

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE :
COMMISSION, :
Plaintiff, :

vs. :

PATRICK CHURCHVILLE; and :
CLEARPATH WEALTH MANAGEMENT, :
LLC, :
Defendants, :

and :

CLEARPATH MULTI-STRATEGY FUND I, :
L.P.; CLEARPATH MULTI-STRATEGY :
FUND II, L.P.; CLEARPATH MULTI- :
STRATEGY FUND III, L.P.; HCR VALUE :
FUND, L.P., :
Relief Defendants. :

Case No. 15-CV-00191-S-LDA

MOTION OF CLAIMANTS LINDA ROSENBERG, INDIVIDUALLY, AND LINDA ROSENBERG, AS EXECUTRIX OF THE ESTATE OF S. MICHAEL ROSENBERG, TO COMPEL COMPLIANCE WITH SUBPOENAS DUCES TECUM AND/OR FOR AN ORDER FROM THE COURT AUTHORIZING THE ISSUANCE OF SAME
(Memorandum of Law Incorporated Herewith)

Pursuant to Fed. R. Civ. P. 45 and LR Cv 7(a), Claimants Linda Rosenberg individually and Linda Rosenberg, as Executrix of the Estate of S. Michael Rosenberg (*hereinafter together*, the “Rosenbergs”), respectfully request an order from this Court compelling the following persons/entities to produce documents and records pursuant to *subpoenas duces tecum* issued to each on May 21, 2020 with a compliance date of June 1, 2020: (i) the Receiver, Stephen Del Sesto, Esq. (*hereinafter*, the “Receiver”); (ii) the United States Securities and Exchange Commission, by and through Attorney Marc Jones (*hereinafter*, the “SEC”); and (iii) the United States Attorney’s Office for Rhode Island, by and through Assistant United States Attorney Dulce Donovan

(*hereinafter*, the “U.S. Attorney”). Alternatively, if the three (3) *Subpoenas Duces Tecum* are deemed to be procedurally deficient, the Rosenbergs then request that this Court authorize their issuance upon the Receiver, the SEC, and the U.S. Attorney for Rhode Island.

To date, the Receiver and the U.S. Attorney for Rhode Island have provided no response, objection, or responsive documents to their respective *Subpoenas Duces Tecum*. The SEC, through Attorney Marc Jones, has sent a letter to the undersigned counsel dated June 10, 2020, stating with respect to the *Subpoenas*, *inter alia*, that “these are invalidly issued subpoenas. The Commission does not recognize them and will not be responding to them.” A true and correct copy of SEC counsel Jones’s letter is attached hereto as Exhibit A.¹

Without the documents requested, the Rosenbergs are subject to a “trial by ambush” on the Receiver’s determination of their “insider” status and their ineligibility for recovery from the receivership estate. The process that was established by this Court in ECF Nos. 153 & 155 and Text Orders (Smith, J.) dated March 19, 2020 and April 15, 2020, by which the Rosenbergs may challenge the Receiver’s designation of them to be “insiders”, would be nothing more than a ruse or a nullity, if the alleged evidence for the designation is not revealed to them by the Receiver, the SEC or the U.S. Attorney for Rhode Island. Clearly, the Rosenbergs are now at a distinct disadvantage and will be prejudiced in attempting to prepare objections to the Receiver’s determination that they are deemed “insiders” by the Court’s deadline of June 18, 2020.

¹ In Attorney Jones’s imperious June 10, 2020 letter, he posits that the Rosenbergs are not “Parties” to this action and have no standing to issue the subject *Subpoenas Duces Tecum*. He suggests that the Rosenbergs might wish to seek joinder under Fed. R. Civ. P. 19 or intervention under Fed. R. Civ. P. 24 in order to gain standing to issue *Subpoenas*. However, he then argues that status as a party would be ineffectual anyway, as “[d]iscovery in this case is long since over.” Should the Court invite the Rosenbergs to file a Motion for Joinder or a Motion for Intervention so as to confer standing on them to issue the subject *Subpoenas Duces Tecum*, the Rosenbergs would be pleased to do so. Perhaps, more appropriately, under Fed. R. Civ. P. 21, this Court *sua sponte* “may at any time, on just terms, add or drop a party.”

As of now, the only way that the Rosenbergs will ever be able to gather any evidence concerning the Receiver's determination of their alleged insider status will be upon the Receiver's filing of his response to the Rosenbergs' objections. The Rosenbergs have good cause for issuing the subject *Subpoenas Duces Tecum* to gather the documents requested, as such documents supposedly provided the basis for the Receiver's determination. On this basis, the Rosenbergs request that this Court enter an order requiring the Receiver, the SEC and the U.S. Attorney to produce documents responsive to the subject *Subpoenas Duces Tecum*.²

APPLICABLE FACTS AND TRAVEL

1. On May 4, 2020, this Court granted the Rosenbergs' Motion for Extension of Time to File an Objection to the "Insiders" Designation on May 4, 2020, extending the deadline for filing their objections to June 18, 2020.

2. On May 5, 2020, the Rosenbergs' counsel spoke with the Receiver regarding his determination that the Rosenbergs were insiders. During the conversation, the Receiver stated that he was not in possession of any documents that would show the Rosenbergs were insiders, but that he had been shown charts and other documents by the SEC and the U.S. Attorney's Office for

² All three (3) subpoenaed persons/entities received electronic notice of the *Subpoenas Duces Tecum* via email on May 21, 2020 in accordance with Fed. R. Civ. P. 45(a)(4). However, in-hand service on them has been delayed by the COVID-19 pandemic and recent protests in the City of Boston in response to the killing of George Floyd. Constables attempted service on the Receiver, the SEC, and the U.S. Attorney at their professional offices during May 22-29, 2020. The Constables were informed that the Receiver and Attorney Jones from the SEC were working remotely and would need to be served at their residences. The Constable was informed that there would be nobody in the U.S. Attorney's Office in Providence until June 1, 2020. On June 4, 2020, the Constable served the Receiver and the U.S. Attorney's Office in hand with the *Subpoenas Duces Tecum*. However, an appointment to serve Mr. Jones at the SEC's office in Boston was canceled at the last minute, because that building was placed in lock-down on June 4th & 5th due to protests taking place in the City of Boston in response to the killing of George Floyd. Finally, as stated in Mr. Jones's June 10, 2020 letter, the SEC's office in Boston remains closed to date.

Rhode Island that led him to conclude that the Rosenbergs were each “net winners” and, therefore, were deemed to be insiders.

3. On May 12, 2020, the Rosenbergs’ counsel sent letters to the SEC and U.S. Attorney’s Office via first-class mail and email requesting the documents upon which those agencies relied to determine the Rosenbergs were insiders. *See* May 12, 2020 Letter to Attorney Donovan, a true and accurate copy of which is attached hereto as **Exhibit B**; *see also*, May 12, 2020 Letter to Attorney Jones, a true and accurate copy of which is attached hereto as **Exhibit C**.

4. Having received absolutely no response to these letters, on May 21, 2020, the Rosenbergs’ counsel issued *Subpoenas Duces Tecum* with a compliance date of June 1, 2020 to the Receiver, the U.S. Attorney and the SEC. *See* May 21, 2020 *Subpoena Duces Tecum* to the Receiver, a true and accurate copy of which is attached hereto as **Exhibit D**; May 21, 2020 *Subpoena Duces Tecum* to the U.S. Attorney, a true and accurate copy of which is attached hereto as **Exhibit E**; May 21, 2020 *Subpoena Duces Tecum* to Marc Jones, Esq. at the SEC, a true and accurate copy of which is attached hereto as **Exhibit F**.

5. The *Subpoena Duces Tecum* to the U.S. Attorney requests the following documents:

- a. “All witness statements concerning or regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg;”
- b. “All interview notes, recordings, or transcripts of you or your office’s communications with the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg;”

- c. “Any witness statements made by witness regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg;”
- d. “All accounting evidence relating to the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg;”
- e. “All evidence demonstrating or showing that the Rosenbergs were “net winners” in the Patrick Churchville Ponzi scheme;”
- f. “All presentations that your office (and/or any Federal agency) made to the Receiver concerning the Rosenbergs;”
- g. “All deposition transcripts, sworn statements, affidavits, or other sworn testimony relating to or regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg;” and,
- h. “All documents showing that the Rosenbergs were “insiders” as defined by the Receiver in this matter.”

The U.S. Attorney has provided no response.

6. The *Subpoena Duces Tecum* to the Receiver is identical to the requests to the U.S. Attorney. The Receiver has provided no response.

7. The *Subpoena Duces Tecum* to the SEC is identical to the requests to the U.S. Attorney. As indicated above, Attorney Jones of the SEC sent a letter to the undersigned counsel on June 10, 2020, which is Exhibit A hereto.

8. On May 22, 2020, Attorney Jones of the SEC contacted the Rosenbergs’ counsel, and stated that the SEC would not respond to the *Subpoena Duces Tecum*. Attorney Jones

questioned the validity of the Rosenbergs' *Subpoena Duces Tecum* to the SEC, because the Rosenbergs are claimants in this action – not named parties.

9. As of the filing of this Motion, the Rosenbergs have received no communication from the U.S. Attorney or the Receiver regarding the respective *Subpoenas Duces Tecum* served upon them.

10. The Receiver, the U.S. Attorney, and/or the SEC have not filed a motion for a protective order to prevent the enforcement of the *Subpoenas Duces Tecum*, nor have they filed any Rule 45(c)(2)(B) objections.

RULE OF LAW

Federal Rule of Civil Procedure 45 permits the issuance of a *subpoena duces tecum*. See Fed. R. Civ. P. 45. The issuance of a *subpoena duces tecum* is permitted as to agencies of the United States as they are “persons” as identified in Rule 45. See Yousuf v. Samantar, 451 F.3d 248, 257 (D.C. Cir. 2006). Normally, if “a party objects to the enforcement of a subpoena, enforcement depends preliminarily on a showing of good cause by the party seeking production.” Boeing Airplane Co. v. Cogheshall, 280 F.2d 654, 659 (D.C. Cir. 1960). “Good cause may ordinarily be sustained by a claim that the requested documents are necessary to establishment of the moving party’s claim or that denial of production would cause the moving party undue hardship or injustice.” Id. (citations omitted).

LEGAL ARGUMENT

In this case, the Rosenbergs have good cause for seeking the documents which they requested through the *Subpoenas Duces Tecum*. In order to mount a sufficient defense to the Receiver’s determination that both are “insiders,” the Rosenbergs must be able to review and determine the basis for that initial determination. Without such ability, the Rosenbergs will be

substantially prejudiced and subject to a trial by ambush as to the Receiver's "insider" designation. Moreover, the subpoenaed persons and entities have not filed any objection to the *Subpoenas Duces Tecum* pursuant to Fed. R. Civ. P. 45(c)(2)(B). See In re Denture Cream Prod. Liab. Litig., 292 F.R.D. 120, 124 (D.D.C. 2013) (internal quotations and citations omitted) ("The failure to serve written objections to a subpoena within the time frame specified by Rule 45(c)(2)(B) typically constitutes a waiver of such objections.").

Here, the Rosenbergs are without any documentation supporting or contradicting the Receiver's factual basis for determining that both of the Rosenbergs are allegedly "insiders." If the current circumstances remain the same, the Rosenbergs would have no choice but to file their objections to the Receiver's determination without being made aware of any documentation or evidence whatsoever that supports the Receiver's determination. Such circumstances deny the Rosenbergs an opportunity to review the evidence and the opportunity to address the full merits of the Receiver's determination as to "insider" status. See Boeing Airplane Co., 280 F.2d at 659. In short, the Rosenbergs are being kept completely in the dark as to the factual predicate for the Receiver's conclusions as to "insider" status.

For these reasons, the Rosenbergs have good cause to obtain relevant and probative documents from the Receiver, the SEC and the U.S. Attorney relative to their purported "insider" status. The Rosenbergs must be afforded the ability to review the evidence upon which the Receiver made his determination as to "insider" status. Without such review, the Rosenbergs are denied the possibility of addressing the Receiver's factual basis for his determination prior to his response. Such circumstances prejudice the Rosenbergs' ability to argue their position to this Court and deny them due process under the Constitution. In response to the SEC's efforts to elevate form over substance to deny the Rosenbergs access to salient documents and information,

this Court can *sua sponte* simply add the Rosenbergs as parties to this case pursuant to Fed. R. Civ. P. 21 – which would obviate the SEC’s procedural concerns.

CONCLUSION

For the foregoing reasons, the Rosenbergs request that this Court enter an order authorizing the issuance of the subject *Subpoenas Duces Tecum* and ordering the Receiver, the SEC and the U.S. Attorney to provide the Rosenbergs’ counsel with responsive documents within each party’s control within twenty (20) days. Without such information, the Rosenbergs will be prejudiced in their ability to challenge the Receiver’s determination that each was an “insider.”

**LINDA ROSENBERG, individually; and
LINDA ROSENBERG, as Executrix of
the ESTATE OF S. MICHAEL
ROSENBERG,**

By and through their attorneys,

/s/ Randall L. Souza
Randall L. Souza, Esq. (#4082)
Michael A. Kelly, Esq. (#2116)
KELLY, SOUZA, ROCHA & PARMENTER, PC
128 Dorrance Street, Suite 300
Providence, RI 02903
Tel. 401.490.7334 | Fax 401.490.7874
mkelly@ksrplaw.com
rsouza@ksrplaw.com

Dated: June 11, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2020, I electronically filed the within document in this case with the Clerk of this Court using the CM/ECF System and that notice will be sent electronically to all counsel who are registered participants identified on the Mailing Information for Case No. 15-cv-00191-S-LDA.

/s/ Randall L. Souza
KELLY, SOUZA, ROCHA & PARMENTER, PC

Exhibit A



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Boston Regional Office
33 Arch Street, 24th Floor
Boston, MA 02110

DIVISION OF ENFORCEMENT

Marc Jones
Senior Trial Counsel
(617) 573-8947
jonesmarc@sec.gov

June 10, 2020

By Electronic Mail

Randall Souza, Esq.
Kelly, Souza, Rocha & Parmenter, P.C.
128 Dorrance Street, Suite 300
Providence, RI 02903
rsouza@ksrplaw.com

Re: SEC v. Churchville, et al., 15-CV-00191-S-LDA

Dear Attorney Souza:

Yesterday, I was contacted by a Boston constable who you apparently sent to my (closed) office with a subpoena. I was also told by the United States Attorney's Office in Rhode Island, that you sent a subpoena there as well. As you and I previously discussed by telephone, these are invalidly issued subpoenas. The Commission does not recognize them and will not be responding to them.

As you know—and as we discussed by telephone before you sent a process server— Fed. R. Civ. P. 45 limits subpoena power to parties to a lawsuit. *See* Fed. R. Civ. P. 45(a)(3) (“The clerk must issue a subpoena ... to a *party* that otherwise requests it. That *party* must complete it before service.”). Your clients are not parties to the above-referenced lawsuit. *See* Fed. R. Civ. P. 17. Nor have they moved to intervene. Fed. R. Civ. P. 24. Discovery in this case is long since over. *See* ECF No.114 (Default of Patrick Churchville). The Court has defined a limited process to determine eligibility for recovery from the Receivership Estate. *See* ECF No. 153, 155, and text orders dated 3/19/20 and 4/15/20. That process does not empower those provisionally designated as “insiders” to issue subpoenas or otherwise take discovery. I informed you of that before you sent this latest round of subpoenas, so there could be no confusion on that point.

Misuse of the court's subpoena power (as it is the court's power, and not a third party attorney's) could subject the issuing attorney and his client to a contempt finding. The improper issuance of subpoenas also may violate Rhode Island Rule of Professional Conduct 3.1 (*see* Commentary note 1, “The advocate has a duty ... not to abuse legal procedure”); 3.4 (“A lawyer shall not ... in pretrial procedure, make a frivolous discovery request”); *see also* U.S.D.C. Local Rule Gen. 208.

Randall Souza, Esq.

June 10, 2020

Page 2

Accordingly, the Commission will not comply with your improperly issued subpoenas. Because your subpoenas lack the authority of the District Court, the Commission must treat them as mere requests. As I explained to you, the Commission obtains documents via investigative subpoenas issued before the filing of litigation. These documents regularly contain confidential personal and financial information. The Commission may not give out that information based only on a request without the force of law. *See* 17 C.F.R. § 200.735-3(b)(2) (“A[n] ... employee of the Commission shall not ... divulge to any unauthorized person ... any nonpublic Commission document, or any information contained in any such document...”); 17 C.F.R. § 203.2 (“Information or documents obtained by the Commission in the course of any investigation ... shall be deemed non-public...”); SEC Administrative Regulations 23-2. For the same reasons, Commission staff would not appear for a “deposition” noticed by a non-party without authority to do so.

Please immediately withdraw all subpoenas sent either to the Commission or others, notifying me by electronic mail that you have done so.

Sincerely,



Marc Jones

Cc: Stephen DelSesto (by email)
Zachary Cunha (by email)
Dulce Donovan (by email)

Exhibit B



Randall L. Souza
rsouza@ksrplaw.com

May 12, 2020

VIA E-MAIL (DDonovan@usa.doj.gov)
AND VIA FIRST-CLASS MAIL

Dulce Donovan, Esq.
Assistant U.S. Attorney
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

Re: *S.E.C. v. Patrick Churchville, ClearPath Wealth Management, LLC et al.*
USDC-RI Case No. 15-CV-000191-WES

Dear Attorney Donovan:

Please be advised that this firm represents Linda Rosenberg and the Estate of S. Michael Rosenberg in the above-captioned matter. Both Linda Rosenberg and the Estate of S. Michael Rosenberg (*hereinafter together*, the “Rosenbergs”) have been excluded from any disbursements to claimants from this receivership proceeding to date, as they have been deemed to be “insiders” by the Receiver, Stephen DeSesto, Esq. (the “Receiver”).

Judge Smith has granted the Rosenbergs until June 18, 2020 to file an objection to the Receiver’s determination that both are “insiders.” In an effort to understand the Receiver’s determination, we recently spoke with him. Attorney DeSesto indicated to us that your office, the SEC and other Federal authorities had presented him with information and documentation that led him to conclude that the Rosenbergs were “net winners” and, thus, should be deemed “insiders.” The Receiver informed us that he did not presently possess any such documentation, and he referred us to you and to Marc Jones at the SEC for further inquiry.

Accordingly, we hereby request any relevant documents concerning the Rosenbergs’ connections to Patrick Churchville and/or ClearPath Wealth Management, LLC, including:

- Any witness statements concerning or relating to the Rosenbergs;
- All interview notes, recordings, or transcripts of your office’s communications with either of the Rosenbergs;
- Any statements made by other witnesses regarding the Rosenbergs;
- Any accounting evidence involving or relating to the Rosenbergs;

Dulce Donovan, Esq.

May 12, 2020

Page 2

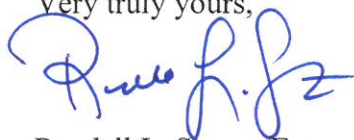
- Any evidence demonstrating or showing that the Rosenbergs were “net winners” in Patrick Churchville’s Ponzi scheme;
- Any presentations that your office (and/or any Federal agency) made to the Receiver concerning the Rosenbergs;
- Any depositions transcripts, sworn statements, affidavits, or other sworn testimony relating to or regarding the Rosenbergs; and
- Any evidence that would show that the Rosenbergs were “insiders” in this matter.

Furthermore, if you are aware of other Federal agencies, and individuals at those agencies, who could help us gather this information and documentation, please so advise us. It would be of great assistance to us.

As you are aware, time is of the essence in this matter. Please let me know if there is anything we can do to help obtain these necessary materials promptly.

Thank you for your attention to this matter, and I hope you and yours are well in these challenging times.

Very truly yours,



Randall L. Souza, Esq.

cc: Marc Jones, Esq. (via e-mail)
Michael A. Kelly, Esq. (via e-mail)

Exhibit C



Randall L. Souza
rsouza@ksrplaw.com

May 12, 2020

VIA E-MAIL (jonesmarc@sec.gov)
AND VIA FIRST-CLASS MAIL

Marc Jones, Esq.
Senior Trial Counsel
Securities and Exchange Commission
33 Arch Street, 23rd Floor
Boston, MA 02110

Re: *S.E.C. v. Patrick Churchville, ClearPath Wealth Management, LLC et al.*
USDC-RI Case No. 15-CV-000191-WES

Dear Attorney Jones:

Please be advised that this firm represents Linda Rosenberg and the Estate of S. Michael Rosenberg in the above-captioned matter. Both Linda Rosenberg and the Estate of S. Michael Rosenberg (*hereinafter together*, the “Rosenbergs”) have been excluded from any disbursements to claimants from this receivership proceeding to date, as they have been deemed to be “insiders” by the Receiver, Stephen DelSesto, Esq. (the “Receiver”).

Judge Smith has granted the Rosenbergs until June 18, 2020 to file an objection to the Receiver’s determination that both are “insiders.” In an effort to understand the Receiver’s determination, we recently spoke with him. Attorney DelSesto indicated to us that your office, the United States Attorney’s Office and other Federal authorities had presented him with information and documentation that led him to conclude that the Rosenbergs were “net winners” and, thus, should be deemed “insiders.” The Receiver informed us that he did not presently possess any such documentation, and he referred us to you and to AUSA Dulce Donovan for further inquiry.

Accordingly, we hereby request any relevant documents in the care, custody and control of the SEC concerning the Rosenbergs’ connections to Patrick Churchville and/or ClearPath Wealth Management, LLC, including:

- Any witness statements concerning or relating to the Rosenbergs;
- All interview notes, recordings, or transcripts of your office’s communications with either of the Rosenbergs;
- Any statements made by other witnesses regarding the Rosenbergs;

Marc Jones, Esq.

May 12, 2020

Page 2

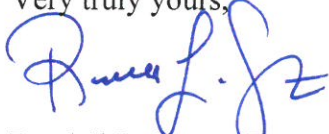
- Any accounting evidence involving or relating to the Rosenbergs;
- Any evidence demonstrating or showing that the Rosenbergs were “net winners” in Patrick Churchville’s Ponzi scheme;
- Any presentations that your office (and/or any Federal agency) made to the Receiver concerning the Rosenbergs;
- Any depositions transcripts, sworn statements, affidavits, or other sworn testimony relating to or regarding the Rosenbergs; and
- Any evidence that would show that the Rosenbergs were “insiders” in this matter.

Furthermore, if you are aware of other Federal agencies, and individuals at those agencies, who could help us gather this information and documentation, please so advise us. It would be of great assistance to us.

As you are aware, time is of the essence in this matter. Please let me know if there is anything we can do to help obtain these necessary materials promptly.

Thank you for your attention to this matter, and I hope you and yours are well in these challenging times.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Randall L. Souza". The signature is stylized and cursive.

Randall L. Souza, Esq.

cc: Dulce Donovan, Esq. (via e-mail)
Michael A. Kelly, Esq. (via e-mail)

Exhibit D

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of

Plaintiff v. Defendant Civil Action No.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Table with 2 columns: Place, Date and Time: June 1, 2020 at 10 AM

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place, Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date:

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party), who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Definitions

For the purposes of this Schedule A, the following terms are defined:

1. “ClearPath” – This term shall mean ClearPath Wealth Management, LLC and its associated funds, including, but not limited to, ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., ClearPath Multi-Strategy Fund III, L.P., and HCR Value Fund, L.P.
2. “Receiver” – This term shall mean the Receiver, Stephen Del Sesto, appointed in SEC v. Patrick Churchville and ClearPath Wealth Management, LLC, Case No. 15-CV-00191-S-LDA in United States Federal District Court for the District of Rhode Island.
3. “Rosenbergs” – This term shall mean Linda Rosenberg and S. Michael Rosenberg, both individually and collectively.

Documents

1. All witness statements concerning or regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
2. All interview notes, recordings, or transcripts of you or your office’s communications with the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
3. Any witness statements made by witness regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
4. All accounting evidence relating to the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
5. All evidence demonstrating or showing that the Rosenbergs were “net winners” in the Patrick Churchville Ponzi scheme.

6. All presentations and documents supporting those presentations made to or provide to the Receiver concerning the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.

7. All deposition transcripts, sworn statements, affidavits, or other sworn testimony relating to or regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.

8. All documents showing that the Rosenbergs were “insiders” as defined by the Receiver in this matter.

Exhibit E

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)
Plaintiff)
v.) Civil Action No.
_____)
Defendant)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: _____ Date and Time: June 1, 2020 at 10 AM

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: _____ Date and Time: _____

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

_____)
Signature of Clerk or Deputy Clerk

_____)
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Definitions

For the purposes of this Schedule A, the following terms are defined:

1. “ClearPath” – This term shall mean ClearPath Wealth Management, LLC and its associated funds, including, but not limited to, ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., ClearPath Multi-Strategy Fund III, L.P., and HCR Value Fund, L.P.
2. “Receiver” – This term shall mean the Receiver, Stephen Del Sesto, appointed in SEC v. Patrick Churchville and ClearPath Wealth Management, LLC, Case No. 15-CV-00191-S-LDA in United States Federal District Court for the District of Rhode Island.
3. “Rosenbergs” – This term shall mean Linda Rosenberg and S. Michael Rosenberg, both individually and collectively.

Documents

1. All witness statements concerning or regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
2. All interview notes, recordings, or transcripts of you or your office’s communications with the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
3. Any witness statements made by witness regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
4. All accounting evidence relating to the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
5. All evidence demonstrating or showing that the Rosenbergs were “net winners” in the Patrick Churchville Ponzi scheme.

6. All presentations that your office (and/or any Federal agency) made to the Receiver concerning the Rosenbergs.

7. All deposition transcripts, sworn statements, affidavits, or other sworn testimony relating to or regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.

8. All documents showing that the Rosenbergs were “insiders” as defined by the Receiver in this matter.

Exhibit F

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of

Plaintiff v. Defendant Civil Action No.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: Date and Time: June 1, 2020 at 10 AM

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date:

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party), who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

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- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
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(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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2. “Receiver” – This term shall mean the Receiver, Stephen Del Sesto, appointed in SEC v. Patrick Churchville and ClearPath Wealth Management, LLC, Case No. 15-CV-00191-S-LDA in United States Federal District Court for the District of Rhode Island.
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2. All interview notes, recordings, or transcripts of you or your office’s communications with the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
3. Any witness statements made by witness regarding the Rosenbergs in relation to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
4. All accounting evidence relating to the Rosenbergs in regards to investigations into or related to Patrick Churchville, ClearPath, or Jonathan E. Rosenberg.
5. All evidence demonstrating or showing that the Rosenbergs were “net winners” in the Patrick Churchville Ponzi scheme.

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8. All documents showing that the Rosenbergs were “insiders” as defined by the Receiver in this matter.