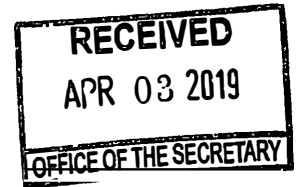


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UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-16386

In the Matter of

TIMOTHY W. CARNAHAN  
AND CYIOS CORPORATION,

Respondents.

DIVISION OF ENFORCEMENT'S  
OPPOSITION TO RESPONDENTS'  
MOTION TO DISMISS

The Court should reject the Respondents' March 18, 2019 Motion to Dismiss. The Respondents argue that dismissal is warranted because: (1) the alleged violations were dismissed as part of the December 21, 2015 Initial Decision (the "Initial Decision," I.D. Rel. No. 930); (2) the claims in the OIP are "arbitrary and capricious" and/or unproven; and (3) the claims are barred by the statute of limitations. They are wrong on each count.

First, the Initial Decision—which never became final (since the Respondents appealed) and did not dismiss the claims against the Respondents—is effectively vacated. This happened when the Commission remanded this case for a new hearing on August 22, 2018.<sup>1</sup> *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 SEC LEXIS 2058. Consequently, none of the claims against the Respondents have been dismissed.

Second, the Respondents are wrong to argue that the claims against them are "arbitrary and capricious" and/or unproven. The Division has not yet had a chance to prove the claims in the OIP.

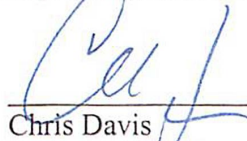
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<sup>1</sup> The August 22 Order does not explicitly vacate all orders issued by the ALJ who presided over the initial hearing. However, here—where the Respondents have elected to proceed with a new hearing before a new ALJ, who "shall not give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued in the matter"—it is clear that the Initial Decision is effectively vacated.

That opportunity will come through a motion for summary disposition and/or during the hearing. Consequently, the Respondents' arguments are premature and should be rejected.

Finally, this proceeding does not run afoul of the five year statute of limitations. It was instituted on February 13, 2015 and has been pending continuously since then.<sup>2</sup> All of the allegations in the OIP relate to conduct that occurred within five years of that date—with the earliest alleged conduct taking place on February 26, 2010, when CYIOS filed its 2009 Form 10-K.<sup>3e</sup> Consequently, the Respondents' argument is incorrect.

Respectfully submitted,



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<sup>2</sup> The Commission's August 22 Order did not dismiss or otherwise terminate the proceeding. It gave the Respondents the opportunity for a new hearing before a different ALJ.

<sup>3</sup> It is important to note that the relevant date is when the false and misleading public filings were made—not the time period they cover. Before that date, there was no misstatement—and thus no violation. For this reason, the Respondents are incorrect when they say (on page 2-3 of their filing) that the violation occurred in 2009. In fact, the misleading 2009 Form 10-K was not filed until February 26, 2010.

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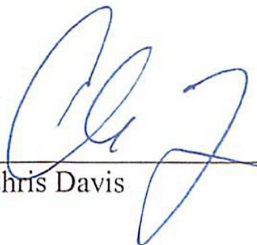
Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the Division of Enforcement's Opposition to Respondents' Motion to Dismiss was served on the following on April 2, 2019, via electronic mail and United Parcel Service, Overnight Mail:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
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Honorable James Grimes  
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