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

**IN THE MATTER OF**  
**TIMOTHY W. CARNAHAN,**  
**AND CYIOS CORPORATION**  
**RESPONDENTS**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16386**  
**Judge Carol Fox Foelak**

**NOTICE OF MOTION FOR RECONSIDERATION FOR CERTIFICATION FOR INTERLOCUTORY REVIEW, IN ALTERNATIVE, DISMISS THIS CASE**

**TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on **October, 25<sup>th</sup>, 2018** or as soon thereafter as the matter may be heard, before the administrative proceeding **THE RESPONDENTS** shall move and hereby move this Court for reconsideration and vacatur of the **Release No. AP-6223/October 18, 2018 order ("Order")**, for certification for interlocutory review of the Order, in alternative, dismiss this order pursuant to **Rules 111, 161, 300 & 400** of the Securities and Exchange Commission's Rules of Practice, **17 C.F.R. § 201.100**.

**INITIAL STATEMENT**

Respondents implore Judge Foelak to reconsider the recent Order for interlocutory review in alternative, dismiss this order and case, instead of pushing for the original Order dated October 1<sup>st</sup>, 2018. The SEC has tolled the time to “remand” and bring forth alleged violations against the respondents; in alternate, this would violate 5 year Statute of limitations. Any violations have been vacated and as such would be new which “Equitable Tolling” would not allow. The Supreme Court reaffirmed in *Gabelli*, statutes of limitations “provide security and stability to human affairs” and it “would be utterly repugnant to the genius of our laws if actions for penalties could be brought at any distance of time.”

The Supreme Court in *Amgen, Inc. v. Sandoz*, 583 U.S. 456 (2018) held that “remanding” a case due to the SEC wrong doing and tolling does not permit “Equitable Tolling” and therefore, the case, which was vacated and remanded, the time to report begins to run anew. The respondents wish upon the fact that the SEC Commission issue a ruling in 2018 after all the relevant facts are in place? The respondents are not in spirit with the law and if that is what you want, then never the respondents are already provided by the SEC. The respondents are not in spirit with the law.

## **LEGAL ARGUMENTS**

SEC enforcement actions are subject to a five-year statute of limitations, which provides that "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued." 28 U.S.C. § 2462.

*Gabelli v. Securities and Exchange Commission, No. 11-1274, the United States Supreme Court clarified that the 5-year statute of limitations applicable to SEC enforcement actions that seek financial penalties begins to accrue when the alleged violation occurs, not when the SEC discovers the violation. The Supreme Court recited policy reason favoring a "Fixed Date" when exposure to government enforcement efforts must end.*

The Supreme Court further explained in *American Pipe & Construction Co. v. Utah* 414 U. S. 538 and further in a recent case *CHINA AGRITECH, INC. v. RESH* – American Pipe does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.

The respondents make the argument that "remanding" a case due to the SEC wrong doing and mishap does not permit "Equitable Tolling" and therefore, the case which was vacated and remanded is a moot point because time has tolled. The respondents wish upon the Judge to reference the statement "Why didn't the SEC Commission issue a ruling in 2016 after all the briefs were filed and zero stays were in place?". The delays are not in spirit with the laws and ruling of the Supreme Court, moreover, the respondent have been extremely prejudiced by the SEC lack of action, especially due being a small business.

<sup>1</sup> Paul Weiss - February 28, 2013 U.S. Supreme Court Clarifies Scope of 5-Year Statute of Limitations in SEC Enforcement Proceedings

**CONCLUSION**

For the foregoing reasons, Respondents respectfully request that Your Honor grant this motion for reconsideration, vacate the Order, and in its place for certification for Interlocutory review of the Order, in alternative, dismiss this case.

**Rule 154(c) Certification:** This brief complies with the limitations set forth in Rule 154(c).

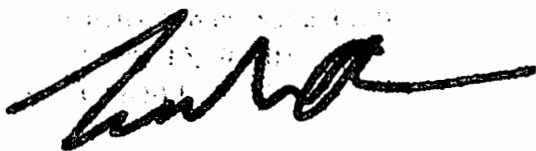
**Timeliness:**

The Order was received October 18<sup>th</sup>, 2018 so under rule 470 Reconsideration is filed within 10 days after the order, this motion is filed timely.

Date: October 25<sup>th</sup>, 2018

Respondents submitted,

Respectfully,



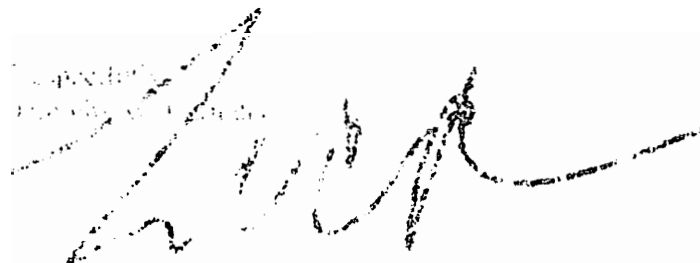
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Timothy Carnahan



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Timothy Carnahan, CEO and President of CYIOS



Service List

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing **Reply to the Division of Enforcement's Summary Disposition** was served on the persons listed below October 25<sup>th</sup>, 2018 via United States Postal Service or email where indicated:

Honorable Brenda P. Murray Chief  
Administrative Law Judge SEC  
100 F Street, N.E.  
Washington, DC 20549-2557  
via USPS

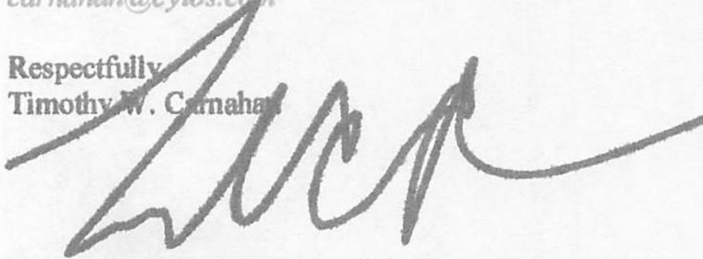
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Timothy W. Carnahan  
President and CEO and Chairman  
CYIOS Corporation  
*carnahan@cyios.com*

CYIOS Corporation  
c/o Timothy W. Carnahan, President,  
CEO and Chairman  
*carnahan@cyios.com*

Respectfully,  
Timothy W. Carnahan



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**CASE: ap-3-16386**

**CYIOS Corporation  
Timothy Carnahan  
2023691984**

STATE OF CALIFORNIA

DEPARTMENT OF REVENUE

1500 CALIFORNIA STREET, SACRAMENTO, CA 95833

ALSO KNOWN AS

ADMINISTRATIVE PROCEEDING  
Proc No. 2018-00000

Case No. 18-00000

**NOTICE OF HEARING FOR A POSSIBLE ACTION TO REVOKE A PERSON'S AS  
SIGNED TO FORM REGISTERED PROFESSIONAL BUSINESS ENTITY CASE**

**TO THE PARTIES AND THIRD PARTY BENEFICIARIES OF RECORD**

On September 28, 2018, the Board of Directors for the State of California  
received information regarding the REVOCATION of the registration of the  
subject corporation and the REVOCATION of the registration of the

subject corporation and the REVOCATION of the registration of the  
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subject corporation and the REVOCATION of the registration of the  
subject corporation and the REVOCATION of the registration of the

STATE OF CALIFORNIA