handwritten notes previously produced by the Division of Enforcement (the “Division”) and recent meetings and correspondence between the Division and witnesses conducted in connection with this proceeding.

On May 27, 2015, the Division produced a number of handwritten notes taken by Division staff in relation to communications and meetings with various witnesses, bearing Bates numbers SECNOTES000001 – SECNOTES000764. Respondents request more detailed information concerning 17 sets of these notes (hereinafter, the “Requested Notes,” enclosed as Appendix A). In particular, for each of the Requested Notes, please provide: 1) the author(s)’s name; 2) the identification of the person(s) whose statements the notes reflect; 3) the date(s) upon which the notes were taken; 4) the date(s) of any phone calls or meetings with any person reflected therein; and 5) any audio recordings of the interview or any audio recordings received by the Division from the individual(s) interviewed.

On a separate note, within the past two weeks, the Division has been in contact with a number of witnesses in connection with the above-referenced matter. (A list of known meetings and correspondence conducted between the Division and witnesses may be found in Appendix B, enclosed.)¹ Respondents request the Division produce any notes concerning

¹ This list includes individuals who appear on the Division’s August 22, 2016 Witness List but for whom trial subpoenas have not been requested to-date—any recent contacts with these individuals were made

GIBSON DUNN

Dugan Bliss, Esq.
October 3, 2016
Page 2

the meetings and/or correspondence with witnesses indicated in Appendix B in addition to any other notes regarding correspondence and meetings held between the Division and witnesses in connection with this matter, pursuant to the SEC Rules of Practice (hereinafter, the "Rules") Rule 230(a); the Jencks Act, 18 U.S.C. § 3500; and *Brady v. Maryland*, 373 U.S. 83 (1963). See Rule 231; Rule 230(b)(2).

Given the impending hearing, Respondents request that the Division provide the information and materials requested in this letter by no later than Wednesday, October 5, 2016.

Sincerely,

/s/ Randy M. Mastro

Randy M. Mastro

Enclosures

cc: Nicholas Heinke, Esq. (*via Electronic Mail*)

while they were potential witnesses in this matter, even if the Division ultimately makes the decision not to call these individuals to testify in the hearing.

APPENDIX A

Handwritten Notes Produced to Respondents by Division
In the Matter of Lynn Tilton et al., File No. 3-16462

	Date (If Known)	Bates Numbers	Description
1.	On or about 01/03/2011	SECNOTES000480 SECNOTES000481	Notes from telephone conversation between representative(s) of the SEC, Susan DiCicco, Esq. (Bingham McCutchen LLP), and Kevin Biron, Esq. (Bingham McCutchen LLP).
2.	On or about 12/29/2011	SECNOTES000491 SECNOTES000492	Notes from telephone conversation between representative(s) of the SEC, Susan DeCicco, Esq. (Bingham McCutchen LLP), and Jeff Smith, Esq. (Bingham McCutchen LLP).
3.	On or about 01/19/2012	SECNOTES000497 – SECNOTES000500	Notes from meeting between representative(s) of the SEC, Anthony McKiernan (MBIA), and Johnathan Harris, Esq. (MBIA).
4.	On or about 01/20/2012	SECNOTES000752 – SECNOTES000756	Notes from meeting between representative(s) of the SEC and representative(s) of MBIA.
5.	On or about 03/22/2012	SECNOTES000337 – SECNOTES000341	Notes from conversation between representative(s) of the SEC and unknown individual(s).
6.	On or about 09/13/2012	SECNOTES000606	Notes from conversation between representative(s) of the SEC, Susan DiCicco, Esq. (Bingham McCutchen LLP), and any other representative(s) of MBIA and/or Bingham McCutchen LLP.
7.	On or about 11/05/2012	SECNOTES000608 – SECNOTES000614	Notes from meeting between Reid Muoio (SEC), Brent Mitchell (SEC), Mandy DeRoo (SEC), N. Creola Kelly (SEC), Jeff Smith, Esq. (Bingham McCutchen LLP), Kevin Biron, Esq. (Bingham, McCutchen LLP), Anthony McKiernan (MBIA), and any other representative(s) of MBIA and/or Bingham McCutchen LLP.

	Date (If Known)	Bates Numbers	Description
8.	On or about 11/05/2012	SECNOTES000126 SECNOTES000127	Notes from telephone conversation between representative(s) of the SEC and representative(s) of MBIA.
9.	On or about 03/20/2013	SECNOTES000712 SECNOTES000713	Notes from telephone conversation between representative(s) of the SEC and counsel for MBIA.
10.	On or about 04/09/2013	SECNOTES000656 – SECNOTES000670	Notes from conversation between representative(s) of the SEC and Anthony McKiernan (MBIA), Jonathan Harris, Esq. (MBIA), Susan DiCicco, Esq. (Bingham McCutchen LLP), and representative(s) of MBIA.
11.	On or about 07/30/2013	SECNOTES000726 – SECNOTES000728	Notes from telephone conversation between representative(s) of the SEC, Susan DiCicco, Esq. (Bingham McCutchen LLP), and Bryan Goff, Esq. (Bingham McCutchen LLP).
12.	On or about 08/22/2013	SECNOTES000721 – SECNOTES000725	Notes from conversation between N. Creola Kelly (SEC), Susan DiCicco, Esq. (Bingham McCutchen LLP), representative(s) of the SEC, and representative(s) of MBIA.
13.	On or about 08/29/2013	SECNOTES000719 SECNOTES000720	Notes from conversation between representative(s) of the SEC and Susan DiCicco (Bingham McCutchen LLP).
14.	On or about 10/02/2013	SECNOTES000715 – SECNOTES000718	Notes from conversation between representative(s) of the SEC and Susan DiCicco, Esq. (Bingham McCutchen LLP).
15.	Unknown	SECNOTES000495 SECNOTES000496	Notes from telephone conversation between representative(s) of the SEC and representative(s) of Bingham McCutchen LLP and any other representative(s) of MBIA.
16.	Unknown	SECNOTES000151 – SECNOTES000159	Notes from conversation between representative(s) of the SEC, Susan DiCicco, Esq. (Bingham McCutchen LLP), and representatives of MBIA.

	Date (If Known)	Bates Numbers	Description
17.	Unknown	SECNOTES000090 – SECNOTES000101	Notes from conversation between representative(s) of the SEC and unknown individual(s).

APPENDIX B

Recent Contacts Between Division Witnesses and the Division
In the Matter of Lynn Tilton et al., File No. 3-16462

	Witness	Company Name	Date(s) of Recent Division Contact
1.	Jamie Aldama	Barclays	09/29/2016
2.	David Aniloff	SEI Investments Co.	09/07/2016
3.	Omar Bolli	Norddeutsche Landesbank Girozentrale (Nord/LB)	09/28/2016
4.	Rohit Chaku	Barclays	09/29/2016
5.	David Crowle	MBIA	Unknown
6.	Jeremy Hedberg	Varde Partners	Unknown
7.	Matthew Mach	Varde Partners	On or about 10/23/2016 (Proposed)
8.	Anthony McKiernan	MBIA	Unknown

	Witness	Company Name	Date(s) of Recent Division Contact
9.	Ramki Muthukrishnan	Standard & Poors	Unknown
10.	Wendy Ruttle	Rabobank	Unknown
11.	Tim Walsh	Standard & Poors	Unknown

From: Heinke, Nicholas
To: Mastro, Randy M.; Bliss, Dugan; Sumner, Amy A.; Williams, Mark L
Cc: Loseman, Monica K.; Zweifach, Lawrence J.; Kirsch, Mark A.; Rubin, Lisa H.; Brodsky, Reed; Mary Beth Maloney*; Susan E. Brune; Herrmann, Gabriel
Subject: RE: Time-Sensitive Request
Date: Tuesday, October 4, 2016 7:20:16 PM

Mr. Mastro – we have reviewed the specific documents you identified in your email. As you know, on May 27, 2015, the Division produced redacted copies of confidential internal witness interview notes to Respondents’ prior counsel. While we did not expect Respondents to use these documents beyond the Commission’s administrative proceeding when they were produced, we agree that there was not a protective order entered by the Administrative Law Judge and have not identified an explicit agreement between the Division and prior counsel for Respondents regarding use of these documents.

We have reviewed the documents you have identified and do not believe there sufficient reason to require sealing from the public record. Therefore, the Division does not object to Respondents filing the specific documents publicly on the District Court’s electronic docket. We would ask, however, that if you intend to make use of any other documents produced by the Division in the administrative proceeding, including the documents produced on May 27, 2015 (SECNOTES000001-000764), that you notify the Division of the intended use so that we can determine whether or not to seek a protective order regarding their use.

By not objecting to Respondents’ public filing of these documents, the Division is not waiving any applicable privilege or protection.

Finally, we decline to provide additional information regarding the author(s) of the documents. You do not cite – and we are not aware of – any legal basis for this request, nor do we see how the information is relevant.

Sincerely,

Nic

Nicholas P. Heinke
Trial Counsel
U.S. Securities & Exchange Commission
Byron G. Rogers Federal Building
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
(303) 844-1071
HeinkeN@sec.gov

From: Mastro, Randy M. [mailto:RMastro@gibsondunn.com]
Sent: Tuesday, October 04, 2016 4:54 AM
To: Heinke, Nicholas; Bliss, Dugan; Sumner, Amy A.

Cc: Loseman, Monica K.; Zweifach, Lawrence J.; Kirsch, Mark A.; Rubin, Lisa H.; Brodsky, Reed; Mary Beth Maloney*; Susan E. Brune; Herrmann, Gabriel
Subject: Time-Sensitive Request

Counsel:

We represent Patriarch Partners XV, LLC and Octaluna LLC (collectively, "Plaintiffs") in a pending civil action captioned *Patriarch Partners XV, LLC v. U.S. Bank National Ass'n*, No. 1:16-cv-07128-JSR (S.D.N.Y.) (the "PPXV Case"). As you know, we also represent the Respondents here, including Patriarch Partners XV, LLC, in the pending administrative and cease-and-desist proceedings before the Commission captioned *In re Lynn Tilton*, File No. 3-16462 (the "Administrative Proceeding").

I write regarding certain documents previously produced by the Commission's Division of Enforcement (the "Division") in connection with the Administrative Proceeding, which Division staff unilaterally described as "confidential" at the time of production, even though, as we understand it, no protective order was ever entered and no agreement ever reached between the parties permitting the Division to make any such designation. The documents at issue—which are Bates numbered SECNOTES000495-96, SECNOTES000656-70, SECNOTES000715-18, SECNOTES000721-25, and SECNOTES000726-28 (collectively, the "Documents")—are copies of handwritten interview notes prepared by one or more Division attorneys in connection with the investigation that gave rise to the Administrative Proceeding. In the PPXV Case, Plaintiffs recently submitted copies of those Documents to U.S. District Judge Jed Rakoff of the Southern District of New York, to whom the PPXV Case has been assigned, in connection with their application seeking a preliminary injunction against the Defendants in that case.

Division counsel described these Documents as "confidential" in a production cover letter dated May 27, 2015, and stamped the documents with a confidentiality legend. Again, it is our understanding, however, that the Documents are not subject to confidential treatment, given that the Administrative Law Judge presiding over the Administrative Proceeding has not entered a protective order providing for confidential treatment of the Documents and no confidentiality agreement exists between the Division and the Respondents in the Administrative Proceeding permitting the Division to make any such designation. Thus, Plaintiffs believe that the Documents should be filed publicly on the District Court's electronic docket for the PPXV Case. Nevertheless, given the Division's reference to the "confidential" nature of the Documents, Plaintiffs submitted the Documents directly to Judge Rakoff to request and await guidance from him on publicly filing them.

We therefore write to request the Division's position regarding whether the Documents may be publicly filed. We intend to contact Judge Rakoff's chambers later this morning at 11AM NY time to seek permission, in accordance with Judge Rakoff's Individual Rules of Practice, to submit a letter requesting a ruling that the Documents should be filed publicly, but we wanted to request the Division's position in advance of doing so.

Please let us know as soon as possible the Division's position regarding these Documents. And also please confirm as soon as possible who within the Division authored each of these Documents, which is information to which we are entitled. Given the time sensitivity here, we respectfully request the Division's response to these requests by today at 11AM NY time.

Thank you for your prompt attention to these requests.

Sincerely,

Randy Mastro

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.
