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

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ADMINISTRATIVE PROCEEDING

File No. 3-16386

In the Matter of

**TRACI J. ANDERSON, CPA
TIMOTHY W. CARNAHAN
AND CYIOS CORPORATION,**

Respondents.

**THE DIVISION OF ENFORCEMENT'S
REPLY TO RESPONDENTS' RESPONSE
TO MAY 1, 2015 MOTION FOR
SUMMARY DISPOSITION & MOTION
FOR DISMISSAL**

In accordance with the Hearing Officer's Order entered March 23, 2015, the Division of Enforcement ("Division") submits this Reply to Respondents' Response to May 1, 2015 Motion for Summary Disposition and Motion for Dismissal—filed on May 15, 2015 (the "Response"). In their Response, the Respondents raise no genuine issues of material fact. Instead, they attack the Division's motives, attempt to refute claims the Division is not making, and purport to raise prohibited counterclaims.¹ The Division asks that the Court reject these irrelevant and improper arguments and grant summary disposition in its favor.

¹ The Respondents' "Request for Relief" [Response at 7], which can only be interpreted as the attempted assertion of counterclaims, should be stricken. The Commission Rules of Practice do not allow for counterclaims. *In the Matter of Hausmann-Alain Banet*, 2014 WL 345338 at *4, Rel. No. 556 (January 30, 2014) (citing *Gupta v. SEC*, 796 F. Supp. 2d 503, 513 (S.D.N.Y. 2011)).

I. ARGUMENT

a. **It is undisputed that Anderson remained associated with CYIOS in violation of SOX §105(c)(7)(B)**

The Respondents completely miss the mark in arguing that Anderson’s association with CYIOS was permissible because she was not involved in the preparation or issuance of an audit report. This standard is only relevant to violations of SOX §105(c)(7)(A), which relates to association with a registered public accounting firm—which Respondents are not charged with.²

The charges here relate to SOX §105(c)(7)(B), which addresses prohibited association with an issuer. That provision plainly sets forth a different standard than the one argued by the Respondents—“associat[ion] with any issuer in an accountancy or financial management capacity.” (emphasis added) The Respondents do not dispute—and in fact readily admit³—the Division’s allegation that Anderson worked for CYIOS in such a capacity. Beyond that, the Division offered overwhelming evidence that Anderson was associated with CYIOS in an accounting or financial management capacity in support of its Motion for Summary Disposition. The Respondents have not disputed any of this evidence, nor have they offered any countervailing evidence. As a result, the Division is entitled to summary disposition.

² The PCAOB order attached to the Response—which the Respondents claim supports their legal argument—explicitly states that it only relates to SOX §105(c)(7)(A). See PCAOB Rel. No. 105-2013-008 at 4 (“By these acts and omissions, Deloitte violated Section 105(c)(7)(A) of the Act”).

³ See Answer at 3: “Traci Jo Anderson is working and doing accounting work [. . .] for an issuer CYIOS Corporation.”

b. It is undisputed that Carnahan did not use the COSO Framework to assess CYIOS' internal controls over financial reporting, as stated in CYIOS' Commission filings

In a recurring theme, the Respondents also fail to respond directly to the allegations raised by the Division concerning Carnahan's assessments of CYIOS' internal controls over financial reporting ("ICFR"). Instead, they attempt to dispute theories that the Division has not alleged. The Division alleges—and the Respondents do not dispute—that CYIOS' filings stated that ICFR had been assessed using the COSO Framework. The Respondents do not deny that the COSO Framework was not used to conduct the ICFR assessments.

The Respondents instead assert that ICFR was "assessed using our in-house product CYIPRO" which is "mapped [. . .] to ISO 9001 framework to comply with COSO." [Response at 5] At best, this is irrelevant and constitutes a failure to deny the Division's allegations. At worst, it is an acknowledgement that CYIOS' filings were misleading—since they say that the COSO Framework was used, not that the in-house product CYIPRO was used.

In addition, there is no evidence that CYIPRO is a control framework at all—much less 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" as required by Rule 13a-15.⁴ Notably, the "CYIPRO –a Defined Process Enhancing Continuous Improvement" document, offered by the Respondents in support of their Response, relates strictly to time management automation. It makes no mention whatsoever of internal controls. Nor does it mention financial reporting or any relationship between CYIPRO and any recognized control framework, including COSO. Thus, there is no evidence whatsoever that the

⁴ These specific requirements in Rule 13a-15 are quite different from the "COSO [or] something similar" standard set forth in the Response. [Response at 6]

assessments were done using the COSO Framework—or even something that is the functional equivalent of the COSO Framework.⁵

Because the Respondents either fail to dispute or affirmatively admit that the statements in CYIOS' filings were materially misleading, the Division is entitled to summary disposition.

c. It is undisputed that CYIOS did not make its filings on a timely basis

In their Response, the Respondents do not dispute that CYIOS' public filings were not made on a timely basis—which is all that is required for a violation of the law. Instead, they again recite facts that are irrelevant to the Division's claims (including the purported reasons for the failure to file and the fact that Commission staff was notified about the failure to file). These facts have no bearing on the Division's claims. Thus, the Division is entitled to summary disposition.

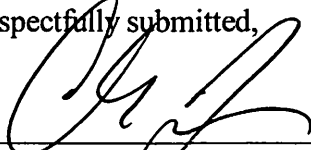
⁵ The Respondents explicitly argue only that there has been no misstatement or misrepresentation about the ICFR assessments and the allegedly misleading statements “are true.” [Response at 5-6] Nonetheless, to the extent that Respondents' arguments can be construed to mean that the filings are misleading—but not materially so—that argument also falls short. That is because the Respondents have offered no evidence that the CYIPRO product is equivalent to the COSO Framework, which the filings claim was used.

II. CONCLUSION

In their Response, the Respondents fail to raise any material fact issues regarding the Division's claims. Therefore, for the reasons stated in the Division's Motion for Summary Disposition, the Division should be granted the relief requested therein.

Dated: June 3, 2015.

Respectfully submitted,



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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 ***DIVISION OF ENFORCEMENT'S REPLY TO RESPONDENTS' RESPONSE TO MAY 1, 2015 MOTION FOR SUMMARY DISPOSITION & MOTION FOR DISMISSAL*** was served on the persons listed below on the 3rd day of June, 2015, via electronic mail (where indicated) and United Parcel Service (UPS) overnight mail:

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