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Subject:	FW: In the Matter of the Petition of CYIOS Corporation (File No. 3-16386)
Date:	Monday, May 10, 2021 5:58:30 PM
Attachments:	CYIOS Reply Brief 5-10-21.pdf

From: Mark Hunter
Sent: Monday, May 10, 2021 5:56:13 PM (UTC-05:00) Eastern Time (US & Canada)
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Cc: Gulde, Matthew; Fraser, B. David; Tim Carnahan (org); Stewart, Angelia L.; Sharifa Hunter; Jenny Sardella
Subject: In the Matter of the Petition of CYIOS Corporation (File No. 3-16386)

Attached please find CYIOS Corporation's Reply Brief in connection with the above-referenced matter.

Regards,

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UNITED STATES OF AMERICA
BEFORE THE
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of	:	
	:	
CYIOS CORPORATION	:	Administrative Proceeding
	:	File No. 3-16386
For Modification or Reversal of Initial Decision of Administrative Law Judge	:	

REPLY BRIEF IN SUPPORT OF APPLICATION OF CYIOS CORPORATION FOR MODIFICATION OR REVERSAL OF INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE

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I. PRELIMINARY STATEMENT

Pursuant to Rule 450 of the Securities and Exchange Commission's (the "**Commission**") Rules of Practice, CYIOS Corporation ("**CYIOS**" or the "**Company**") hereby submits this reply brief in further support of its application for modification or reversal of the Initial Decision of Administrative Law Judge ("**ALJ**") James E. Grimes ("**Grimes**"), dated January 10, 2020 (the "**Initial Decision**"). For the reasons set forth in the Opening Brief in Support of Application of CYIOS Corporation for Modification or Reversal of Initial Decision of Administrative Law Judge ("**Opening Brief**"), and as further demonstrated herein, the Commission should modify or reverse the Initial Decision and set aside cease-and-desist, civil penalties, and disgorgement sanctions against CYIOS.

In the Division of Enforcement's Brief in Response to Respondent CYIOS' Petition for Review of the Administrative Law Judge's Initial Decision ("**Opposition Brief**"), the Division of Enforcement ("**Division**") has attempted to mischaracterize the record, and to belittle CYIOS' new management's extensive efforts to rehabilitate CYIOS into the functional, compliant company that it currently is. The Division's convenient attempt to downplay CYIOS' new management's remedial endeavors only manages to further highlight the fundamental unfair nature of the sanctions that ALJ Grimes rendered in the Initial Decision. Those sanctions are not substantiated by the evidence in the record, and the Initial Decision should be modified or reversed on the grounds that its findings are erroneous and fundamentally unfair.

II. ARGUMENT

A. The Division's Attempt to Mischaracterize CYIOS' Current Management's Efforts is Not Supported By the Record

In an attempt to undermine and negate the efforts of CYIOS' current management,

Chief Executive Officer ("**CEO**") and Board of Directors ("**Board**") member David Lewis ("**Mr. Lewis**") and Board Chairman John O'Shea ("**Mr. O'Shea**") (collectively, "**CYIOS' Current Management**"), the Division's Opposition Brief takes the position that CYIOS' Current Management "is not credible." *See* Opposition Brief at 7. The Division's support for such allegation is telling.

According to the Division's Opposition Brief, Mr. Lewis and Mr. O'Shea had to be aware of the underlying administrative proceeding in this matter when Mr. Lewis and Mr. O'Shea assumed their positions at CYIOS on May 7, 2020, simply because CYIOS disclosed the matter in its 2019 annual report filed on April 15, 2020. *See* Opposition Brief at 7. The Division appears to have overlooked the notion that ALJ Grimes issued the Initial Decision on January 10, 2020, almost three months before CYIOS filed its 2019 annual report and almost four months before Mr. Lewis and Mr. O'Shea assumed their positions as CYIOS' Current Management. In fact, page seven of the 2019 annual report that the Division relies upon in its Opposition Brief specifically references the Initial Decision. *See* Initial Decision, Exhibit B. Since both the 2019 annual report and the Initial Decision predated Mr. Lewis' or Mr. O'Shea's tenure, the best that either could do was to address the issues upon assuming their positions, which the record is clear they did.

The Division's word play in response to CYIOS' assertion in the Opening Brief that CYIOS' Current Management would have immediately retained legal counsel to correspond with the Commission's staff in order to responsibly address CYIOS' violative conduct and potentially resolve the matter with the Commission does nothing to undermine the validity of CYIOS' Current Management's assertions. Simply put, if CYIOS' Current Management had been aware of the underlying administrative proceeding at a time when Mr. Lewis and Mr. O'Shea had the authority

to direct CYIOS' activities and before the issuance of the Initial Decision, they would have taken the appropriate action as described herein, in contrast to the actions taken by prior management.

In an attempt to imply that Respondent Timothy W. Carnahan ("**Carnahan**") still exercises ongoing control over CYIOS' operations, the Division has also alleged that CYIOS' assertion that "Carnahan is no longer affiliated in any way with CYIOS" was somehow dishonest by referencing Carnahan's ownership of 5,000,000 shares of common stock (apparently to suggest that Carnahan's passive shareholding somehow affords Carnahan some ongoing control over CYIOS' operations). *See* Opposition Brief at 8.[1] CYIOS rejects the notion that Carnahan's shareholding has allowed him to retain any control over CYIOS' ongoing operations since he ceased serving as CYIOS' sole officer and director. In fact, CYIOS has sued Carnahan in the Broward County, Florida, state circuit court for his conduct while serving as CYIOS' sole officer and director.[2] Even a cursory review of the Complaint and related injunctive motion in that matter demonstrates the soured relationship between CYIOS and Carnahan. Simply put, any notion that Carnahan continues to exercise any control over CYIOS' operations is simply erroneous and intended to add ambiguity to the record.

Rather than acknowledging CYIOS' Current Management's efforts to convert CYIOS into a responsible corporate citizen, the Division's Opposition Brief simply brushes aside both Mr. Lewis' and Mr. O'Shea's efforts. The Division's efforts, however short-sighted, do nothing to counter the record CYIOS established in its Opening Brief about CYIOS' remedial efforts relevant

[1] As of March 26, 2021, the date that both Mr. Lewis and Mr. O'Shea signed their respective declarations in support of CYIOS' Opening Brief, CYIOS had 109,018,898 shares outstanding. The number was disclosed on OTC Markets' website (available at https://www.otcmarkets.com/stock/CYIO/security) on March 31, 2021. Accordingly, Carnahan was not an affiliate or otherwise in control of CYIOS (due to his shareholding or for any other reason) when Mr. Lewis and Mr. O'Shea signed their respective declarations, and any representation to the contrary by the Division is erroneous.

[2] The Complaint and related injunctive motion for that matter are attached hereto as "Exhibit A."

to this matter. Those efforts, rather than the Division's attempts to twist facts, are the appropriate focus in connection with this petition.

In an additional attempt to discredit CYIOS and CYIOS' Current Management, the Division dedicates nearly two of the nine substantive pages of its Opposition Brief to unfavorably characterize the managerial changes at CYIOS prior to the arrival of CYIOS' Current Management in May 2020. *See* Opposition Brief at 2-4. As noted multiple times herein, CYIOS understands the problematic nature of its system of internal controls prior to May 2020, but respectfully notes that the changes relevant to this application happened after the arrival of CYIOS' Current Management and due to its daily efforts.

B. Order to Cease-And-Desist Was Issued in Error Based on Material Information Unavailable to ALJ Grimes Prior to Issuance of the Initial Decision

As noted in CYIOS' Opening Brief, the primary factors the Commission considers in determining whether to issue a cease-and-desist order are: (1) the egregiousness of the respondent's actions; (2) the degree of scienter involved; (3) the isolated or recurrent nature of the infraction; (4) the respondent's recognition of the wrongful nature of his or her conduct; (5) the sincerity of any assurances against future violations; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). Those six public interest factors (the "***Steadman* Factors**") guide the Commission's review of ALJ decisions to determine the appropriateness of cease-and-desist sanctions, but the Commission has traditionally also "balanced a variety of mitigating and aggravating circumstances[]." *See KPMG Peat Marwick LLP*, 2001 WL 47245, at *24 (Jan. 19, 2001), *recons. denied*, Exchange Act Release No. 44050, 2001 WL 223378 (Mar. 8, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). The Commission has

recognized that "there must be some likelihood of future violations" in order for a cease-and-desist order to be imposed but has also noted that, absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation. *See KPMG Peat Marwick LLP*, 2001 WL 47245, at *24, 26. CYIOS' Opening Brief provided such "evidence to the contrary," and this reply brief further discusses that evidence.

CYIOS' Opening Brief noted that, based upon the significant relevant facts that are now in the record pursuant to Rule 452 of the Commission's Rules of Practice, consideration of those factors at this point warrants the vacatur of the cease-and-desist order against CYIOS. *See* Opening Brief at 8-13. In its Opposition Brief, the Division has characterized all of the remedial efforts of CYIOS' Current Management as "changes in key personnel" and insisted that such changes are insufficient to warrant the vacatur of the cease-and-desist order. *See* Opposition Brief at 4-5. In support of its proposition, the Division cited *In the Matter of optionsXpress, Inc., et al.*, Securities Act Rel. No. 10125, 2016 WL 4413227 (August 18, 2016), *vFinance Investments, Inc.*, Exchange Act Rel. No. 62448, 2010 WL 2674858, at *17 (July 2, 2010), and *City of Miami*, Exchange Act Release No. 47552, 2003 WL 1412636, at *11 (Mar. 21, 2003). Upon closer scrutiny, each of those cases included factual scenarios that were diametrically opposed to the factual scenarios at issue in this matter, and fail to be persuasive for that reason.

In the *optionsXpress* case, for example, a registered broker-dealer violated its close-out obligations under Rule 204 of Regulation SHO with respect to a continuing fail to deliver positions that arrive from its retail customers' trading activity. *See optionsXpress, Inc.*, 2016 WL 4413227, at *1. In determining to order the firm to cease and desist from future violations, the Commission noted "the firm's failure to accept responsibility for its conduct, and its efforts to deflect responsibility onto regulators." *Id*. at *35. Finally, aside from the departure of individuals most

responsible for the conduct at issue, the Commission referenced no remedial activities by the firm, or any other facts that would address the factors appropriate for consideration.

Similarly, in the *vFinance Investments* case, a registered broker-dealer violated recordkeeping and production provisions of the federal securities laws, while its former Chief Compliance Officer and later President (the "**Respondent Officer**") willfully aided and abetted and was the cause of the violations. *See vFinance Investments, Inc.*, 2010 WL 2674858, at *1. In refusing to vacate the cease-and-desist order against the respondents, the Commission noted that neither respondent "offer[ed] assurances against future violations nor recognize[d] the wrongfulness of their conduct[,]" and "attempted to shift all responsibility to [a third party]." *Id*. at *16. Aside from the departure of the Respondent Officer, the Commission referenced no remedial activities, either by the broker-dealer or the Respondent Officer, or any other facts that would address the factors appropriate for consideration.

Finally, in the *City of Miami* case, a municipal securities issuer distributed offering documents and an annual financial report that contained material misstatements and omitted material facts concerning its financial condition. *See City of Miami*, 2003 WL 1412636, at *1. In refusing to vacate the underlying ALJ's order that the City of Miami cease and desist from future securities law violations, the Commission noted "[the City of] Miami still maintains that it did nothing wrong[,]" and "has pointed its finger at [its auditor], and other bond professionals, without taking any responsibility for its own conduct." *Id*. at *11. Finally, aside from the departure of the responsible individuals, the Commission referenced no remedial activities by the City of Miami, or any other facts that would address the factors appropriate for consideration.

Accordingly, the Division's purported legal authority does more to undermine its position than to support its position. CYIOS' Opening Brief, however, cited several cases that are much

more akin to the factual circumstances at issue in determining whether a cease and desist order is appropriate in this matter. For example, in *Raymond James Financial Services, Inc.*, Initial Decision Release No. 296, 2005 WL 2237628, (ALJ Sept. 15, 2005), a registered broker-dealer violated certain anti-fraud provisions and related technical provisions of the federal securities laws. In declining to impose a cease-and-desist order upon the firm, then-Chief Administrative Law Judge Brenda P. Murray ("**ALJ Murray**") noted that the managers at issue were no longer with the firm, but more importantly noted that the firm "has made large-scale changes to its management structure[,], and "is committed to making compliance . . . one of [its] highest operational priorities." *See Raymond James Financial Services, Inc.*, 2005 WL 2237628, at *65. ALJ Murray further noted that "there [were] other significant factors that show that the risk of future violations is slight" even in light of acknowledging that traditional factors like egregious conduct, recurrent violations over an extended period, serious harm to investors, and opportunity for future violations were all present. Id. at *66.

In *SEC v. Cenco, Inc.*, 436 F.Supp. 193, 200 (N.D.Ill. 1977), the Commission sought injunctive relief against a corporation. In refusing to grant the requested injunctive relief, the Court noted the corporation had demonstrated that "massive housecleaning procedures have been pursued with vigor, that all evidences or irregularities have been dealt with after discovery, and that reporting regulations have been adhered to as scrupulously as possible in view of the fact that some data is still unavailable because of past falsification of underlying records." *Id*. at 200. Further influencing the Court's determination was its recognition that the Commission noted no misconduct on the part of current officers and directors, but expressed only its concern that "some future negligence might result in further violations." *Id*.

Reviewing the case law that both the Division and CYIOS have relied upon demonstrates that the absence of the wrongdoer is definitely appropriate for consideration when determining whether to impose a cease and desist order on a party, but the review of the factual record obviously requires further review. Such contention is consistent with ALJ Grimes' recognition that evidence that undermines a finding of a likelihood of future violations may demonstrate that a cease and desist is unmerited. *See* Initial Decision at 19.

As CYIOS noted in its Opening Brief, the following facts are now in the record pursuant to Rule 452 of the Commission's Rules of Practice:[3] Neither Mr. Lewis nor Mr. O'Shea has ever been the subject of either an investigation or enforcement action by the Commission, any securities self-regulatory organization, or any state securities regulator. Mr. O'Shea and Mr. Lewis share CYIOS' decision-making authority for the areas at issue in this matter. CYIOS' Current Management is responsible for: (A) ensuring that CYIOS has an effective system of internal controls and procedures relating to financial reporting; (B) representing in CYIOS' periodic filings that management has assessed CYIOS' internal controls; (C) performing an evaluation of CYIOS' internal controls as of the end of each fiscal year; and (D) ensuring that CYIOS' financial statements that are incorporated into CYIOS' periodic filings are accurate. CYIOS' Current Management has almost daily conversations regarding the aforementioned topics, so that CYIOS never again runs afoul of the federal securities laws, rules, and regulations. To assist in that endeavor, CYIOS has also engaged experienced outside securities counsel to assist CYIOS with preparing and maintaining policies and procedures regarding CYIOS' internal controls, including the use of the COSO Framework to assist in that regard. CYIOS' Current Management attests that CYIOS understands the wrongful nature of the conduct that caused the underlying enforcement

[3] Such facts were introduced through the declarations of Mr. Lewis and Mr. O'Shea, which were attached as "Exhibit A" to CYIOS' Opening Brief.

action, and Mr. Lewis and Mr. O'Shea's daily contact is largely concentrated on addressing those issues so they are never repeated. In light of the fact that CYIOS' Current Management was appointed nearly four months after the Initial Decision was rendered, CYIOS' Current Management had no involvement in CYIOS' activities during any of the Commission's underlying investigation or enforcement proceeding at issue in this matter. If CYIOS' Current Management had been in place during the pendency of the underlying investigation or enforcement proceeding, CYIOS would have retained competent legal counsel experienced in handling and resolving Commission enforcement investigations and/or actions. Aside from this matter, CYIOS has not been the subject of any other investigation or enforcement action by the Commission, or any investigation or enforcement action by any securities self-regulatory organization or any state securities regulator. Moreover, since CYIOS' Current Management's appointment, CYIOS has not received any subpoena or request for information from the Commission, any securities self-regulatory organization, or any state securities regulator. CYIOS' Current Management can confirm with certainty that, while CYIOS' Current Management is in place, CYIOS will not have any further involvement with Carnahan (but for through its counsel, in connection with the litigation against Carnahan described herein).

Such facts are directly on point for the legal standard set forth in both CYIOS' Opening Brief and the Division's Opposition Brief relating to the imposition of a cease-and-desist order. In its Opposition Brief, the Division boldly pointed out the fact that "CYIOS does not dispute any factual finding made by the ALJs[,]" and further contends that "CYIOS does not take issue with a single factual finding made by the ALJ . . ." *See* Opposition Brief at 1, 4. In light of the Division's obvious familiarity with the *Steadman* Factors, this assertion is strangely disingenuous. Rather than making a useful point against CYIOS' position, the Division has conceded that CYIOS has

acknowledged its wrongful conduct (one of the specific factors addressed in *Steadman*). CYIOS' Opening Brief and accompanying affidavits from Mr. Lewis and Mr. O'Shea further reinforce the principle. Applying those facts to the applicable standard supports the vacatur of the cease-and-desist order that ALJ Grimes issued in the Initial Decision. Vacatur of the cease-and-desist order against CYIOS also serves the further policy interest of the Commission acknowledging a public company's efforts in corporate housekeeping, which will demonstrate to later public companies (and their counsel) who violate the securities laws the benefits of swiftly addressing their violative conduct and practices. Considering the entire record, vacating the cease-and-desist order against CYIOS promotes the Commission's policy objectives, as well as the principles of rationality and fair process.

C. Based on Additional Material Information, the Order for Civil Penalties Was Issued in Error

As CYIOS noted in its Opening Brief, ALJ Grimes' imposition of a $500,000 civil money penalty on CYIOS in the Initial Decision should be set aside. In its Opposition Brief, the Division rendered no argument why the legal authorities in CYIOS' Opening Brief were ill-placed, but rather stated only that "the Commission should . . . impose civil penalties in at least the amount ordered below." *See* Opposition Brief at 9. The Commission's review of this matter is not guided by the Division's preferences, however, but rather by principles of rationality and fair process. For example, in *SEC v. Evolution Capital Advisors, LLC*, No. H-11-2945, 2013 WL 5670835 (S.D. Tex. Oct. 16, 2013), the Court ruled upon the Commission's motion for disgorgement, civil penalties, and prejudgment interest against two corporate defendants and one individual defendant. In making its determination to impose a third-tier penalty against the individual defendant while refusing to impose any civil penalty against the corporate defendants, the Court noted that, because the individual defendant controlled the entities, additional penalties were "not warranted to serve

the twin goals of punishment and deterrence"). *See Evolution Capital Advisors, LLC*, 2013 WL 5670835, at *5. The Court's ruling in *Evolution Capital Advisors* was well-reasoned and consistent with principles of rationality and fair process, and the Commission should adopt similar reasoning in this matter. ALJ Grimes ordered a $100,000.00 civil monetary penalty against Carnahan in the Initial Decision. *See* Initial Decision at 24. In light of Carnahan's complete control of CYIOS' violative conduct in this matter, a civil penalty against CYIOS is not warranted and should be vacated.

D. Based on Additional Material Information, the Order for Disgorgement Was Issued in Error

According to the Initial Decision, CYIOS paid for consulting services it received with shares of its common stock, valued at $37,500.00. *See* Initial Decision at 10. ALJ Grimes ultimately ordered $37,500.00 in disgorgement against CYIOS to disgorge $37,500.00 in ill-gotten gains, with interest due from December 1, 2012. *Id*. at 26. As CYIOS noted in its Opening Brief, ALJ Grimes imposition of $37,500 in disgorgement against CYIOS in the Initial Decision should be set aside because "such sanction will function solely as a penalty" based upon the underlying facts in this matter. *See* Opening Brief at 15. In its Opposition Brief, the Division insists that such disgorgement is appropriate because it will prevent unjust enrichment and deter others from violating securities laws. *See* Opposition Brief at 9.

In its insistence that disgorgement is appropriate in this matter, the Division misapplies the standard for such disgorgement. In *Kokesh v. SEC*, the Supreme Court held that a disgorgement order in a Commission proceeding constitutes a "penalty." *See* 137 S.Ct. 1635, 1645 (2017). The Supreme Court recently clarified, in *Liu v. SEC*, that a disgorgement is permissible equitable relief when "awarded for victims." *See* 140 S.Ct. 1936, 1937 (2020). In this matter, the Initial Decision fails to note that the disgorgement amount was awarded for any victim. Indeed, nothing in the

Initial Decision suggests any loss for the consulting firm CYIOS paid with its common shares, other than a general assertion that "[t]he value of these consulting services is an unjust enrichment subject to disgorgement[.]" The Initial Decision was silent as to whether the consulting firm sold CYIOS' common shares for any value (including potentially for a value far greater than $37,500.00), and failed to meet the "awarded for victims" principle established by *Liu*. Accordingly, in light of the circumstances in this matter, CYIOS respectfully requests that the Commission set aside the disgorgement and prejudgment interest ordered against CYIOS in the Initial Decision.

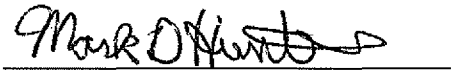
III. CONCLUSION

In light of the facts presented herein, the Commission's imposition of cease-and-desist, civil penalties, and disgorgement sanctions was in error. Any reasonable, de novo review of the entire factual record herein will demonstrate that sanctions against CYIOS are unwarranted and will function solely as a punitive remedy. For the reasons set forth herein, CYIOS respectfully requests that the Commission modify or reverse the Initial Decision and set aside cease-and-desist,

civil penalties, and disgorgement sanctions against CYIOS. Additionally, CYIOS respectfully renews its request that the Commission allow oral argument in connection with this matter.

Dated: May 10, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that, on May 10, 2021, I caused a true and correct copy of the foregoing document to be served upon the following via email and/or UPS, Overnight Mail:

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Timothy W. Carnahan
[redacted]

Mark David Hunter

REPLY BRIEF

EXHIBIT

A

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CYIOS CORPORATION., a Nevada Corporation
Plaintiff,
v.

TIMOTHY W. CARNAHAN, individually

Defendant.
_____/

CASE NO.

COMPLAINT

Plaintiff, CYIOS CORPORATION ("CYIOS"), sues Defendant, TIMOTHY W. CARNAHAN ("Carnahan"), a Florida resident, and states for its complaint:

JURISDICTION AND VENUE

1. This is an action for damages and equitable relief in excess of $30,000.00, exclusive of pre-judgment interest, attorneys' fees and costs.

2. Plaintiff is a Nevada corporation with its principal place of business in Broward County, Florida.

3. At all times material hereto, Carnahan was and is a resident of Broward County, Florida, is over the age of eighteen, and is otherwise *sui juris*.

4. Venue is proper in Broward County, Florida because Defendant is located in Broward County, Florida.

5. Plaintiff has retained the undersigned law firm to represent them in this action and are obligated to pay said firm a reasonable fee for its services.

6. All conditions precedent to bringing this action have occurred and/or have been waived, satisfied, discharged, or excused.

INTRODUCTION

7. CYIOS is a public company that has a class of securities registered with Securities and Exchange Commission and Carnahan was CYIOS's sole officer and director up until Carnahan's

resignation from CYIOS on March 13, 2020. A true and correct copy of the unanimous written consent of the board of directors of CYIOS evidencing Carnahan's resignation is attached hereto and incorporated as **Exhibit "A".**

8. An investigation conducted by the Securities and Exchange (SEC) which resulted in an administrative proceeding, concluded that for several years during Carnahan's tenure, CYIOS's public, periodic filings misrepresented that the Company's management had assessed the effectiveness of its internal controls over financial reporting. In addition, Carnahan caused CYIOS's filings to be made with the SEC and signed multiple certifications misrepresenting that the filings contained no untrue statements of material fact. Based on the forgoing the SEC issued an order instituting proceedings ("OIP") in February 2015. The proceedings pursuant to an OIP are administrative in nature with judgment being rendered by an administrative law judge (an "ALJ"). The ALJ, after hearing, rendered an initial decision finding Carnahan and the Company liable and ordering civil penalties against the Company of $500,000 and disgorgement of $37,500. A true and correct copy of the ALJ's Initial Decision on January 10, 2020, is attached hereto and incorporated as **Exhibit "B".**

9. The ALJ found that Carnahan was responsible for CYIOS's periodic filings with the SEC and their content, filed them with the SEC through its electronic filing system, drafted responses to SEC staff's comment letters regarding the filings, and knew CYIOS had failed to make required public filings. In its filings on Form 10-K for the fiscal years 2009, 2010, and 2011, as well as in its filings on Form 10-Q covering the first quarter of 2010 through the third quarter of 2012, CYIOS represented that its management had effective internal controls over financial reporting. However, when asked during his investigative testimony, Carnahan could not explain how he evaluated the effectiveness of CYIOS's internal controls or explain the framework on which they were based.

10. In March 2010, Carnahan issued 5,000,000 (Five Million) shares of the Company's stock to himself as a performance bonus. At the time equal to 16% of the company.

11. This self-issuance of stock is precisely within the timeframe that the SEC concluded that Carnahan misrepresented the Company's internal controls over financial reporting. Furthermore, the

Division of Enforcement (the "Division") concluded that CYIOS received $37,500 (THIRTY-SEVEN THOUSAND AND FIVE HUNDRED) dollars' worth of consulting services by exchanging its publicly traded stock for services while the company's periodic filings contained material misstatements and was awarded disgorgement of such amount.

12. Carnahan's unlawful activities not only violate federal securities laws, Carnahan's unlawful activities also violate the duties that a corporate officer owes to the corporation and its shareholders.

13. The U.S. Congress enacted the Sarbanes-Oxley Act (SOX) in July 2002. Section 304 of SOX, known as the compensation clawback provision, requires the return of incentive compensation received by the CEO's and CFO's if such compensation was issued during the period where there needed to be an accounting restatement as a result of misconduct with any financial reporting requirement under the securities laws. Here Carnahan made misstatements regarding the effectiveness of controls over the Company's financial reporting.

GENERAL ALLEGATIONS

14. In May 2019, Mr. Carnahan expressed his intent to step down as the control person of CYIOS Corp due to ongoing litigation with the SEC. He began shopping CYIOS Corp for change of control whereby Mr. Carnahan would step down as CEO in a change of control transaction. Mr. Carnahan expressed concern that with the SEC issue pending, nobody would take control for fear of being brought into the proceedings. He further expressed intent that if someone was willing to step in and take control of CYIOS, he would gladly step down.

15. In July 2019, a hearing was held pursuant to the OIP in which Carnahan representing CYIOS and himself *pro se,* appeared before the ALJ.

16. On August 30, 2019 without knowledge of the proceedings against CYIOS, Mr. David Green became the new CEO, Chairman, and Secretary of CYIOS.

17. However, it was not disclosed to Mr. Green that there were ongoing SEC Proceedings against CYIOS. Mr. Greene was unaware of July 2019 Hearing or the September 2019 Post Hearing Brief filed by the Division of Enforcement.

18. As such, CYIOS did not respond to the Post Hearing Brief.

19. It wasn't until the Initial Decision by the ALJ was filed on January 10, 2020, that current management became aware of the OIP. On becoming aware of the ALJ's decision on January 10, 2020, the Company engaged counsel to respond, and the Company filed its petition for review of the Initial Decision on January 31, 2020. This enraged Mr. Carnahan, who then made filings with the SEC, the state of Nevada and the Company's transfer agent denying the change in management and the right of the then management of CYIOS to make the filing.

20. On March 13, 2020, a Mutual Release and Separation Agreement ("Mutual Release") was signed by Carnahan and CYIOS affirming his resignation from all positions with CYIOS and ratifying all the filings made by Mr. Greene on behalf of CYIOS. Section 7(b) of the Mutual Release states that the Mutual Release shall be governed by and construed in accordance with Florida law and that any legal proceedings arising out of this agreement shall be brought in any state court having jurisdiction located in Broward County, Florida, or in the United States District Court, Southern District of Florida. A true and correct copy of the Mutual Release is attached hereto and incorporated as **Exhibit "C".** The Mutual Release does not reach the causes of action set forth herein as they relate to claims that cannot be waived.

21. On March 27, 2021, Counsel for Carnahan issued a legal opinion supporting the proposed sale of 5,000,000 shares of restricted common stock to Carnahan by CYIOS pursuant to the exemption available to the shareholder under Section 4(a)(1) of the Securities Act of 1933, which was subsequently revised and resubmitted to the transfer agent on April 10, 2021. However, such exemption would not apply to Carnahan because they are subject to the clawback provisions of Section 304 of the Sarbanes Oxley Act. A true and correct copy of the April 10 legal opinion from Carnahan's counsel is attached hereto as **Exhibit "D".**

COUNT I – BREACH OF FIDUCIARY DUTY

Plaintiff hereby realleges and incorporates the allegations contained in Paragraphs 1 through 21 above as though fully set forth herein and further allege as follows:

22. Carnahan invited the utmost trust and confidence of the Plaintiff, and Plaintiff reposed the utmost trust and confidence in Carnahan based upon Carnahan's status as CEO of CYIOS. As CEO, Carnahan had a fiduciary duty to CYIOS and its shareholders.

23. Carnahan breached his fiduciary duty to Plaintiff by, among other things, filing false and misleading financial reports with the SEC from 2009 through 2012 and failing to hire counsel to the defend the company in the SEC's administrative action.

24. As a result of Defendants' conduct, Plaintiff has suffered damages that exceed Eight Hundred Eighty-Seven Thousand Five Dollars ($887,500.00) including fines and penalties imposed by the SEC and the wrongful issuance of 5,000,000 shares of the Company's common stock to himself.

25. But for Defendant's breach of his fiduciary duty to Plaintiff, Plaintiff would not have suffered the damages.

WHEREFORE, Plaintiff, CYIOS, demands that judgment be entered against Defendant, Carnahan., (1) in an amount that exceeds $30,000.00 in damages; (2) return of the 5,000,000 shares Carnahan issued to himself as a bonus; (3) pre-judgment interest; (4) all attorneys' fees and costs; (5) compensating Plaintiffs for all other damages they suffer as a result of Defendants' unlawful actions and omissions; and (6) for such other and further relief as this Court deems just and proper.

COUNT II – GROSS NEGLIGENCE (Duty of Reasonable Care)

Plaintiffs hereby realleges and incorporates the allegations contained in Paragraphs 1 through 21 above as though fully set forth herein and further allege as follows:

26. This is an action for negligence against Defendant for his negligent acts and/or omissions which caused and/or contributed to Plaintiff's damages.

27. At all times material hereto, Defendant owed a duty of reasonable care to Plaintiff to conduct himself in such a way as to act in the best interest of the Plaintiff and its shareholders.

28. Defendant breached the foregoing duties by making false and misleading filings with the SEC from 2009 through 2012, causing significant damage to Plaintiff.

29. Defendant's acts and omissions amount to gross negligence in that Defendant was so reckless or wanton in care that his actions constituted a conscious disregard or indifference as to complying with the reporting requirements from the SEC. No reasonable officer or director would believe that from 2009 through 2012 CYIOS had effective internal controls over financial reporting.

30. As a direct and proximate result of Defendant's breach of his duties, Plaintiff has incurred substantial damages as set forth more fully above.

WHEREFORE, Plaintiff, CYIOS, demands that judgment be entered against Defendant, Carnahan., in an amount that (1) exceeds $30,000.00 in damages; (2) return of the 5,000,000 shares Carnahan issued to himself as a bonus to CYIOS; (3) includes pre-judgment interest; (4) includes all attorneys' fees and costs; (5) compensates Plaintiffs for all other damages they suffer as a result of Defendants' unlawful actions and omissions; and (6) for such other and further relief as this Court deems just and proper.

COUNT III – UNJUST ENRICHMENT AGAINST CARNAHAN

Plaintiffs hereby realleges and incorporates the allegations contained in Paragraphs 1 through 21 above as though fully set forth herein and further allege as follows:

31. Plaintiff conferred a benefit upon Carnahan when Plaintiff issued him 5,000,000 shares of the common stock of the Plaintiff then valued at $350,000 (THREE HUNDRED FIFTY THOUSAND) dollars as a performance bonus.

32. Defendant has knowledge of the benefit conferred by Plaintiff. Defendant knows that he is not entitled to such benefit

33. As a result of Defendant's misrepresentation to the SEC, the monies were not rightfully earned and Defendant has been unjustly enriched.

34. Defendant will continue to be unjustly enriched to the detriment of the Plaintiff who has been forced to repair the damage caused by Defendant and ensure that accurate financial reporting is provided to the SEC.

WHEREFORE, Plaintiff, CYIOS, demands that judgment be entered against Defendant, Carnahan., in an amount that (1) exceeds $30,000.00 in damages; (2) return of the 5,000,000 shares Carnahan issued to himself as a bonus and for consulting services to CYIOS; (3) includes pre-judgment interest; (4) includes all attorneys' fees and costs; (5) compensates Plaintiffs for all other damages they suffer as a result of Defendants' unlawful actions and omissions; and (6) for such other and further relief as this Court deems just and proper.

COUNT IV – DISGORGMENT OF SHARES RECEIVED BY CALAHAN UNDER SOX SECTION 304 AND THE EXCHANGE ACT RULE 13A-14 OF THE SEC

Plaintiff hereby realleges and incorporates the allegations contained in Paragraphs 1 through 21 above as though fully set forth herein and further allege as follows:

35. Defendant should be disgorged of the 5,000,000 shares Defendant received as a result of signed certifications misrepresenting that the financial filings submitted to the SEC contained no untrue statements of material fact.

36. Under Section 304 of SOX, certain discretionary CEO and CFO compensation and trading profits is subject to forfeiture ("clawback") if there is a restatement of the issuer's financial statements based on wrongful conduct. In U.S. Sec. & Exch. Comm'n v. Jensen, 835 F.3d 1100 (9th Cir. 2016), the court held that under rule 13a -14 of the Exchange Act and SOX Section 304, there is a cause of action against CEO's and CFO's who certify false or misleading statements. The disgorgement remedy authorized under SOX section 304 applies regardless of whether a restatement was caused by personal misconduct of an issuer's CEO and CFO or by other issuer misconduct.

37. Here, Carnahan was CEO of CYIOS at the time that he signed multiple certifications misrepresenting that the filings contained no untrue statements and issued to himself a total of 5,000,000 shares. Therefore, Carnahan should be disgorged of the 5,000,000 shares.

WHEREFORE, Plaintiff, CYIOS, demands that judgment be entered against Defendant, Carnahan., for the disgorgement of 5,000,000 shares Carnahan issued to himself as a performance bonus; (3) pre-judgment interest; (4) attorneys' fees and costs; and (5) for such other and further relief as this Court deems just and proper.

COUNT V – DECLARATORY RELIEF

Plaintiff hereby realleges and incorporates the allegations contained in Paragraphs 1 through 21 above as though fully set forth herein and further allege as follows:

38. As set forth herein, an actual controversy has arisen and now exists between Defendant and the Plaintiff as to whether Defendant is entitled to the 5,000,000 shares he issued to himself at the same time Defendant was engaged in the misconduct set forth in the Initial Decision of the ALJ -- knowingly misrepresenting the effectiveness of the Company's internal controls over financial reporting. Thus, the fact that Defendant issued himself the shares as a bonus based upon his performance is so inconsistent with the business judgment of a reasonable director that it constitutes self-dealing and a breach of fiduciary duty.

39. Additionally, given that the misconduct constitutes a breach of fiduciary duty, the issuance of the Shares should be considered an *ultra vires* act and the issuance is therefore not valid, the shares are not duly issued and there was no consideration paid for the shares.

WHEREFORE, Plaintiff, CYIOS, respectfully requests that the Court declare the rights of the parties and find that: (a) Defendant Carnahan misrepresented the effectiveness of the Company's internal controls over financial reporting during 2009, 2010, 2011 and 2012; (b) breached his duty the shareholders of CYIOS by misrepresenting the effectiveness of the Company's internal controls over financial reporting during 2009, 2010, 2011 and 2012; (c) breached his duty of good faith to the

shareholders of CYIOS by issuing 5,000,000 shares to himself; (d) that the issuance of the 5,000,000 shares was an *ultra vires* act; and (e) that the shares should be returned to Plaintiff and cancelled.

COUNT VI – TEMPORARY INJUNCTION

Plaintiff hereby realleges and incorporates the allegations contained in Paragraphs 1 through 39 above as though fully set forth herein and further allege as follows:

40. Defendant, acting as the sole officer and director of CYIOS issued himself 5,000,000 shares of the Company's common stock (the "Shares"), at the time equal to more than 16% of the shares of the Company.

41. An administrative law judge in a proceeding initiated by the SEC found that Defendant knowingly filed periodic reports with the SEC that falsely claimed that CYIOS maintained effective internal controls over financial reporting thereby violating the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act.

42. The certificate representing the Shares is stamped with a restrictive legend that must be removed prior to Defendant selling the Shares. Defendant has submitted his stock certificate representing the Shares to a stockbroker who has submitted them to CYIOS's transfer agent to have the restrictive legend removed. This indicates that the Defendant intends to sell the Shares. If the Defendant sells the shares it would cause irreparable harm to CYIOS and its shareholders by depressing the price of the stock and preventing CYIOS from being able to raise funding in the capital markets to execute its business plan. There is no remedy at law that would be able to compensate the Plaintiff or its shareholders from the resulting damage should Defendant be allowed to sell the shares. Once the Shares are sold the damage will have been done to the Company.

43. Conversely, should Defendant be restrained from transferring and selling the Shares, even should Plaintiff not prevail in this action, Defendant would still have the Shares and the ability to sell the Shares and therefore not suffer any loss or damages. The preliminary injunction would merely maintain the status quo.

44. Given that the SEC ALJ has already determined that Defendant acted contrary to law and his duty to the shareholders of Plaintiff it is likely that Plaintiff will prevail on its claims.

WHEREFORE, Plaintiff requests the Court enter an order temporarily enjoining Defendant Carnahan from seeking the removal of the restrictive legend from 5,000,000 shares of CYIOS Corp. common stock, transferring the Shares, and selling the Shares; and any all other relief that this Court deems appropriate.

DESIGNATION OF PRIMARY AND SECONDARY E-MAIL ADDRESSES

In accordance with Rule 2.515 of the Florida Rules of Judicial Administration, the undersigned hereby designates the following e-mails as their primary and secondary e-mail addresses in the above-referenced action:

Jonathan D. Leinwand, Esq Primary E-mail: *jonathan@jdlpa.com*
Secondary E-mail: *efilings@jdlpa.com*

DATED this 20th day of April, 2021.

Respectfully submitted,

Attorney for Plaintiff

Jonathan D. Leinwand. P.A.
18305 Biscayne Blvd
Aventura, FL 33160
Telephone: (954) 903-7856
Facsimile: (954) 252-4265

By: */s/ Jonathan D. Leinwand*_____
Jonathan D. Leinwand, Esq.
Fla. Bar No.: 64076
jonathan@jdlpa..com
efilings@jdlpa.com

EXHIBIT A

UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS OF
CYIOS CORPORATION

March 13, 2020

Pursuant to NRS 78.315, the Board of Directors of CYIOS CORPORATION (the "***Company***") took the following actions and passed the following resolutions:

RESOLVED, that David W. Greene is appointed as a director of the Company and elected President of the Company.

RESOLVED, that the Company enter into that Mutual Release and Separation Agreement between the Company and Timothy Carnahan.

RESOLVED, that the resignation of Timothy Carnahan is hereby accepted.

RESOLVED, that the President of the Company or his designee is authorized to do any and all things and take any and all actions necessary or appropriate to carry out these resolutions of the Board.

In witness whereof the directors of the Company has affixed his signature below on the date first set forth above.

David W. Greene, Director

Timothy Carnahan, Director

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

On this 13 day of March, 2020, before me a Notary Public, personally appeared Timothy Carnahan who executed the above resolution of the Board of Directors of CYIOS Corp. and acknowledged the same to be his free act and deed.

Produced Identification: US Passport

JONATHAN LEINWAND
Notary Public-State of Florida
Commission # GG 953598
My Commission Expires
April 13, 2024

NOTARY PUBLIC

Sign

EXHIBIT B

Initial Decision Release No. 1394
Administrative Proceeding
File No. 3-16386

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of

Traci J. Anderson, CPA,
Timothy W. Carnahan, and
CYIOS Corporation

Initial Decision
January 10, 2020

Appearances: Matthew J. Gulde, Chris Davis, and B. David Fraser
for the Division of Enforcement,
Securities and Exchange Commission

Timothy W. Carnahan, *pro se*, and for CYIOS Corporation

Before: James E. Grimes, Administrative Law Judge

Summary

This initial decision resolves allegations of material misstatements and reporting violations against Respondents Timothy W. Carnahan and CYIOS Corporation. CYIOS is a former public company that had a class of securities registered with the Securities and Exchange Commission, and Carnahan is its sole officer and director. For several years, CYIOS's public, periodic filings misrepresented that the company's management had assessed the effectiveness of its internal controls over financial reporting for each period using an established framework. The evidence establishes that CYIOS had no documented internal controls and Carnahan did not use any suitable framework to assess the company's internal controls. Indeed, Carnahan admitted during his investigative testimony that he was the company's internal control and acted as his own quality assurance. Carnahan caused CYIOS's filings to be made with the Commission and signed multiple certifications misrepresenting that the filings contained no untrue statements

of material fact. Additionally, CYIOS failed to make numerous required periodic filings while its securities were registered.

I find that CYIOS violated, and Carnahan caused its violations of, Section 17(a)(3) of the Securities Act of 1933, Section 13(a) of the Securities Exchange Act of 1934, and Exchange Act Rules 13a-1 and 13a-13. I also find that Carnahan violated Exchange Act Rules 13a-14 and 13a-15(c). I order appropriate sanctions below.[1]

Procedural Background

The Commission initiated this proceeding in February 2015, when it issued an order instituting proceedings (OIP) under Securities Act Section 8A, Exchange Act Sections 4C and 21C, and Commission Rule of Practice 102(e).[2] In relevant part, the OIP alleges the following facts and violations: Carnahan failed to assess CYIOS's internal controls and CYIOS misrepresented in its periodic filings that management had assessed its internal controls using the criteria set forth in the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO framework). As a result, CYIOS violated, and Carnahan caused its violations of, Securities Act Section 17(a)(3), which makes it unlawful to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.[3] Also as a result of this misconduct, Carnahan violated Exchange Act Rule 13a-14, which requires an issuer's principal executive and principal financial officer to attest that the company's "report does not contain any untrue statement of a material fact"; and Exchange Act Rule 13a-15(c), which requires an issuer's management to perform an evaluation of the company's internal controls as of the end of each fiscal year.[4] Further, due to its failure to file multiple periodic reports while its

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1 A prior initial decision dismissed the proceeding as to Respondent Traci J. Anderson, CPA, and that decision has become the final decision of the Commission. *Traci J. Anderson, CPA*, Initial Decision Release No. 930, 2015 WL 9297356, at *1, *24 (ALJ Dec. 21, 2015), *finality order*, Securities Act Release No. 10032, 2016 SEC LEXIS 380 (Feb. 2, 2016).

2 *See* 15 U.S.C. §§ 77h-1, 78d-3, 78u-3; 17 C.F.R. § 201.102(e).

3 15 U.S.C. § 77q(a)(3).

4 17 C.F.R. §§ 240.13a-14, .13a-15(c).

securities were registered, CYIOS violated, and Carnahan caused its violations of, Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.[5]

In 2015, an administrative law judge held a hearing and issued an initial decision in which he found against Respondents on these charges but dismissed two other charges that the Division is no longer pursuing.[6] Respondents appealed to the Commission.

In August 2018, following the Supreme Court's decision in *Lucia v. SEC*, the Commission remanded this proceeding, ordered that it be reassigned to an administrative law judge who had not previously participated in the matter, and directed that Respondents be given the opportunity for a new hearing.[7] On remand, the newly assigned administrative law judge ordered the parties to submit a proposal for the conduct of further proceedings.[8] In November 2018, the parties represented that they were unable to agree to a proposal and Respondents sought dismissal.

This case was reassigned to me in March 2019.[9] Following a prehearing conference, I adopted the parties' jointly proposed schedule with modest amendments.[10] In late April 2019, I denied in part and deferred ruling in part on Respondents' motion for a ruling on the pleadings.[11] In doing so, I directed the Division to submit supplemental briefing on whether, following remand, charges under Section 105(c)(7)(B) of the Sarbanes-Oxley Act of 2002 and

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5 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13.

6 *Anderson*, 2015 WL 9297356, at *1, *9–20; *see also Anderson*, Admin. Proc. Rulings Release No. 6549, 2019 SEC LEXIS 961, at *15–16 (ALJ Apr. 24, 2019); *Anderson*, Admin. Proc. Rulings Release No. 6613, 2019 SEC LEXIS 1482, at *2–3 (ALJ June 24, 2019).

7 *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 WL 4003609, at *1 (Aug. 22, 2018); *see also Lucia v. SEC*, 138 S. Ct. 2044 (2018).

8 *Anderson*, Admin. Proc. Rulings Release No. 6126, 2018 SEC LEXIS 2705, at *2 (ALJ Oct. 1, 2018).

9 *Anderson*, Admin. Proc. Rulings Release No. 6474, 2019 SEC LEXIS 295 (ALJ Mar. 4, 2019).

10 *Anderson*, Admin. Proc. Rulings Release No. 6519, 2019 SEC LEXIS 632 (ALJ Mar. 26, 2019).

11 *Anderson*, 2019 SEC LEXIS 961.

Securities Act Section 17(a)(2) were still at issue.[12] The Division responded that it would not pursue "these charges further and w[ould] not offer evidence supporting them."[13]

In July, I ruled on various motions and denied Respondents' motions seeking dismissal.[14]

I held the hearing in this matter in July 2019. During the hearing, the Division called three witnesses, Carnahan rested without calling any witnesses or offering any exhibits, and I admitted 23 of the Division's offered exhibits. Carnahan refused to testify on Fifth Amendment grounds and I instructed the Division to file a motion regarding whether I should draw adverse inferences from Carnahan's refusal to testify.[15] I gave Respondents ten days to respond to the Division's motion.[16] After the Division briefed the issue but Carnahan failed to respond, I determined that I would draw adverse inferences from Carnahan's silence subject to the Division identifying specific questions and inferences in its post-hearing brief.[17] I also admitted four exhibits that the Division was prevented from introducing through Carnahan's testimony by his refusal to testify.[18]

The Division filed its post-hearing brief in September 2019. Respondents have made no filings since the hearing.

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12 *See id.* at *11–16.

13 Div. Supplemental Br. 1–2 (Apr. 30, 2019).

14 *See, e.g.*, *Anderson*, Admin. Proc. Rulings Release No. 6620, 2019 SEC LEXIS 1622 (ALJ July 2, 2019); *Anderson*, Admin. Proc. Rulings Release No. 6626, 2019 SEC LEXIS 1724 (ALJ July 11, 2019).

15 *Anderson*, Admin. Proc. Rulings Release No. 6632, 2019 SEC LEXIS 1782 (ALJ July 18, 2019).

16 *Id.*

17 *Anderson*, Admin. Proc. Rulings Release No. 6650, 2019 SEC LEXIS 1955 (ALJ Aug. 5, 2019).

18 *Id.* at *8.

Procedural Issues

I base the following factual findings and legal conclusions on the entire record and on facts officially noticed, applying preponderance of the evidence as the standard of proof.[19] I have given no weight to and have not presumed the correctness of any opinions, orders, or rulings issued in this matter prior to the Commission's post-*Lucia* remand order of August 22, 2018.[20] All arguments that are inconsistent with this decision are rejected.

At the July hearing, I reserved ruling on the admissibility of Exhibit 43, which contained Carnahan's testimony from the pre-*Lucia* hearing held in 2015. The 2015 hearing was presided over by a judge who, at the time of the hearing, was not properly appointed.[21] Admission of the prior hearing testimony would arguably contravene the Commission's post-*Lucia* directive to provide respondents with the opportunity for a new hearing before a judge who did not previously participate in the matter, unless the parties expressly agreed otherwise.[22] Carnahan exercised his right to a new hearing but then refused to testify. Nonetheless, the prior testimony is unnecessary given the record developed at the July hearing, and the Division does not rely on it or make any argument regarding its admissibility in its brief. I now determine that Exhibit 43 is not admitted.[23]

During the hearing, Carnahan appeared to object to the entire administrative proceeding on statute of limitations grounds. I instructed Carnahan that he could address this argument in his post-hearing brief, but he did not do so.[24] Carnahan's argument seeking dismissal on this basis has

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[19] *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006); *see also* 17 C.F.R. § 201.323; *Anderson*, Admin. Proc. Rulings Release No. 6622, 2019 SEC LEXIS 1706, at *1 (ALJ July 10, 2019) (taking official notice under Rule 323 of CYIOS's public filings with the Commission and their content).

[20] *See Pending Admin. Proc.*, 2018 WL 4003609, at *1.

[21] Tr. 17; *see also Lucia*, 138 S. Ct. at 2055.

[22] *Pending Admin. Proc.*, 2018 WL 4003609, at *1.

[23] 17 C.F.R. §§ 201.111(c), .320(a).

[24] Tr. 138–40.

previously been denied.[25] The OIP was filed on February 13, 2015, and the relevant misconduct began with CYIOS's 2009 Form 10-K filed on February 26, 2010, which is within the five-year limitations period in 28 U.S.C. § 2462.[26]

Regarding adverse inferences, the Division summarily referenced the topics about which Carnahan refused to testify in its brief, without identifying "the specific questions and inferences it seeks," as I directed it to do.[27] In any event, the record provides sufficient proof of Respondents' violations, without regard to any adverse inference.[28] It is therefore unnecessary to base my findings and conclusions on adverse inferences drawn from Carnahan's refusal to testify.[29]

Findings of Fact

1. Relevant Persons and Entities

CYIOS is incorporated in Nevada and headquartered in Washington, D.C.[30] CYIOS operates two subsidiaries that provide technology services and products to U.S. government entities.[31] One of CYIOS's subsidiaries offers a product called CYIPRO, which is described as "a business transformation tool" that was built "to complement knowledge management and business

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[25] *See Anderson*, Admin. Proc. Rulings Release No. 6223, 2018 SEC LEXIS 2894, at *7 (ALJ Oct. 18, 2018); *Anderson*, Admin. Proc. Rulings Release No. 6620, 2019 SEC LEXIS 1622 (ALJ July 2, 2019).

[26] OIP ¶¶ 11, 16, 20; CYIOS Corp., Annual Report (Form 10-K) (Feb. 26, 2010); *see also Gabelli v. SEC*, 568 U.S. 442, 447–48 (2013).

[27] *Anderson*, 2019 SEC LEXIS 1955, at *8.

[28] I did rely on adverse inferences to admit four of the Division's exhibits after the hearing. *See supra* note 18 and accompanying text.

[29] *See Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, at *16 (Dec. 11, 2009) (concluding that the evidence against the respondent was "persuasive and more than sufficient to support findings of violations, without regard to any adverse inference"), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010), *abrogated on other grounds by Kokesh v. SEC*, 137 S. Ct. 1635 (2017).

[30] Div. Ex. 21 at 490. Citations to an exhibit's Bates numbers are to the numerical digits only, excluding any alphabetical prefix and leading zeros.

[31] *Id.* at 500.

transformation for agencies and commercial business."[32] This product "provides a virtual work space for collaboration, project management, and document management to help manage people, processes and information."[33] CYIOS has represented in its public filings that CYIPRO "provides key solutions for compliance with Securities and Exchange Commission ('SEC') Sarbanes-Oxley regulations," but it is unclear how this aspect of the product functioned or what regulations it addressed.[34]

Carnahan earned a bachelor of science degree in computer science from Old Dominion University in 1989.[35] He has no formal education in accounting or financial statement preparation.[36] After college graduation, Carnahan worked for the U.S. Senate Sergeant at Arms where he "ran all the computer systems for every Senator."[37] Carnahan founded CYIOS in 1995 and took the company public through a reverse merger in 2005.[38] Since the merger, he has served as the company's CEO, treasurer, and board chairman; and, since July 2007, he has served as its sole officer and director.[39] He signed company filings as its CEO, president, principal financial officer, and principal accounting officer.[40]

After serving as the company's independent auditor for several years, Traci J. Anderson resigned as its auditor and performed full-time accounting-related work for CYIOS from at least 2010 until 2015.[41] She interacted directly with Carnahan and saw how the company functioned.[42]

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32 *Id.*

33 Div. Ex. 3 at 100.

34 *See id.*

35 Div. Ex. 12 at 281; Div. Ex. 2 at 16.

36 Div. Ex. 2 at 16–18.

37 *Id.* at 18–19.

38 *Id.* at 20; Div. Ex. 3 at 100.

39 Div. Ex. 2 at 20–21.

40 Div. Ex. 2 at 67.

41 Tr. 33–34, 64–65; Div. Ex. 2 at 33–34, 83–84, 88–89.

42 Tr. 37.

2. Delinquent Filings, Misstatements as to Internal Controls, and Stock Issued in Exchange for Consulting Services

CYIOS was a public company with its common stock registered with the Commission under Exchange Act Section 12(g).[43] CYIOS's last periodic filing was an amended Form 10-Q for the third quarter of 2012, which was filed November 21, 2012.[44] CYIOS filed a Form 15-12G to terminate its common stock's registration on May 30, 2014, which became effective ninety days later on August 28, 2014.[45]

Carnahan was responsible for CYIOS's periodic filings with the Commission and their content, filed them with the Commission through its electronic filing system, drafted responses to Commission staff's comment letters regarding the filings, and knew CYIOS had failed to make required public filings between November 2012 and May 2014.[46] Due to a downturn in the company's financial condition, Carnahan decided to stop making CYIOS's required periodic filings, prioritizing other bills instead of paying fees necessary to complete the filings.[47]

In its Forms 10-K for the fiscal years 2009, 2010, and 2011, as well as in its Forms 10-Q covering first quarter 2010 through third quarter 2012, CYIOS represented that management had: (1) assessed the effectiveness of its internal controls using the criteria set forth in the COSO framework, and (2) concluded that its internal controls were effective.[48] Attached to the reports were Carnahan's certifications under Exchange Act Rule 13a-14 that the reports did not contain any untrue statements of material fact.[49]

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43 *See* 15 U.S.C. § 78*l*(g); Div. Ex. 44; *see, e.g.*, Div. Ex. 3 at 99.

44 CYIOS Corp., Amended Quarterly Report (Form 10-Q/A) (Nov. 21, 2012); Div. Ex. 21.

45 CYIOS Corp., Certification and Notice of Termination of Registration (Form 15) (May 30, 2014); Div. Ex. 44; *see also* 17 C.F.R. § 240.12g-4(a).

46 Tr. 40–42, 56–58; Div. Ex. 2 at 40, 58–60.

47 Div. Ex. 2 at 40–41; Tr. 56–57; Answer (filed Mar. 9, 2015) at 4.

48 Official Notice; *see, e.g.*, Div. Ex. 3 at 118; Div. Ex. 11 at 248; Div. Ex. 12 at 281; Div. Ex. 13 at 309–10; Div. Ex. 21 at 505.

49 Official Notice; *see, e.g.*, Div. Ex. 3 at 124; Div. Ex. 12 at 286; Div. Ex. 21 at 513–14.

When asked during his investigative testimony, however, Carnahan could not explain how he evaluated the effectiveness of CYIOS's internal controls. He testified that: he kept track of the company's revenue and payroll himself; because he wrote the payroll system, "it can't be flawed"; and he was the company's "internal control" and "did the internal controls" in his "mind," so he could not document himself.[50] This testimony—which Carnahan did not dispute, disavow, or attempt to explain during the hearing—established that the periodic filings were the only documentation of CYIOS's internal controls and, as the company's sole director and officer serving in every relevant role, he was his "own quality assurance."[51] Carnahan also stated that he has had "several arguments" with attorneys, auditors, and Anderson about accounting principles related to revenue recognition, but that he makes all the decisions on when revenue is recognized and he decides all the accounting policies.[52]

Although Anderson helped prepare the company's financial statements, Carnahan was responsible for incorporating them in the periodic filings, and he fully controlled and was solely responsible for evaluating the company's internal controls.[53] Anderson was familiar with the COSO framework from her continuing education studies but was unaware of anything specifically done by Carnahan to evaluate internal controls using the COSO framework.[54] Carnahan did not perform formal risk assessments as part of maintaining internal controls at CYIOS and, aside from checklists from auditors, had no formally documented accounting policies or procedures for the company.[55] Anderson believed that the company's financial information "was eventually reported … the correct way" but only after Carnahan had many disagreements with others as he "would prefer it to be done his way."[56]

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50 Div. Ex. 2 at 63–65, 72–73.

51 *Id.* at 63, 66–69, 72–73, 75.

52 *Id.* at 42–46.

53 Tr. 44–46, 53–55; Div. Ex. 38.

54 Tr. 45–46.

55 Tr. 46–47.

56 Tr. 48–49.

Carnahan has represented that the company's internal controls were assessed using CYIPRO,[57] but no evidence supports this claim.

In March and October 2010, CYIOS issued common shares of its registered securities, with a total value of $37,500, as stock compensation in exchange for consulting services.[58] This occurred during the time when the company's periodic filings contained the misstatements about Carnahan's assessment of the company's internal controls.

3. Expert evidence

The Division introduced expert evidence from Charles R. Lundelius Jr., CPA.[59] Lundelius earned a bachelor of science in commerce with a major in accounting from the University of Virginia in 1978 and a master's in business administration with a concentration in finance from Tulane University in 1980.[60] Early in his career, he worked as an investment banker and ran a broker-dealer.[61] Lundelius was the senior vice president and chief financial officer of a leading marketer of long-term insurance and its affiliate from 1989 to 1992, and also served as chief investment officer.[62] He worked as a forensic accountant at Coopers & Lybrand, Deloitte, and FTI Consulting, Inc., between 1992 and 2012.[63] Lundelius also served on the NASDAQ Listing Qualifications Panel from 1999 to 2006.[64] Since 2012, he has been the managing director of the capital markets group at Berkeley Research Group, LLC.[65] Lundelius authored *Financial Reporting Fraud: A Practical Guide to Detection and Internal Control*, a textbook published by the American Institute of Certified Public Accountants.[66] He has testified as an expert in more than fifty cases

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57 Div. Ex. 22 at 5; Div. Ex. 40.

58 Div. Ex. 12 at 274, 277.

59 Tr. 102, 133; *see generally* Div. Ex. 42.

60 Div. Ex. 42, App. A at 29.

61 Tr. 108.

62 Div. Ex. 42 at 1 & n.1; Tr. 106.

63 Div. Ex. 42 at 1.

64 *Id.*

65 *Id.*

66 *Id.* at 2.

over the past twenty-five years and has participated in numerous investigations relating to internal controls and corporate governance.[67]

Lundelius's expert report, which comprised the bulk of his direct testimony, offered three main opinions: (1) disclosures indicating whether or not an issuer has implemented effective internal controls are material; (2) disclosures indicating whether or not an issuer has implemented "a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment," are material; and (3) CYIOS's failure to assess the effectiveness of its internal controls using the COSO framework, as stated in its filings, made those statements material misrepresentations.[68]

Lundelius also opined on related issues. He testified that suitable, recognized frameworks for evaluating issuers' internal controls, such as COSO, are frameworks that were publicly circulated and presented for comment from the accounting profession.[69] Lundelius also gave his opinion that CYIOS's CYIPRO product was not a suitable, recognized framework for evaluating internal controls.[70] He elaborated on the five components of COSO and gave his opinion on how Carnahan's internal controls assessment of CYIOS did not appear to appropriately address any of those elements.[71]

Carnahan did not move to exclude Lundelius's testimony, challenge his expertise, or present contrary evidence. Although he objected when the Division elicited testimony to correct an error in Lundelius's report, I overruled Carnahan's objection.[72] Carnahan did little on cross-examination to discredit Lundelius's testimony, choosing to chiefly focus on whether Lundelius had

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67 *Id.* at 1 & App. A at 1.

68 *Id.* at 3, 7–12. As discussed further in my legal conclusions, Exchange Act Rule 13a-15(c) contains an explicit requirement that management's evaluation of the issuer's internal controls must be based on a suitable, recognized control framework.

69 Tr. 110–12; *see also* Div. Ex. 42 at 4, 7–8.

70 Tr. 113–14; *see also* Div. Ex. 42 at 8–9.

71 Tr. 121–24; *see also* Div. Ex. 42 at 5–6.

72 Tr. 104–05.

reviewed CYIOS's patent.[73] Carnahan, however, failed to present any evidence about CYIOS's patent or whether it had one.[74]

Conclusions of Law

1. Carnahan caused CYIOS's violation of Securities Act Section 17(a)(3).

The Division charged CYIOS with violating Securities Act Section 17(a)(3), and Carnahan with causing that violation. Section 17(a)(3) makes it "unlawful for any person in the offer or sale of any securities," by use of interstate means or the mails, "to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."[75] Repeatedly making or disseminating material misstatements may constitute a fraudulent practice or course of business under Section 17(a)(3).[76] The Division need not demonstrate scienter to establish a violation

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[73] Tr. 125–26.

[74] When he cross-examined Lundelius, Carnahan asked Lundelius whether he evaluated CYIOS's patent and asserted that "the patent is in the 10-Ks" CYIOS filed. Tr. 125–29. But CYIOS's Forms 10-K do not establish the existence of a patent; they represent merely that one of CYIOS's subsidiaries had applied for registration of CYIPRO's logo with the U.S. Patent and Trademark Office, and that CYIOS claims copyright protection for CYIPRO. *See, e.g.*, Div. Ex. 3 at 102. Moreover, Carnahan's questions and statements during cross-examination, as opposed to sworn testimony on the witness stand, are not evidence. *Sims v. Greene*, 161 F.2d 87, 88 (3d Cir. 1947).

[75] 15 U.S.C. § 77q(a)(3).

[76] *See Dennis J. Malouf*, Securities Act Release No. 10115, 2016 WL 4035575, at *12 (July 27, 2016), *aff'd*, 933 F.3d 1248 (10th Cir. 2019). The Tenth Circuit held in *Malouf* that liability for misconduct involving material misstatements may lie under Securities Act Section 17(a)(3) given the Supreme Court's interpretation of similar language under Exchange Act Rule 10b-5(c) in *Lorenzo v. SEC*, 139 S. Ct. 1094 (2019). *See* 933 F.3d at 1259–60; *see also Lorenzo*, 139 S. Ct. at 1101 ("By sending emails he understood to contain material untruths, Lorenzo . . . 'engage[d] in a[n] act, practice, or course of business' that 'operate[d] . . . as a fraud or deceit' under subsection (c) of the Rule." (alterations in original)).

of Section 17(a)(3); negligence is sufficient to establish a violation of Section 17(a)(3).[77]

A misstatement is material if there is a substantial likelihood that a reasonable investor would view "disclosure of the omitted fact … as having significantly altered the 'total mix' of information made available."[78] Misconduct occurs "in the offer or sale" of securities when, for instance, misstatements are material and are contained in documents on which an investor would presumably rely, such as public filings made with the Commission, at the time when the issuer offered or sold its securities.[79] The interstate commerce requirement is satisfied when the misstatements are contained in filings made with the Commission via EDGAR, a system maintained by the Commission for the electronic filing of documents.[80]

To establish Carnahan's liability for causing CYIOS's violation of Section 17(a)(3), the Division must show: (1) a primary violation; (2) an act or omission by Carnahan that caused the violation; and (3) that Carnahan knew, or should have known, that his conduct would contribute to the violation.[81] Negligence is

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[77] *See Aaron v. SEC*, 446 U.S. 680, 701–02 (1980); *Malouf*, 2016 WL 4035575, at *11 n.74.

[78] *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 38 (2011) (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988)).

[79] *See, e.g.*, *SEC v. Wolfson*, 539 F.3d 1249, 1262–63 (10th Cir. 2008); *cf. United States v. Naftalin*, 441 U.S. 768, 773 (1979) (explaining that "Congress expressly intended to define broadly" language in Section 17(a) that the fraud occur *in* the *offer* or *sale* of any securities).

[80] *See SEC v. Straub*, No. 11-cv-9645, 2016 WL 5793398, at *11 (S.D.N.Y. Sep. 30, 2016) ("a company uses an instrumentality of interstate commerce when it files documents publicly on the EDGAR website"); *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at *6 & n.17 (Feb. 20, 2015) ("use of the Internet … is *per se* sufficient to satisfy the interstate jurisdictional element of the securities laws"); *McConville*, 2005 WL 1560276, at *10 ("misstatements and omissions in … financial statements … electronic[ally] fil[ed]" with the Commission meet interstate commerce requirement).

[81] *Robert M. Fuller*, Securities Act Release No. 8273, 2003 WL 22016309, at *4 (Aug. 25, 2003), *pet. denied*, 95 F. App'x 361 (D.C. Cir. 2004).

enough to demonstrate causing liability if the primary violation does not require a showing of scienter.[82]

CYIOS's statements that management had evaluated the company's internal controls using the COSO framework were false. Carnahan's undisputed investigative testimony established that he was the only so-called "internal control" and the statements in the periodic filings were the only support for his assessment of the company's internal controls.[83] CYIOS employed no process meeting the COSO framework.[84] CYIOS's misstatements were made in multiple periodic reports uploaded to the Commission's EDGAR database for the investing public to see and rely upon. Further, CYIOS obtained consulting services in exchange for its publicly traded stock while these misstatements were in its periodic reports.

As to materiality, CYIOS was legally required to report on its internal controls in its filings and to include management's annual report on internal controls that contained, among other items, a "statement identifying the framework used by management to evaluate the effectiveness of" its internal controls.[85] By Commission regulation, internal controls must be assessed using a suitable, recognized framework that meets certain standards.[86] When disclosures are required by law, those disclosures are presumed material.[87] That presumption is justified with respect to disclosures about internal

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[82] *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at *19 (Jan. 19, 2001), *recons. denied*, Exchange Act Release No. 44050, 2001 WL 223378 (Mar. 8, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

[83] Div. Ex. 2 at 63–69, 72–73, 75.

[84] Tr. 45–47, 113–14, 121–24; *see also* Div. Ex. 42 at 5–6, 8–12; *see generally* COSO Internal Control – Integrated Framework – 1992 and 1994, CCH Accounting Research Manager (Wolters Kluwer).

[85] *See* 17 C.F.R. §§ 229.308(a) (requiring companies to disclose information regarding its internal controls in Forms 10-K), .601(b)(31)(i) (requiring management certification regarding internal controls as an exhibit to a periodic report).

[86] *See* 17 C.F.R. § 240.13a-15(c); *see infra* discussion on Rule 13a-15(c) accompanying notes 103–06.

[87] *See Craftmatic Sec. Litig. v. Krafstow*, 890 F.2d 628, 641 n.17 (3d Cir. 1989); *cf. United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991) ("[T]he fact that the information is required to be revealed under § 13(d) is evidence of its materiality.").

controls because internal controls provide assurance that an issuer's financial statements—the heart of a public company's periodic reports—are reliable and comply with applicable standards.[88] And it is further supported in this case because CYIOS was a federal contractor and a false disclosure of this nature could threaten its business—as the company recognized in its periodic reports, "failure to comply with applicable laws or regulations could have a material adverse effect on [its] business and reputation" with the government.[89]

Moreover, the stark difference between the representations that Carnahan repeatedly included in multiple reports and his failure to use any suitable framework leads to the inescapable conclusion that he knew that the representations regarding internal controls were false. In other words, he made the false statements with scienter, "a mental state embracing intent to deceive, manipulate, or defraud."[90] These knowingly false statements impugn

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[88] *See In re Insys Therapeutics, Inc. Sec. Litig.*, No. 17-cv-1954, 2018 WL 2943746, at *5 (S.D.N.Y. June 12, 2018) ("When assurance that a company complies with its accounting policies, or that a company has effective internal controls, turns out to be false, that would be viewed by the reasonable investor as having significantly altered the total mix of information made available." (internal quotation marks omitted)); *In re Equimed, Inc.*, No. 98-cv-5374, 2000 WL 562909, at *7 (E.D. Pa. May 9, 2000) ("The adequacy of internal controls would be material to a shareholder's decision to buy and sell."); *see also In re Grupo Televisa Sec. Litig.*, 368 F. Supp. 3d 711, 720–21 (S.D.N.Y. 2019) ("Misstatements made in [an issuer's] certifications concerning the design and efficacy of internal controls are actionable."); *accord* Div. Ex. 42 at 7, 8 (Lundelius opined that "the lack of effectiveness of internal controls calls into question the accuracy of an issuer's public disclosures" and "a reasonable investor would consider the lack of a suitable, recognized framework for internal control important when making investment decisions").

[89] *See, e.g.*, Div. Ex. 12 at 262–63.

[90] *Aaron*, 446 U.S. at 686 n.5 (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976)); *see also Ades v. Deloitte & Touche*, 799 F. Supp. 1493, 1499 (S.D.N.Y. 1992) ("An inference of recklessness satisfying the scienter requirement may be drawn from facts demonstrating conduct that the defendant disseminated material knowing it was false . . . ." (internal quotation marks and brackets omitted)). Because Carnahan's scienter is imputed to CYIOS, CYIOS acted with scienter. *Clarke T. Blizzard*, Advisers Act Release No. 2253, 2004 WL 1416184, at *5 (June 23, 2004) ("A company's scienter may be imputed from that of the individuals who control it."). Although scienter is not required for a Section 17(a)(3) violation, it is nonetheless relevant because evidence sufficient to establish scienter

CYIOS's management's integrity, which further supports the determination that they are material.[91] As reasonable investors would consider the integrity of a public company's management important, outright false statements included in periodic filings by management indicate a lack of reliability and would affect investors' decisions regarding that company's securities.[92]

The false statements about CYIOS's internal controls were material. CYIOS violated Section 17(a)(3) through its repeated material misstatements in its periodic filings. As the person responsible for those filings and their content, Carnahan caused CYIOS's violation.[93]

2. Carnahan caused CYIOS's violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

The Division charged CYIOS with violating Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13. Carnahan is charged with causing those violations. Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 require issuers of securities registered under Section 12 to file annual and quarterly reports with the Commission.[94] Compliance with these requirements is mandatory.[95] Scienter is not required to establish violations of these provisions.[96] As CYIOS's sole officer and director, Carnahan was responsible

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necessarily establishes a lesser mental state. The existence of scienter is also relevant to sanctions.

91 *See United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010); *In re Monster Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 139 (S.D.N.Y. 2008).

92 *Cf. S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 WL 6850921, at *6 (Dec. 5, 2014) (holding that a "misrepresentation that audit reports appearing in … periodic reports filed with the Commission have been signed by a CPA is material").

93 *See Fuller*, 2003 WL 22016309, at *4.

94 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13.

95 *Am.'s Sports Voice, Inc.*, Exchange Act Release No. 55511, 2007 WL 858747, at *4 (Mar. 22, 2007), *recons. denied*, Exchange Act Release No. 55867, 2007 WL 1624611 (June 6, 2007).

96 *See SEC v. McNulty*, 137 F.3d 732, 740–41 (2d Cir. 1998); *SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

for the content of the periodic filings and filed them with the Commission via EDGAR.[97]

As noted above, CYIOS had a class of securities registered under Exchange Act Section 12 and did not file any periodic reports between November 21, 2012, and May 30, 2014, the date it filed the Form 15 to terminate its registration. By failing to make required periodic filings during that time, CYIOS violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. Given that Carnahan was responsible for CYIOS's periodic filings as the company's sole officer and director, he caused these violations.[98] In fact, as I found above, Carnahan decided to stop making the filings.

3. Carnahan violated Exchange Act Rule 13a-14.

The Division charged Carnahan with violating Exchange Act Rule 13a-14, which requires that an issuer's periodic reports, including those filed on Forms 10-K and 10-Q, include certifications by the issuer's principal executive and principal financial officers, as specified in the filing requirements of such reports.[99] Carnahan, who served in these officer roles for CYIOS, was required to certify in an exhibit to each periodic report that, based on his knowledge, the report "does not contain any untrue statement of material fact."[100] And a person who makes this certification violates Rule 13a-14 if the periodic report subject to the certification contains materially false statements.[101] For purposes of this decision, I assume that to establish a violation of Rule 13a-14, the Division must show that a respondent knew his certification was false or acted recklessly in making a false certification.[102]

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97 Div. Ex. 2 at 58–60; Tr. 40–42.

98 *See Gateway Int'l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 WL 1506286, at *8 (May 31, 2006); *Phlo Corp.*, Exchange Act Release No. 55562, 2007 WL 966943, at *11 & n.66 (Mar. 30, 2007). As explained above, CYIOS violated Section 13(a), Carnahan did not make the periodic filings for which he was responsible, and he knew or should have known that if he did not make those filings, CYIOS would fail to file its periodic reports.

99 17 C.F.R. § 240.13a-14(a).

100 17 C.F.R. § 229.601(b)(31)(i).

101 *See SEC v. Jensen*, 835 F.3d 1100, 1112–13 (9th Cir. 2016).

102 *See id.* at 1113 n.6 (declining to reach the question of the mental state required for a violation of Rule 13a-14); *id.* at 1118 (Bea, J. concurring) ("I would hold that liability for false certification under Rule 13a-14 may lie only

CYIOS's Forms 10-K for fiscal years 2009, 2010, and 2011 and Forms 10-Q for the first quarter of 2010 through the third quarter of 2012 all falsely indicated that management had assessed the company's internal controls using the COSO framework. Nevertheless, Carnahan signed certifications attached as exhibits to those periodic reports stating there were no untrue statements of material fact in the reports. As the reports contained materially false statements, Carnahan violated Exchange Act Rule 13a-14. Being the only control person of the company, Carnahan knew that no one had assessed CYIOS's internal controls using the COSO framework.

4. Carnahan violated Exchange Act Rule 13a-15(c).

The Division charged Carnahan with violating Exchange Act Rule 13a-15(c), which requires a public company's management to evaluate the effectiveness of the company's internal controls at each fiscal year's end.[103] The rule requires that "[t]he framework on which management's evaluation of the issuer's internal control over financial reporting is based must be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment."[104] It also states that "[a]lthough there are many different ways to conduct an evaluation of" internal controls, "an evaluation that is conducted in accordance with the interpretive guidance issued by the Commission in Release No. 34-55929 will satisfy the evaluation required by this paragraph."[105] Commission Release No. 34-55929 cites the COSO framework as a suitable control framework and further makes clear that management must maintain sufficient evidential matter to support its assessment.[106]

Carnahan was the only member of CYIOS's management during the relevant time period. The evidence establishes that Carnahan did not assess

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where a CEO or CFO acts with knowledge or at least recklessness as to the falsity of a certification.").

103 17 C.F.R. § 240.13a-15(c).

104 *Id.*

105 *Id.*

106 *See* Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, 72 Fed. Reg. 35,324, 35,326 nn.23 & 24, 35,329, 35,332 (June 27, 2007).

CYIOS's internal controls using any suitable framework, let alone the COSO framework, as the periodic reports claimed.[107] Carnahan was aware of the statements in CYIOS's periodic filings and indeed was responsible for those filings and their content.[108] Accordingly, Carnahan violated Rule 13a-15(c).

Sanctions

1. Cease-and-Desist Order

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to issue a cease-and-desist order against any person found to have violated, or caused a violation of, a provision of those acts or a rule or regulation promulgated under either act.[109] To issue such an order, "there must be some likelihood of future violations."[110] But the "risk" of future violations "need not be very great to warrant issuing a cease-and-desist order. Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation."[111]

Additionally, the Commission considers the public-interest factors described in *Steadman v. SEC*[112] when determining whether to issue a cease-and-desist order.[113] These factors include: the egregiousness of the respondents' actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondents' assurances against future violations, the respondents' recognition of the wrongful nature of their conduct, and the likelihood that the respondents' occupations will present opportunities for future violations.[114] The Commission also considers

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107 *See supra* notes 83 and 84 and accompanying text.

108 *See supra* notes 46, 90, and 91 and accompanying text.

109 *See* 15 U.S.C. §§ 77h-1(a), 78u-3(a).

110 *KPMG Peat Marwick*, 2001 WL 47245, at *24.

111 *Id.*; *see also id.* at *26.

112 603 F.2d 1126, 1140 (5th. Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

113 *KPMG Peat Marwick*, 2001 WL 47245, at *23 & n.114, *26; *see Timothy S. Dembski*, Securities Act Release No. 10326, 2017 WL 1103685, at *14 (Mar. 24, 2017), *pet. denied*, 726 F. App'x 841 (2d Cir. 2018).

114 *KPMG Peat Marwick*, 2001 WL 47245, at *26; *see also Steadman*, 603 F.2d at 1140.

"whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings."[115] No single factor in this analysis is dispositive, and the entire record is considered when deciding whether to issue a cease-and-desist order.[116]

The fact CYIOS and Carnahan committed the charged violations shows the likelihood of future violations. Their misconduct was egregious. CYIOS violated the antifraud provision of Securities Act Section 17(a)(3) by falsely representing in its periodic filings that its management followed an established framework when assessing its internal controls.[117] The misstatements appeared in numerous periodic filings over a period of about three years, highlighting the misconduct's recurrent nature. Carnahan was fully responsible for CYIOS's filings and admitted that he was the company's only internal control. He acted with scienter by knowingly making false statements in those filings, and his scienter is imputed to CYIOS.[118] Carnahan also repeatedly included false certifications with those filings and failed to assess CYIOS's internal controls using any suitable framework, in violation of Exchange Act Rules 13a-14 and 13a-15(c). This had the potential to cause "serious harm to investors and the marketplace."[119]

Further, Carnahan decided to stop making CYIOS's required periodic filings. He thus caused CYIOS's violation of "a central provision of the Exchange Act, … depriv[ing] both existing and prospective holders of its registered stock of the ability to make informed investment decisions based on

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115 *KPMG Peat Marwick*, 2001 WL 47245, at *26.

116 *Id.*

117 *See Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) ("[The Commission has] repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." (internal quotation marks omitted)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

118 *See Aaron*, 446 U.S. at 686 n.5; *Blizzard*, 2004 WL 1416184, at *5.

119 *Rockies Fund, Inc.*, Exchange Act Release No. 54892, 2006 WL 3542989, at *5 (Dec. 7, 2006) ("The dissemination of false and misleading financial information, such as in the periodic reports at issue, causes serious harm to investors and the marketplace."), *pet. denied*, 298 F. App'x 4 (D.C. Cir. 2008).

current and reliable information."[120] CYIOS and Carnahan's "long history of ignoring … reporting obligations evidences a high degree of culpability."[121] Moreover, Carnahan's own decision shows that the "violations here were intentional."[122]

Respondents have made no assurances against future violations. Further underscoring the significant risk of future violations, Carnahan has not recognized the wrongfulness of the misconduct and in his closing argument simply claimed the Division did not present evidence of wrongdoing.[123] As the control person for CYIOS, Carnahan's occupation presents the opportunity for CYIOS to again become public and resume its misconduct. The *Steadman* factors thus weigh in favor of strong sanctions.

The factors specific to issuing a cease-and-desist order further show that such an order is appropriate. Although the violations are not recent, "this consideration is outweighed by the other factors previously discussed."[124] There is no evidence quantifying monetary losses to investors; however, investors were deprived of current information when CYIOS stopped filing its reports and were misled into believing that CYIOS's management evaluated its internal controls using a recognized framework.[125] Instructing Carnahan

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[120] *Accredited Bus. Consolidators Corp.*, Exchange Act Release No. 75840, 2015 WL 5172970, at *2 (Sept. 4, 2015); *see also Phlo Corp.*, 2007 WL 966943, at *13 (describing a respondent's repeated failure to timely file its periodic reports as "serious").

[121] *Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 WL 2499350, at *5 (June 29, 2012) (internal quotation marks omitted).

[122] *Id.*

[123] *See* Tr. 131; *see also Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004) ("[The respondent] still thinks he did nothing wrong, which casts doubts on his promise that he will mend his ways."); *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *6 (Jan. 16, 2007) ("[F]ailure to acknowledge guilt or show remorse indicates that there is a significant risk that, given the opportunity, [the respondent] would commit further misconduct in the future.").

[124] *Robert W. Armstrong, III*, Exchange Act Release No. 51920, 2005 WL 1498425, at *15 (June 24, 2005).

[125] *See McConville*, 2005 WL 1560276, at *16 ("Fraudulent misstatements and omissions in financial statements and periodic reports mislead investors who buy or sell stock based on the information contained therein."); *see also*

and CYIOS to not violate the securities laws in the future does not prejudice them and, in conjunction with the sanctions discussed below, is an appropriate remedy.

Based on the entire record, a cease-and-desist order is warranted against CYIOS and Carnahan.

2. Civil Penalties

Securities Act Section 8A(g) and Exchange Act Section 21B(a)(2) authorize civil penalties in cease-and-desist proceedings against any person who has violated, or caused a violation of, a provision of those acts or a rule or regulation promulgated under either act.[126] These provisions both outline a three-tiered system for determining the maximum civil penalty for each act or omission. First-tier penalties are available based on the fact of the violation alone.[127] Second-tier penalties may be imposed if the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.[128] Third-tier penalties require the additional finding that the misconduct, directly or indirectly, "resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain" to the respondent who committed the violation.[129]

The Division requests that I impose seventeen third-tier penalties.[130] The basis for the number is clear; it is derived from the number of periodic filings containing misstatements, plus the required filings that were not made.[131] The basis for the tier is less clear, however. Although the Division asserts

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SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1377 (D.C. Cir. 1980) ("Dissemination of false or misleading information by companies to members of the investing public may distort the efficient workings of the securities markets and injure investors who rely on the accuracy and completeness of the company's public disclosures.").

126 15 U.S.C. §§ 77h-1(g)(1), 78u-2(a)(2).

127 15 U.S.C. §§ 77h-1(g)(2)(A), 78u-2(b)(1).

128 15 U.S.C. §§ 77h-1(g)(2)(B), 78u-2(b)(2).

129 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3).

130 Div. Br. 19–20.

131 Div. Br. 20.

Respondents "created a 'significant risk of substantial losses,'" it does not explain why this is the case.[132]

The record nonetheless supports second-tier penalties for Respondents' misconduct. Respondents' misconduct relating to the false statements in CYIOS's periodic filings was committed with scienter and was deceitful.[133] Respondents also deliberately disregarded regulatory requirements when they failed to file periodic reports. Indeed, Carnahan was aware of those requirements yet decided to stop making the filings.

When determining whether civil penalties are in the public interest, the Commission considers six factors listed in the securities statutes: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm, directly or indirectly, to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need for deterrence; and (6) such other matters as justice may require.[134] As I have already found, the first factor is satisfied. As discussed in determining that a cease-and-desist order is appropriate, while investor harm cannot be quantified, Respondents' misconduct harmed investors in that it deprived investors of current information about CYIOS and misled them due to repetitive misstatements about the company's internal controls. CYIOS was unjustly enriched by obtaining consulting services in exchange for its stock. There is no evidence that either Carnahan or CYIOS have a disciplinary history. There is, however, a need to deter them and others from future misconduct. There are no

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[132] Div. Br. 20. The only record evidence of the trading volume and price of CYIOS's stock suggests that on all but a few days total trading volume was well under $5,000, *see generally* Div. Ex. 26, which makes the potential losses to investors less likely to be characterized as substantial. Moreover, although the Division points to Carnahan's income as substantial, Div. Br. 19; Div. Ex. 3 at 119, it has made no showing that his income resulted from his misconduct.

[133] *See SEC v. M&A W., Inc.*, 538 F.3d 1043, 1054 (9th Cir. 2008) ("[T]he imposition of second-tier penalties requires an assessment of scienter.").

[134] *See, e.g.*, 15 U.S.C. § 78u-2(c). When assessing the public interest under the Securities Act, the Commission considers the factors listed under the other securities statutes as the Securities Act does not contain a statutory list of public-interest factors. *See Dembski*, 2017 WL 1103685, at *15 & n.70; *Thomas C. Gonnella*, Securities Act Release No. 10119, 2016 WL 4233837, at *14 & n.70 (Aug. 10, 2016), *pet. argued*, No. 16-3433 (2d Cir. Sept. 9, 2019); *see generally* 15 U.S.C. § 77h-1.

indications that Respondents understand the gravity of their misconduct. Carnahan ran a public company without proper internal controls and knowingly caused that company to make false statements to the investing public indicating otherwise. On balance, significant penalties are warranted.

Although the securities statutes provide that a penalty may be imposed for each act or omission, they leave the precise unit of violation undefined.[135] Based on the record, two second-tier penalties are appropriate against each Respondent. The first is imposed for the misconduct relating to the misstatements about CYIOS's internal controls, and the second is imposed for the failure to make required periodic filings. These violations are aptly considered as two courses of misconduct. Imposing a penalty for each filing that contained a misstatement and each missed filing, as the Division proposes, would be unduly punitive in the circumstances of this case. Although I could also impose penalties for each of Carnahan's false certifications, I decline to do so, as I consider those certifications part of the same course of misconduct as the misstatements.

Maximum second-tier penalties of $75,000 for each violation by an individual and $375,000 for each violation by an entity may be imposed for violations occurring during the misconduct's timeframe.[136] Particularly in view of the deceitful nature of the misstatement-related misconduct, the maximum amount against each Respondent is appropriate for that misconduct. But as to the missed periodic filings, it is appropriate to impose lesser penalties of $125,000 against CYIOS and $25,000 against Carnahan. Accordingly, I will order that Carnahan pay a total civil monetary penalty of $100,000 and that CYIOS pay a total civil monetary penalty of $500,000.

3. Disgorgement and Prejudgment Interest

Securities Act Section 8A(e) and Exchange Act Section 21C(e) authorize disgorgement in cease-and-desist proceedings, and Exchange Act Section 21B(e) authorizes disgorgement in proceedings where civil monetary penalties may be imposed.[137] "Disgorgement is an equitable remedy designed to deprive a wrongdoer of [its] unjust enrichment and to deter others from violating the

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135 *Fields*, 2015 WL 728005, at *24 n.162.

136 *See* 17 C.F.R. § 201.1001, tbl. I.

137 *See* 15 U.S.C. §§ 77h-1(e), 78u-2(e), 78u-3(e).

securities laws."[138] To establish the appropriate amount of disgorgement, the Division need only show "a reasonable approximation of profits causally connected to the violation" in question.[139] Ordinarily, once the Division makes the required showing, the burden shifts to the respondent to show that the disgorgement figure was not a reasonable approximation.[140]

The Division has shown, and CYIOS has not disputed, that CYIOS received $37,500 worth of consulting services by exchanging its publicly traded stock for such services while the company's periodic filings contained material misstatements in violation of Section 17(a)(3).[141] Because CYIOS's misstatements about its internal controls were material—for the reasons discussed earlier in this decision—a provider of consulting services would consider those false disclosures important in deciding whether to accept stock compensation. The receipt of these services in exchange for the company's stock was thus causally connected to the violation.[142] The value of these consulting services is an unjust enrichment subject to disgorgement, as otherwise CYIOS would retain a free benefit it gained while violating the law.[143] The Division reasonably approximated the value of these services based on CYIOS's stated

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138 *Montford*, 2014 WL 1744130, at *22 (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)).

139 *First City Fin.*, 890 F.2d at 1231; *see also Montford & Co. v. SEC*, 793 F.3d 76, 83–84 (D.C. Cir. 2015).

140 *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004).

141 Div. Ex. 12 at 274, 277.

142 *See Jay T. Comeaux*, Securities Act Release No. 9633, 2014 WL 4160054, at *3 (Aug. 21, 2014) ("The Division need only show but-for causation between a defendant's violations and profits.").

143 *Cf. SEC v. Contorinis*, 743 F.3d 296, 306 (2d Cir. 2014) (rejecting the principle that disgorgement is limited to the amount of direct pecuniary benefit to the wrongdoer, and recognizing that a "wrongdoer's unlawful action may create illicit benefits for the wrongdoer that are indirect or intangible"); *SEC v. Great Lakes Equities Co.*, 775 F. Supp. 211, 214 (E.D. Mich. 1991) ("The benefit or unjust enrichment of a defendant includes not only what it gets to keep in its pocket after the fraud, but also the value of the other benefits the wrongdoer receives through the scheme."), *aff'd*, 12 F.3d 214 (6th Cir. 1993) (unpublished).

value of its stock issued in exchange for the services.[144] CYIOS has made no contrary showing.[145]

Accordingly, CYIOS will be ordered to disgorge $37,500 in ill-gotten gains, with interest due from December 1, 2012, which is the first day of the month after CYIOS's last periodic filing—an amended Form 10-Q—that contained a material misstatement.[146]

Record Certification

I certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on September 9, 2019.[147]

Order

Under Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934:

CYIOS Corporation must CEASE AND DESIST from committing any violations or future violations of Section 17(a)(3) of the Securities Act of 1933, Section 13(a) of the Securities Exchange Act of 1934, and Exchange Act Rules 13a-1 and 13a-13; and

Timothy W. Carnahan must CEASE AND DESIST from causing any violations or future violations of Section 17(a)(3) of the Securities Act of 1933, Section 13(a) of the Securities Exchange Act of 1934, and Exchange Act Rules 13a-1 and 13a-13; and from committing any violations or future violations of Exchange Act Rules 13a-14 and 13a-15.

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144 *See SEC v. Bilzerian*, 814 F. Supp. 116, 123 (D.D.C. 1993) ("A reasonable approximation of defendant's illicit profit is the amount he gained while in violation of the law."), *aff'd*, 29 F.3d 689 (D.C. Cir. 1994); *see also id.* at 121 ("As it is nearly impossible and speculative to determine the market price but for the illicit conduct, a reasonable approximation of this amount must suffice." (internal citation omitted)).

145 *See Zacharias v. SEC*, 569 F.3d 458, 473 (D.C. Cir. 2009) ("[T]he burden of uncertainty in calculating ill-gotten gains falls on the wrongdoers who create that uncertainty.").

146 *See* 17 C.F.R. § 201.600(a).

147 *See* 17 C.F.R. § 201.351(b).

Under Section 8A(g) of the Securities Act of 1933 and Section 21B(a) of the Securities Exchange Act of 1934:

> CYIOS Corporation must PAY A CIVIL MONEY PENALTY in the amount of $500,000; and
>
> Timothy W. Carnahan must PAY A CIVIL MONEY PENALTY in the amount of $100,000.

Under Section 8A(e) of the Securities Act of 1933 and Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934:

> CYIOS Corporation must DISGORGE $37,500.00, plus prejudgment interest. The prejudgment interest owed will be calculated from December 1, 2012, to the last day of the month preceding the month in which payment of disgorgement is made. Prejudgment interest will be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), and compounded quarterly.[148]

Payment of civil penalties, disgorgement, and interest must be made no later than 21 days following the day this initial decision becomes final, unless the Commission directs otherwise. Payment must be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/ofm; or (3) by certified check, bank cashier's check, bank money order, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying Respondent(s) and Administrative Proceeding No. 3-16386: Enterprise Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment must be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[149] Under that rule, a party may file a petition for review of this initial decision within 21 days after service of the initial decision. Under Rule of Practice 111, a party may also file a motion to correct a manifest

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148 *See* 17 C.F.R. § 201.600(b).

149 *See* 17 C.F.R. § 201.360.

error of fact within ten days of the initial decision.[150] If a motion to correct a manifest error of fact is filed by a party, then a party has 21 days to file a petition for review from the date of the order resolving such motion to correct a manifest error of fact.

The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occur, the initial decision will not become final as to that party.

_____

James E. Grimes
Administrative Law Judge

[150] *See* 17 C.F.R. § 201.111.

EXHIBIT C

MUTUAL RELEASE AND SEPARATION AGREEMENT

THIS MUTUAL RELEASE AND SEPARATION AGREEMENT (this "***Agreement***") is made as of the 13th day of March 2020, by Timothy Carnahan, an individual ("***Carnahan***"), and CYIOS Corporation, a Nevada corporation ("***CYIO***").

Preliminary Statements

Carnahan was an Officer and Director of CYIO and has tendered his resignation the date hereof.

Carnahan and CYIO wish to resolve and to settle all issues between them relating to the employment of Carnahan by CYIO, including without limitation, all issues relating to salary, expenses and payments payable to Carnahan.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Preliminary Statements**. The foregoing Preliminary Statements are true and form a part of this Agreement.

2. **Ratification of Agreements and Filings**.

(a) Carnahan on behalf of CYIO has entered into that certain Subscription Agreement ("***Subscription Agreement***"), with David W. Greene, attached hereto as Exhibit A.

(b) Carnahan shall withdraw his claim of fraudulent filing with the state of Nevada and confirm that David W. Greene is the sole officer and director of the Company.

(c) Carnahan shall withdraw his complaint submitted to Internet Crime Complaint Center.

(d) Carnahan will certify the change in control to the Company's transfer agent.

(e) Carnahan hereby ratifies the following actions taken by Greene with regard to the Company prior to the date hereof, without approving or ratifying the content of such filings:

1. Filings with the state of Nevada
2. Filings with OTC Markets
3. Filings with the SEC on behalf of the Company with regard to the administrative proceeding

3. **Payments to Carnahan**.

(a) The Company shall pay to Carnahan $28,000 in the aggregate, pursuant to the following schedule:

1. $2,000 upon execution hereof;
2. $2,000 on April 1, 2020;
3. $4,000 on May 1, 2020; and
4. $2,000 per month for the following 10 months.

4. **Sale of Subsidiaries.** The Company shall transfer ownership of CYIOS Corporation, a District of Columbia corporation and CKO, Inc., a District of Columbia corporation. However, Carnahan shall immediately change the name of CYIOS Corporation (DC) if such company has not already been dissolved.

5. **Cooperation**.

(a) Litigation. Carnahan shall cooperate with the Company in any litigation with Adam Weiss, Weiss Consulting Group Inc., Christopher Maynard, and Azure Associates Inc. CYIO shall not interfere with Carnahan's appeal of the Initial Decision of the Administrative Law Judge with regard to File No. 3-16386, as it pertains to Carnahan individually.

(b) Website. Carnahan will transfer the URL "CYIOS.com" to the control of the Company.

(c) Cooperation Generally. Carnahan will cooperate with the Company as matters may arise including but not limited to providing any company historical information and press releases regarding the matters relating to the change in control of the Company.

6. **Mutual Release**. In consideration of the agreements and mutual promises made herein, CYIO, on the one hand, and Carnahan, on the other hand, hereby mutually release and forever discharge each other, from all actions, suits, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, trespasses, damages, judgments, claims, demands and all other liabilities and obligations whatsoever, in law or in equity, known or unknown, existing or which may arise in the future, and fixed or contingent (each a "***Claim***"), that the parties ever had, now has or hereafter, can, shall or may have, from any matter, cause or thing whatsoever, from the beginning of the world through the date hereof, other than the parties' respective obligations under this Agreement and the other agreements contemplated hereby. The parties represent that no portion of any Claim has been assigned or transferred by subrogation or otherwise to any other person, firm, or entity.

7. **Miscellaneous**

(a) Entire Agreement. This Agreement contains the entire agreement and understanding of the parties, and supersedes all prior agreements and understandings, written or oral; is irrevocable and may not be modified or terminated except to the extent, if any, set forth in a writing signed by the parties.

(b) Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with Florida law without giving effect to the choice of law provisions thereof. Any legal proceeding arising out of or relating to this Agreement shall be brought in any state court having jurisdiction located in Broward County, Florida, or in the United States District Court, Southern District of Florida. Each party consents to the jurisdiction of such courts in any legal proceeding and waives any objection to the laying of venue of any legal action in any such court. Prior to the filing of any action the parties agree to submit any controversy to mediation with a mediator to be picked by the American Arbitration Association.

(c) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be and constitute an original and one and the same instrument. A copy or facsimile copy of this Agreement and any signatures hereon shall be considered for all purposes as originals.

(d) Severability. If any term, provision or portion of this Agreement is held to be unlawful, in conflict with federal, state or other applicable law or otherwise enforceable, the remainder of this Agreement shall continue in full force and effect to the same extent as if the illegal or invalid provision was not included in this Agreement and the remainder of the Agreement shall be enforced to give effect to the fullest extent legally permissible the intent and purposes of the parties as evidenced by this Agreement.

(e) Notices. Any notice or other communication required or permitted hereunder shall be in writing and delivered at the addresses set forth below, or mailed by registered or certified mail, return receipt requested, postage prepaid, or by any courier service of recognized national standing, addressed as follows, or to such other address or addresses as may be hereafter furnished by one party to the other party in compliance with the terms hereof:

If to Carnahan, to:

Timothy W. Carnahan
[redacted]

If to CYIOS, to:

CYIOS Corporation
c/o Jonathan D. Leinwand PA
18851 NE 29th Ave., Suite 1011
Aventura, FL 33180

5. **Non-Disparagement Clause**: The Parties, as well as their respective officers, directors, and principals shall not directly or indirectly falsely disparage each other in any written or oral communication to any person or entity, including via electronic mail or electronic communication, on the Internet, through a website, bulletin board, posting, blog, or otherwise. Should it be determined pursuant to the dispute resolution provisions of this agreement that either

party has violated this provision, either party may seek injunctive relief.

6. **Effectiveness**. This Agreement shall bind and benefit Carnahan and CYIO but shall not become effective or enforceable in any respect until the date executed and delivered by the each of the parties (the "***Effective Date***").

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties as of the dates set forth below.

Signed, sealed and delivered
in the presence of:

Timothy Carnahan

Date: 3-13, 2020

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-Dade

On this 13th day of March, 2020, before me a Notary Public, personally appeared Timothy Carnahan who executed the above Mutual Release and Separation Agreement and acknowledged the same to be his free act and deed.

Personally Known: _____ or Produced Identification: X.
Type of Identification Produced: US PASSPORT.

JONATHAN LEINWAND
Notary Public-State of Florida
Commission # GG 953596
My Commission Expires
April 13, 2024

NOTARY PUBLIC

Sign _____

State of _____ at Large
My Commission Expires: _____
Serial Number, if any: _____

CYIOS CORPORATION, a
Nevada Corporation

By: _____
Name: _____
Title: _____

Date:_____, 2020

EXHIBIT D

LOGAN LAW FIRM PLC

RONALD J. LOGAN

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FAX TRANSMITTAL COVER SHEET

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Date: April 10, 2021

To: Damon Perpetua **Email: DPerpetua@wdco.com**
Wilson-Davis & Co., Inc.

To: David Lewis, CEO **Email: info@choicewellnessbrands.com**
CYIOS Corporation
From: Ronald J. Logan

Revised

Section 4(a)(1) legal opinion and attachments
Section 4(a)(1) Sale of Common Stock
Issuing Company:
Certificate No. Certificate No. 3098-1 representing 5,000,000 shares
Seller: Timothy W. Carnahan

Number of Pages: 18 (including this cover page)

If any portion of this transmission is illegible or is not received, please call 602-957-9320 Ext. 1.

LOGAN LAW FIRM PLC

RONALD J. LOGAN

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PHOENIX, ARIZONA 85018-3392

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Ron@LoganLF.com

April 10, 2021

info@choicewellnessbrands.com
Mr. David Lewis
Chief Executive Officer
CYIOS Corporation
258 South Military Trail
Deerfield Beach, FL 33442

DPerpetua@wdco.com
Mr. Damon Perpetua
Wilson-Davis & Co.
236 S. Main St.
Salt Lake City, UT 84101

EQ Shareowner Services
1110 Centre Pointe Curve, Suite 101
Mendota Heights, MN 55120

Re: Proposed sale of 5,000,000 shares of restricted common stock represented by Certificate No. 3098-1 issued on March 16, 2010, to Timothy W. Carnahan by CYIOS Corporation pursuant to the exemption available to the shareholder under Section 4(a)(1) of the Securities Act of 1933.

Dear Sir or Madam:

I have been asked to provide a legal opinion regarding whether an exemption pursuant to Section 4(a)(1) of the federal Securities Act of 1933 ("Securities Act") is available to the Timothy W. Carnahan (sometimes referred to as "Seller"), regarding his proposed sale in the public markets of 5,000,000 shares of restricted common stock represented by Certificate No. 3098-1 issued to Timothy W. Carnahan on March 16, 2010, by CYIOS Corporation (the "Company" or "CYIOS"). These securities are sometimes collectively referred to as the "Shares."

Seller acquired the Shares for services rendered to the Company in connection with the maintenance of an existing contract and procurement of the contract's renewal for an additional five years, which prevented the need for a corporate restructuring of the Company. The services were completed no later than December 31, 2009. Pursuant to issuance instructions dated March 16, 2010, that the Company delivered to its then-stock transfer agent, Corporate Stock Transfer, 5,000,000 shares of the Company's restricted common stock were issued to Seller on March 16, 2010.

The most recent OTCMarkets.com filing on November 23, 2020, for the period ending September 30, 2020, states that, as of November 18, 2020, there were 85,705,193 common shares of the Company's stock issued and outstanding. Consequently, Seller's 5,000,000 shares constitute fewer than 10% of the Company's issued and outstanding

common shares. The filings do not list Seller as an officer or director of the Company. Based on the foregoing, it is my opinion that Seller is not an affiliate of the Company.

I have reviewed and relied upon the representations made and documents submitted by the Seller, information and documents obtained from the Company's records, the records of the Company's stock transfer agent, EQ Shareowner Services, and obtained from the Company's public filings on OTCMarkets.com, including the following documents:

1. Letter from Seller dated March 26, 2021, describing the services for which the Shares were issued and stating that the Shares were paid for and fully earned more than two years ago;

2. Action by Written Consent of the Sole of [sic] Director of CYIOS Corporation dated March 16, 2010, authorizing the issuance of 5,000,000 shares to Seller for Seller's performance in the year 2009;

3. Letter from the Company to its transfer agent dated March 16, 2010, instructing the issuance of 5,000,000 shares to Seller;

4. Front and back of Certificate No. 3098-1 representing 5,000,000 shares of CYIOS Corporation restricted common stock issued to Seller on March 16, 2010;

5. Form 8-K filed March 17, 2010, stating that the Company's board of directors had issued 5,000,000 common shares to Seller;

6. EQ Shareowner Services account statement for Seller dated March 24, 2021, showing 5,000,000 shares of the Company held in certificate form;

7. The Company's public filings.

I have assumed the genuineness of the signatures on all documents submitted to me for review or obtained from the Company's public filings and reports, the Company's stock transfer agent and the Company's outside securities counsel.

I have relied on the accuracy of the representations that have been made by Seller, the information in the Company's public filings and reports in rendering this opinion and the documents provided to me that are described herein.

Restricted common stock can be sold in the public markets or in private negotiated transactions if (1) the shares have been registered for sale in an effective and current registration statement or (2) an exemption is available under the federal securities laws for the sale of the shares. These shares are not registered for resale pursuant to an effective and current registration statement. Therefore, we must examine the question of whether there is an available exemption. When assessing whether Section 4(a)(1) of the Securities Act of 1933 is available, we must first look at the availability of the Rule 144 safe harbor.

Is the Rule 144 safe harbor available to Seller?

Rule 144 was adopted to create certainty in the midst of conflicting appellate court decisions defining the term underwriter for purposes of the resales of restricted securities. If a shareholder is not an underwriter (did not acquire the shares with a view to make a distribution of the shares) then Section 4(a)(1) of the Securities Act may be an available exemption.

For decades after the adoption of the Securities Act, there was uncertainty about the definition of "underwriter" under the Securities Act. The Securities and Exchange Commission adopted Rule 144 to resolve inconsistent court decisions regarding underwriter status. If a Company meets the requirements set forth in Rule 144 and the shareholder meets the other criteria under that Rule for resales in the public markets, the shareholder is deemed not to be an underwriter and may sell the shares in the public markets under the conditions described in Rule 144.

Rule 405 of the Securities Act of 1933 defines a shell company as one having (a) no or nominal operations; and (b) either (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets. We must look at the public filings of the Company to determine if it was ever a shell.

CYIOS Corporation was incorporated on October 13, 1997, as Halo Holdings of Nevada, Inc., in the State of Nevada. The Company filed a registration statement on Form

10SB12G on September 3, 1999, and thereafter filed periodic 10-Q and 10-K reports through 2012. On May 30, 2014, the Company terminated its registration with the filing of a Form 15-12G. No reports of any kind were filed until December 9, 2019, when Annual reports covering 2016, 2017, and 2018 were filed at OTCMarkets.com. For the past two years, the Company has filed reports at OTCMarkets.com that meet the current public information requirements of 17 CFR 240.15c2-11.

Because the Company terminated its status as a registrant under the Securities Exchange Act of 1934 by filing a Form 15-12G, after which it did not file any public reports with the SEC and had a gap in its filings with OTCMarkets, we have no information about the Company's possible shell status during parts of 2014, all of 2015 and limited information for 2016 through 2020. I have presumed, for purposes of this opinion, that the Company may have been a shell company at some time during since it ceased filing public reports.

As is discussed below, the Company's shareholders are not required to rely on the Rule 144 safe harbor for a resale of their shares in the public markets, even if it is available. Shareholders may elect to rely solely on Section 4(a)(1) for the removal of the Rule 144 legend and resale of the shares in the public markets if the Company has met the current public information requirements for a Section 4(a)(1) resale and if the shareholder, as is the case here, meets all legal requirements for such resale, including holding the shares for at least two years after payment in full has been made.

Is any exemption available to Seller for the sale of the Shares other than Rule 144?

It is necessary to consider the available methods by which equity securities that were initially issued without registration may be resold without registration under the Act. Sales of this kind have become generally characterized as "Section 4(a)(1)" transactions [prior to the amendment of the Securities Act in 2015 to add a subsection "(b)," the Securities and Exchange Commission (the "Commission") and the courts referred to this as "Section 4(1)], primarily because the Commission, in no-action letters and other pronouncements, frequently has required that such resales meet at least some of the established criteria for exemptions under Section 4(a)(1).

Our initial inquiry in analysis of the scope of permissible sales of restricted securities is to determine what subsection within Section 4(a)(1) is applicable. Sections 4(2), 4(3), 4(4) and 4(5) may be ruled out summarily. Because Section 4(2) exempts only "transactions

by an issuer" and a sale by this Seller is not a sale "by an issuer", and a literal reading of this section makes it inapplicable as the basis for an exemption. We then must turn to Section 4(a)(1), which exempts "transactions by any person other than an issuer, underwriter, or dealer." Recognizing that the Shareholder, by definition, is not an "issuer" [as defined in Section 2(4)] and is not a "dealer" based on the representations in Seller's letter dated March 16, 2021, the critical inquiry is whether Seller may be deemed an "underwriter", as defined in Section 2(11) of the Act. To avoid "underwriter" status, the Shareholder (i) must not have purchased the Shares from the Company "with a view to its distribution" and (ii) must not offer or sell the Shares "for an issuer in connection with, the distribution."

The term "distribution", although central to the "underwriter" analysis, is not defined in the Act, and it is at this point that the Section 4(2) concepts typically are introduced and the "underwriter" analysis becomes confusing. Because a "distribution", in the context of Section 4(a)(1), is generally considered to be functionally equivalent to a "public offering" as used in Section 4(2), it seems reasonable in defining "distribution" to borrow by analogy from judicial and administrative interpretations of the term "public offering."

Judicial efforts to identify the statutory provision to be applied to sales of restricted securities and to define the parameters of the appropriate exemption have been far more successful than legislative endeavors and generally support the view that Section 4(a)(1) is the provision to be applied.

There are many federal circuit courts of appeal decisions that have clarified the term "underwriter" as it is used in Section 4(a)(1). It is clear that the SEC acknowledges that, even without Rule 144 being available as a safe harbor, Rule 144 is not the exclusive basis for claiming an exemption from the requirement that restricted shares be registered before they can be sold in the public markets.

Part of the preamble of Rule 144 reads: *"Rule 144 is not an exclusive safe harbor . A person who does not meet all of the applicable conditions of Rule 144 still may claim any other available exemption under the Act for the sale of the securities."* Further, the interpretations of the federal Courts of Appeals and United States Supreme Court are the controlling authority regarding the meaning of the Securities Act.

The Securities Act focuses primarily on initial offerings. Section 4(a)(1) of the Act thus exempts from registration "transactions by any person other than an issuer, underwriter, or dealer." 15 U.S.C. § 77d(1).

The status of a shareholder as an underwriter generally depends upon whether the shareholder acquired the shares with a "view to distribution" of the shares. The selling shareholder has the burden of establishing that he is not an "underwriter." *SEC v. Ralston Purina*, 346 U.S. 119, 126 (1953). Section 2(11) of the Act defines "underwriter" as 'any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates in any such undertaking[.]" 15 U.S.C. § 77b(11). The term "issuer" includes not only the issuing company, but also "any person directly or indirectly controlling or controlled by the issuer." *Id.* The statute does not define "distribution."

The federal courts have examined the question of what criteria should be used to determine whether a shareholder acquired shares with a "view to distribution." Some federal Courts of Appeals have held that, if a shareholder had fully paid for the securities two years or more before seeking to sell the restricted shares in the public markets, the shareholder is presumed not to have acquired the shares with a view to distribution and, therefore, would not be treated as an underwriter for purposes of Section 4(a)(1). While there have been no appellate court opinions since the extensive amendments to Rule 144 effective February 15, 2008, regarding reliance upon the Section 4(a)(1) exemption in situations where the Rule 144 safe harbor is not available, I will first set forth the basic criteria for availability of Section 4(a)(1) clarifying that exemption.

There is some helpful analysis in Soderquist on the Securities Laws, *Resales of Securities Under the Securities Act § 7:4, at pp. 14-15:*

> "It is clear that no holding period removes the taint of underwriter status from someone who has purchased with a distribution in mind. In the usual situation, however, a sufficiently long holding period dispels any notion that a reseller of restricted securities is an underwriter, and two years came to be viewed by securities lawyers as the minimum safe holding period of restricted securities before a public sale. *United States v. Sherwood* [a 1959 decision] helped in that respect by declaring that the passage of two years between the purchase and resale involved in the case was an "insuperable obstacle" to a finding that the reseller was an underwriter." [citations omitted]

As indicated previously, Seller acquired the Shares for services rendered prior to December 31, 2009. Therefore, Seller's holding period of more than two (2) years, establishes a reasonable basis to conclude that Seller did not acquire the Shares with a view to distribution.

Footnote 48 of an article appearing in 52 *Washington and Lee Law Review* 1333 (1995) by Campbell, Rutheford B., Jr., states in part:

> "In United States v. Sherwood, 175 F. Supp. 480 (S.D.N.Y. 1959), the court permitted a resale after two years, but the matter arose in a criminal prosecution and the prosecution had the burden of proving its case "beyond a reasonable doubt." In *Ackerberg v. Johnson, 892 F.2d 1328 (8th Cir. 1989)*, the court easily concluded that a four year holding period was sufficient. In the course of the opinion, the court acknowledged that "many courts have accepted a two-year rule of thumb to determine whether the securities have come to rest."

Based on these facts and the legal authority referenced above, it is my opinion that Seller (i) did not purchase the Shares from the Company "with a view to its distribution" because he has held the shares more than two (2) years and (ii) did not offer or sell the Shares for the Company in connection with a distribution.

Regarding all factual matters, I have relied upon the representations and information (1) contained in the documents listed above, (2) the Seller's representations letter, and (3) my personal review of the Company's filings with OTCMarkets.com as described herein.

I have assumed that all documents and signatures are genuine and representations true and have no reason to believe that any such document or signature is not genuine or that any such representation is not true.

Based upon the representations that Seller has made to me and my analysis of the facts and documents referenced in this opinion letter, attached documents and legal authorities cited herein, it is my opinion that Seller is not a control person or affiliate of the Company for purposes of the Securities Act of 1933 and Section 4(a)(1) under the tests in the rules, statutes, SEC staff comments and relevant court decisions.

Based upon (1) the previous discussion establishing that Seller did not acquire the Shares with a view to distribution, (2) Seller's March 26, 2021,representations and (3) other documents that I have reviewed referenced above, it is my opinion that Seller is not an underwriter under these circumstances.

Based upon the foregoing legal analysis, the written representations of the Seller and the documents I have reviewed, it is my opinion that the Company has met the requirements for current public information described in 17 CFR 240.15c2-11 and that the proposed sale of the Shares currently held by Seller would be exempt from the registration provisions of the Securities Act of 1933 pursuant to an exemption available under Section 4(a)(1), and will, therefore, be in compliance with federal securities laws.

Seller, CYIOS Corporation, EQ Shareowner Services, and Wilson-Davis & Co. may rely on this opinion during so long as the Company is current in filing its periodic reports with OTCMarkets.com.

Very truly yours,

Ronald J. Logan

Ronald J. Logan

Enclosures:

All documents referenced in this opinion except for some documents that are identified with enough specificity to be found on www.sec.gov or www.OTCMarkets.com

March 26, 2021

Mr. Ronald J. Logan
Logan Law Firm PLC
4647 N. 32nd Street, Suite B205
Phoenix, AZ 85018

Dear Mr. Logan:

I am writing to you to confirm that I provided services for CYIOS Corp. during the year 2009 which resulted in the Company issuing 5,000,000 shares of restricted common stock to me for those services described below.

I was the program manager who led the CYIOS Corporation effort to build the contract proposal, manage the existing contract and win the next contract for five years. CYIOS Corporation delivered me 5,000,000 shares as compensation for these services.

All such services were completed no later than December 31, 2009. I have provided you with a copy of an Action by Written Consent of Sole of [sic] Director of CYIOS Corporation dated March 16, 2010. The Consent stated: "for his performance in the year 2009 in obtaining awards for contracts—these contracts have prevented the need for the Company to restructure and has helped the company meet its financial obligations."

I have also provided you with a Company report filed on Form 8-K dated March 17, 2010 (Item 8.01) describing the award of 5,000,000 shares of stock compensation to me.

Regards,

Timothy W. Carnahan

ACTION BY WRITTEN CONSENT
OF THE SOLE OF DIRECTOR
OF
CYIOS CORPORATION

The undersigned, constituting the sole member of the board of directors of CYIOS Corporation, a Nevada corporation (the "Corporation"), in accordance with Section 78.315 of the Nevada Revised Statutes and Article II, Section 7 of the bylaws of the Corporation, does hereby consent to and adopt the following resolutions by written consent in lieu of a meeting as of this **16th day of March 2010.** It is the undersigned's intent that this action by unanimous written consent, upon execution, be filed by the Secretary of the Corporation with the minutes of the meetings of the board of directors.

WHEREAS, a determination has been made by the sole member of the board of directors, after careful analysis and consideration, that it is in the best interests and to the benefit of the Corporation to issue **5,000,000 shares to Timothy Carnahan** for his performance in the year 2009 in obtaining awards for contracts—these contracts have prevented the need for the Company to restructure and has helped the Company meet its financial obligations. The closing price of the stock was .07 March 16th, 2010.

NOW, THEREFORE, BE IT RESOLVED, that the stock issuance is hereby approved and adopted in all respects.

RESOLVED FURTHER, that the officers of the Corporation are, and each acting alone is, hereby authorized, empowered and directed, for and on behalf of the Corporation, to execute and file the records of the Corporation, except for such changes, additions and deletion as to any or all terms and provisions thereof as the executing officer shall deem proper, in the best interests and to the benefit of the Corporation (such officer's execution thereof including such changes shall be deemed to evidence conclusively such determination).

RESOLVED FURTHER, that this written consent shall be filed in the minute book of the Corporation and become part of the record of this Corporation.

IN WITNESS WHEREOF, the undersigned has executed this action by written consent of the sole member of the board of directors as of the date first written above.

Timothy Carnahan

3/16/2010

CYIOS Corporation

"C Your Integrated Office System"

March 16th, 2010

SUBJECT: Stock compensation for Performance

Issue of 5,000,000 shares to Timothy W. Carnahan for 2009 performance.

CYIOS Corporation board has met and approved to issue shares to Timothy Carnahan based upon his 2009 performance. We have attached the board resolution to this letter of instruction.

Instructions for Corporate Stock Transfer are below:
Please request **Expedited Service** and FEDEX next day to the below address:

Timothy W. Carnahan
[redacted]

Vr,

Timothy W. Carnahan
CEO
CYIOS Corporation
3/16/2010

Ronald Reagan Building
1300 Pennsylvania, Ave NW
Suite 700
Washington, DC 20004
202.369.1984

SEE RESTRICTIVE LEGEND ON REVERSE

3098-1

CYIOS Corporation

INCORPORATED UNDER THE LAWS OF THE STATE OF NEVADA
AUTHORIZED: 100,000,000 COMMON SHARES, $.001 PAR VALUE

-5,000,000-

SEE REVERSE FOR CERTAIN DEFINITIONS

CUSIP 23256Y108

This Certifies That

-TIMOTHY W CARNAHAN-

Is The Owner Of

FIVE MILLION

FULLY PAID AND NON-ASSESSABLE COMMON SHARES, $.001 PAR VALUE OF

CYIOS Corporation

transferable on the books of this Corporation in person or by attorney upon surrender of this Certificate duly endorsed or assigned. This Certificate and the shares represented hereby are subject to the laws of the State of Nevada, and to the Articles of Incorporation and Bylaws of the Corporation, as now or hereafter amended. This Certificate is not valid until countersigned by the Transfer Agent.

In Witness Whereof, *the Corporation has caused this Certificate to be signed by the facsimile signatures of its duly authorized officers and to be sealed with the facsimile seal of the Corporation.*

Dated:

3/16/10

Timothy W. Carnahan

PRESIDENT / SECRETARY

CYIOS Corporation CORPORATE SEAL

COUNTERSIGNED:
CORPORATE STOCK TRANSFER, INC.
3200 Cherry Creek South Drive, Suite 430 Denver, CO 80209

CYIOS Corporation

Corporate Stock Transfer, Inc.
Transfer Fee: As Required

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	— as tenants in common	UNIF GIFT MIN ACT - ..... Custodian for ..... (Cust.) (Minor)
TEN ENT	— as tenants by the entireties	under Uniform Gifts to Minors
JT TEN	— as joint tenants with right of survivorship and not as tenants in common	Act of ..... (State)

Additional abbreviations may also be used though not in the above list.

For value received ..... hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

Please print or type name and address of assignee

.....

.....

.....

.....Shares

of the Common Stock represented by the within Certificate and do hereby irrevocably constitute and appoint

.....

.....

Attorney to transfer the said stock on the books of the within-named Corporation, with full power of substitution in the premises.

Dated .....20.....

SIGNATURE GUARANTEED:

X_____

X_____

THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER. THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) **March, 17th, 2010**

CYIOS CORPORATION
(Exact name of registrant as specified in its charter)

Nevada	**000-27243**	**03-7392107**
(State or other jurisdiction of incorporation)	(Commission File No.)	(IRS Employer jurisdiction Identification Number)

1300 Pennsylvania Avenue, Suite 700, Washington, DC 20004
(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: **(202) 204-3006**

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- x Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- x Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- x Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- x Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01. Other Events

On March 17th, 2010, the board recognized the performance past and upcoming events of Mr. Tim Carnahan by issuing five million shares of common stock.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized.

CYIOS CORPORATION

Date: March 17th 2010

By: /s/Timothy W. Carnahan
Timothy W. Carnahan, President and CEO
(Duly Authorized Officer)

EQ Shareowner Services
P.O. Box 64874
St. Paul MN, 55164-0874
shareowneronline.com

Total dividend amount paid YTD: **$0**
Total asset value: **$0**

Share Balance Summary as of March 24, 2021

Account Number: **6100063423**
Registration: TIMOTHY W CARNAHAN
[redacted]

Security Type	Dividend amount paid YTD	Plan shares	Certificate shares	DRS/book-entry shares	Total share balance	Closing price per share*	Estimated value
CYIOS CORPORATION (OTC: CYIO)	$.00	.000	5000000	.000	5,000,000.000	$.00	$.00
Total	**$0**						**$0**

*Closing prices given are the last available price based on as-of date. The estimated value may lose value and is not guaranteed.

This Share Balance Summary displays only issues which are viewable on shareowneronline.com.

You may reach us anytime by signing onto your account at shareowneronline.com and clicking Contact Us. Our Shareowner Relations Specialists are available to assist you Monday through Friday, from 7 AM to 7 PM Central Time.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CYIOS CORPORATION., a Nevada Corporation
Plaintiff,
v.

TIMOTHY W. CARNAHAN, individually

Defendant.
_____/

CASE NO. CACE-21-007984

EX PARTE MOTION FOR TEMPORARY INJUNCTION

The Plaintiff, CYIOS CORPORATION ("CYIOS"), in the above-entitled action hereby moves the Court, pursuant to Fla. R. Civ. P. 1.610, for a temporary injunction enjoining the Defendant, TIMOTHY W. CARNAHAN ("CARNAHAN") from:

> *Selling 5,000,000 shares of restricted common stock (the "Shares") that Carnahan issued to himself in March 2010 unlawfully as a performance bonus while Carnahan was the sole officer and director of CYIOS Corporation.*

In support of the motion, the Plaintiff submits the following:

1. Memorandum of Law in support of Ex Parte Motion for Temporary Injunction.
2. Affidavit demonstrating that Plaintiff will suffer significant prejudice if the opposing party is put on notice hereto attached as **Exhibit "A".**
3. Proposed Temporary Injunction Order hereto attached as **Exhibit "B".**

WHEREFORE, Plaintiff requests the Court enter an order temporarily enjoining Defendant Carnahan from seeking the removal of the restrictive legend from 5,000,000 shares of CYIOS Corp. common stock, transferring the Shares, and selling the Shares; and any all other relief that this Court deems appropriate.

I.

RELEVANT FACTS

1. Defendant, acting as the sole officer and director of CYIOS issued himself 5,000,000 shares of the Company's common stock (the "Shares").

2. An administrative law judge in a proceeding initiated by the SEC found that Defendant knowingly filed periodic reports with the SEC that falsely claimed that CYIOS maintained effective internal controls over financial reporting thereby violating the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act.

3. Plaintiff filed a lawsuit including 6 (SIX) Counts in the Complaint seeking the return of the Shares. The certificate representing the Shares is stamped with a restrictive legend that must be removed prior to Defendant selling the Shares. Defendant has submitted his stock certificate representing the Shares to a stockbroker who has submitted them to CYIOS's transfer agent to have the restrictive legend removed. This indicates that the Defendant intends to sell the Shares. If the Defendant sells the shares it would cause irreparable harm to CYIOS and its shareholders by depressing the price of the stock and preventing CYIOS from being able to raise funding in the capital markets to execute its business plan.There is no remedy at law that would be able to compensate the Plaintiff or its shareholders from the resulting damage should Defendant be allowed to sell the shares. Once the Shares are sold the damage will have been done to the Company.

II.

MEMORANDUM OF LAW IN SUPPORT OF *EX PARTE* MOTION FOR TEMPORARY INJUNTION

A party seeking a temporary injunction must establish that 1. Irreparable harm will result if the temporary injunction is not entered; 2. An adequate remedy of law is not available; 3. There is a substantial likelihood of success on the merits; and 4. Entry of the temporary injunction will serve the public interest. *Foreclosure Freesearch, Inc. v. Sullivan*, 12 So. 3d 771 (Fla. 4th DCA 2009).

1. Irreparable harm will result if the temporary injunction is not entered

If the Court does not grant the relief sought, the Plaintiff will suffer irreparable harm. In the matter of *Applied Energetics, Inc. v. Farley*, C.A. No. 2018-0489-TMR (Del. Ch. Jan. 24, 2019), the Court held that when discretionary director compensation including issuance of stock by directors to themselves is done without stockholder approval, the directors have the burden of establishing the entire fairness of the transaction to the corporation and stockholders. Here, Carnahan failed to establish the entire fairness of the transaction to the corporation and stockholders because Defendant Carnahan misrepresented the effectiveness of the Company's internal controls over financial reporting during 2009, 2010, 2011 and 2012; (b) breached his duty the shareholders of CYIOS by misrepresenting the effectiveness of the Company's internal controls over financial reporting during 2009, 2010, 2011 and 2012; and (c) breached his duty of good faith to the shareholders of CYIOS by issuing 5,000,000 shares to himself. Furthermore, if the Defendant sells the Shares it would cause irreparable harm to CYIOS and its shareholders by depressing the price of the stock and preventing CYIOS from being able to raise funding in the capital markets to execute its business plan.

Defendant may argue that the injury caused by the offending act may not rise to the level of irreparable harm. However, In *Air Ambulance Network, Inc. v. Floribus,* 511 So. 2d 702 (Fla. 3d DCA 1987), the Court found that the injury caused by an offending act does not have to be relatively serious or constitute an irredeemable blow to the movant's economic health in order to be considered "irreparable." The injury can be great or small and can still constitute irreparable injury sufficient to sustain injunctive relief. Therefore, Defendant's offending act would be considered irreparable and an irreparable harm to Plaintiff will result if the Temporary Injunction is not entered.

2. An adequate remedy of law is not available

Equitable relief in the form of an injunction will only be granted under circumstances where the movant has no other adequate legal remedy. A party seeking an injunction must establish that the injury sustained cannot be redressed in a court of law. Furthermore, injunctive relief can be awarded in cases where the damages are speculative or impossible to determine. The remedy at law under these circumstances is considered inadequate because there is no method to reasonably measure damages in monetary terms. *Lincoln Tower Corp. V. Richter's Jewelry Co.* 12 So. 2d 452 (Fla. 1943). Similarly, here, there is no method to reasonably measure the damages in monetary terms if Carnahan removes the restricted legend and sells the Shares because Carnahan's action would lead to depressing the price of the stock which would in turn prevent CYIOS from being able to raise funding in the capital markets to execute its business plan. Therefore, because the monetary damages to CYIOS are speculative and cannot be reasonably measured, an adequate remedy at law is not available. Defendant may argue that injunctive relief is not available because the Shares were for employment or personal services *SeaEscape, Ltd., Inc. v. Maximum Marketing Exposure, Inc.,* 568 So. 2d 952 (Fla. 3d DCA 1990). However, Carnahan obtained the Shares in a fraudulent manner and selling the Shares would have a damaging impact on the economic health of CYIOS as mentioned above. Therefore, a Temporary Injunction is necessary in order to prevent such injustice.

3. There is a substantial likelihood of success on the merits

In order to be entitled to a temporary injunction, Plaintiff must show that there is a substantial likelihood of success on the merits. A mere colorable claim will not suffice. The Motion must demonstrate prima facie, clear legal right to the relief requested. *Florida Dept. of Agr. and Consumer Services v. Haire*, 832 So. 2d 778, 780 (Fla. 4th DCA 2002). Here, CYIOS has established that there is a substantial likelihood of success on the merits because Under Section 304 of Sarbanes-Oxley Act (SOX), certain discretionary CEO

and CFO compensation and trading profits is subject to forfeiture ("clawback") if there is a restatement of the issuer's financial statements based on wrongful conduct. In U.S. Sec. & Exch. Comm'n v. Jensen, 835 F.3d 1100 (9th Cir.2016), the court held that under rule 13a -14 of the Exchange Act and SOX Section 304, there is a cause of action against CEO's and CFO's who certify false or misleading statements. Here, based on the forgoing the Securities and Exchange Commission (SEC) issued an order instituting proceedings ("OIP") in February 2015. The proceedings pursuant to an OIP are administrative in nature with judgment being rendered by an administrative law judge (an "ALJ"). The ALJ found that Carnahan was responsible for CYIOS's periodic filings with the SEC and their content, filed them with the SEC through its electronic filing system, drafted responses to SEC staff's comment letters regarding the filings, and knew CYIOS had failed to make required public filings. Therefore, CYIOS has established that there is a likelihood of success on the merits because there is precedent that Carnahan knowingly made misstatements on filings to the SEC and as a result obtained the Shares in a fraudulent manner.

4. Entry of the temporary injunction will serve the public interest.

Public policy considerations are an integral part of equitable analysis of a request for injunctive relief, and one of the issues is whether the entry of an injunction will or will not serve the public interest. *Sacred Family Invs., Inc. v. Doral Supermarket, Inc.,* 20 So. 3d 412 (Fla. 3d DCA 2009). Here, a Temporary Injunction would serve the public interest because shareholders have a right to receive protection from corporate officers who act fraudulently against the corporation and its shareholders and breach their legal duties to them. Preventing Carnahan from selling the Shares that were fraudulently obtained would serve the public interest to that end.

5. Balance of hardships must favor the movant

The harm the movant will suffer by denial of an injunction must outweigh the harm the Defendant will suffer by the issuance of an injunction. *Cordis Corp. v. Prooslin,* 482 So. 2d 486 (Fla. 3d DCA 1986). Here, there is no remedy at law that would be able to compensate the Plaintiff or its shareholders from the resulting damage should Defendant be allowed to sell the shares. Once the Shares are sold the damage

will have been done to the Plaintiff. Conversely, should Defendant be restrained from transferring and selling the Shares, even should Plaintiff not prevail in this action, Defendant would still have the Shares and the ability to sell the Shares and therefore not suffer any loss or damages. The Temporary Injunction would merely maintain the status quo.

WHEREFORE, Plaintiff requests the Court enter an order temporarily enjoining Defendant Carnahan from seeking the removal of the restrictive legend from 5,000,000 shares of CYIOS Corp. common stock, transferring the Shares, and selling the Shares; and any all other relief that this Court deems appropriate.

DATED this 23rd day of April 2021.

Respectfully submitted,

Attorney for Plaintiff
Jonathan D. Leinwand. P.A.
18305 Biscayne Blvd
Aventura, FL 33160
Telephone: (954) 903-7856
Facsimile: (954) 252-4265

By: */s/ Jonathan D. Leinwand*_____
Jonathan D. Leinwand, Esq.
Fla. Bar No.: 64076
jonathan@jdlpa.com

EXHIBIT A

docVerify

210422 Affidavit of David Lewis.docx

DocVerify ID:	257ACD67-E335-4418-B145-D757D4961CE8
Created:	April 22, 2021 16:12:18 -5:00
Pages:	4
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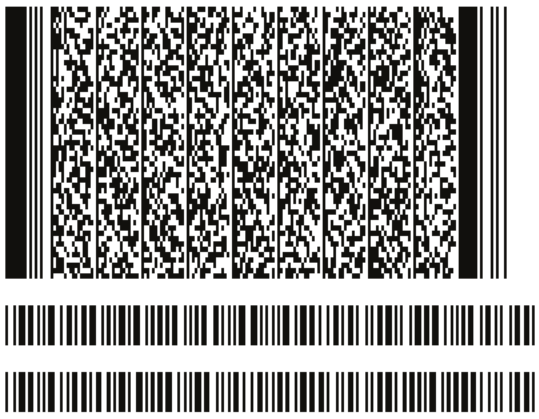
E-Signature Summary

E-Signature 1: David Lewis (DL)
April 22, 2021 16:18:47 5:00 [93EE66D81A39] [73.138.183.222]
dl.rockisland@gmail.com (Principal) (Personally Known)

E-Signature Notary: Jonathan Leinwand (JL)
April 22, 2021 16:18:47 5:00 [2E5338BC182C] [68.72.7.23]
jonathan@jdlpa.com
I, Jonathan Leinwand, did witness the participants named above electronically sign this document.



IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CYIOS CORPORATION., a Nevada Corporation
Plaintiff,
v.

TIMOTHY W. CARNAHAN, individually

Defendant.
/

CASE NO. CACE-21-007984

Affidavit of David Lewis

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

COMES NOW THE AFFIANT, David Lewis, who first being duly sworn according to law by the undersigned authority, deposes and says as follows:

1. My name is David Lewis, I am a resident of the State of Florida, and the Chief Executive Officer of CYIOS Corporation., the Plaintiff in this case.

2. Defendant Timothy Carnahan was the former CEO of CYIOS Corporation. He resigned as CEO on March 13, 2020.

3. According to CYIOS's filings with the US Securities and Exchange Commission (the "SEC") Defendant issued 5,000,000 (Five Million) shares of the Company's stock to himself as a bonus in March 2010. At the time, Defendant was the sole officer and director of CYIOS. At the time, the 5,000,000 shares represented approximately 16% of all of the issued shares of CYIOS.

4. In 2015, the SEC issued an Order Instituting Proceedings with regard to Defendant and CYIOS alleging that CYIOS's reports filed with the SEC from 2009 through 2012 contained misstatements; specifically, that CYIOS had effective internal controls over financial reporting.

5. In January 2020, an SEC administrative law judge issued an Initial Decision finding that Defendant violated the federal securities laws by stating that CYIOS had effective internal controls when in fact it did not.

6. In March 2021, Defendant sought to have the restrictive legend removed from the 5,000,000 shares he had issued to himself in 2010 and presented CYIOS's transfer agent with an opinion of counsel to have the restrictive legend removed and the shares transferred to a

brokerage firm. Plaintiff promptly notified the transfer agent that it objected to the removal of the restrictive legend from the shares and the transfer of the shares. Plaintiff then filed the instant action. The documents presented to the transfer agent for the transfer of the shares are attached to the Complaint as Exhibit D.

7. As stated in the Complaint, Defendant breached his duties as an officer and director and was not entitled to receive the shares. Additionally, Section 304 of the Sarbanes-Oxley Act of 2002 allows for the "clawback" of the shares.

8. Should Defendant be allowed to sell the share it will have a significant negative effect on the price of the Plaintiff's stock thereby making it difficult for the Plaintiff to raise money in the capital markets and execute its business plan, causing the Plaintiff irreparable harm. There is no way to calculate the monetary damage such action would cause.

9. Plaintiff has been informed by its transfer agent that absent a court order enjoining or restraining the transfer of the shares, they will have to transfer the shares pursuant Defendant's request. The email is attached hereto as Exhibit A.

David Lewis
Signed on 2021/04/22 16:18:47 -5:00
David Lewis

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☒ online notarization, this 22nd day of April, 2021, by David Lewis as CEO for CYIOS Corporation.

Jonathan Leinwand
Commission # GG 953596
Notary Public State of Florida
My Commission Expires Apr 13, 2024
Notary Stamp 2021/04/22 13:18:47 PST 2E333B5C182C

(Sign Signed on 2021/04/22 16:18:47 -5:00 ic - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

EXHIBIT A

From: **Akladios, Toula** <Toula.Akladios@equiniti.com>
Date: Tue, Apr 20, 2021 at 4:38 PM
Subject: Court Order Carnahan
To: dl.rockisland@gmail.com <dl.rockisland@gmail.com>
Cc: Perreten, Laurie <Laurie.Perreten@equiniti.com>

Hi David,

Can you please forward the filing regarding Carnahan so we can have our legal look at it or we will need to honor the request for Carnahan as we can't continue to deny it without a court order document. Thank you!

Toula Akladios

VP, Microcap Relationship Manager

EQ Shareowner Services

E toula.akladios@equiniti.com

www.equiniti.com 

From: **Akladios, Toula** <Toula.Akladios@equiniti.com>
Date: Fri, Apr 16, 2021 at 12:07 PM
Subject: RE: Legend Removal - 4(a)(1)
To: David Lewis <dl.rockisland@gmail.com>
Cc: Naughton, Karen <Karen.Naughton@equiniti.com>, Jonathan Leinwand <jonathan@jdlpa.com>

David,

In order to retain the stop we need a court order.

Toula Akladios

VP, Microcap Relationship Manager

EQ Shareowner Services

E toula.akladios@equiniti.com

www.equiniti.com 

EXHIBIT B

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CYIOS CORPORATION., a Nevada Corporation
Plaintiff,
v.

TIMOTHY W. CARNAHAN, individually

Defendant.
_____/

CASE NO. CACE-21-007984

TEMPORARY INJUNCTION ORDER
(proposed)

This matter coming to be heard on Plaintiff CYIOS CORPORATION's [Ex Parte] Motion for a Temporary Injunction, the parties being present or represented by counsel, the Court having jurisdiction over the parties and the subject matter, due notice having been given, and the Court being fully advised:

THE COURT HEREBY FINDS THAT:

1. Plaintiff has shown a clearly ascertainable right in need of protection.

2. If a temporary injunction is not issued, Plaintiff will suffer irreparable harm in the form of: depressing the price of the stock and preventing Plaintiff from being able to raise funding in the capital markets to execute its business plan.

3. Plaintiff has no adequate remedy at law.

4. Plaintiff has demonstrated in its pleading that it is likely to succeed on the merits of its claims.

5. The balance of the equities weighs in favor of issuing a temporary injunction.

6. Plaintiff has posted, or will post a bond in the amount of $[dollar amount] consistent with the requirements of Fla. R. Civ. P. 1.610(b).

IT IS HEREBY ORDERED THAT:

1. The motion is **GRANTED**.

2. Defendant TIMOTHY W. CARNAHAN its agents, officers, employees, and attorneys, and each and every one of them, are temporarily restrained from: seeking the removal of the restrictive legend from 5,000,000 shares of CYIOS Corp. common stock, transferring the Shares, and selling the Shares; and any all other relief that this Court deems appropriate.

3. This Order shall remain in effect until such time as the enjoined party moves for its dissolution, which may be made on five days' notice, and the court enters an order either modifying and or terminating this Order.

4. This Order is conditioned on payment of (and the filing of that) bond in the amount of $[dollar amount] with proof of same to be filed with the Clerk of Court prior to this Order being enforced.

DONE & ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this [day] day of [year] at [time].

_____

CIRCUIT COURT JUDGE

Copies to:

Jonathan D. Leinwand Esq. (for Plaintiff)

Counsel of Record