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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

TIMOTHY W. CARNAHAN
AND CYIOS CORPORATION,

Respondents.

DIVISION OF ENFORCEMENT'S BRIEF
IN OPPOSITION TO PETITION FOR
REVIEW

Division of Enforcement's Opposition to Respondents Timothy Carnahan's and CYIOS's
Petition for Review

The Commission should reject the Respondents' Petition for Review (the "Petition") and affirm Judge Cameron Elliot's December 21, 2015 Initial Decision,¹ as ratified by his January 12, 2018 Order Ratifying Actions.² Judge Elliot correctly found that Respondents Timothy Carnahan and CYIOS Corporation violated Securities Act Section 17(a)(3) and Exchange Act Section 13(a) and Rules 13a-1, 13a-13, 13a-14, and 13a-15. The facts supporting that decision remain undisputed to this day—despite the fact that the Respondents have had two years and two opportunities to present evidence showing that they did not commit these violations. The Commission should thus reject the Petition.

Summary of Relevant Procedural History

The Commission instituted this administrative proceeding On February 13, 2015.³ Judge Elliot issued his initial decision on December 21, 2015.⁴ Respondents Timothy W. Carnahan and CYIOS Corporation sought Commission review of that decision, which the

¹ *Traci J. Anderson, CPA*, I.D. Rel. No. 930, 2015 SEC LEXIS 5189.

² *Anderson, A.P. Rulings* Rel. No. 5461.

³ *Anderson, Exchange Act* Rel. No. 74273, 2015 WL 627340.

Commission granted on February 2, 2016.⁵ Pursuant to the February 2, 2016 order, the parties submitted briefs supporting their positions on March 31, 2016. On November 30, 2017, before it had taken any further action on the Respondents' appeal, the Commission remanded the matter to Judge Elliot—directing him to conduct a de novo review of the record to determine "whether to ratify or revise in any respect all prior actions taken by" him.⁶ Following a December 14, 2017 telephonic conference with the parties, Judge Elliot gave them until January 5, 2018 to submit any new evidence and briefing they deemed relevant.⁷ On January 12, 2018, Judge Elliot determined, upon reconsideration of the record, to ratify all prior actions including the initial decision.⁸ In his order ratifying his actions, Judge Elliot noted that the Respondents' submissions "include[d] no new evidence." He also noted that he had "scrutinized the record" before making his decision. Finally, on February 8, 2018, the Commission issued a Supplemental Briefing Order.⁹ That order allowed the parties to submit additional briefing relevant to the Commission's consideration of the Petition. It also stated that the parties do not need to restate arguments asserted in previous briefing before the Commission.

Argument

As noted in the prior section, on March 31, 2016, the Division submitted a brief in opposition to the Petition.¹⁰ In that brief, the Division noted that the Commission should deny the Petition—as the evidence supporting it remains undisputed. That remains true to this day, and it should be rejected.

⁴ *Anderson*, I.D. Rel. No. 930, 2015 SEC LEXIS 5189.

⁵ *Timothy W. Carnahan, et al*, Exchange Act Rel. No. 10031.

⁶ *Pending Administrative Proceedings*, Securities Act Rel. No. 10440, 2017 WL 59692324, at *1-2.

⁷ *Anderson*, A.P. Rulings Rel. No. 5384.

⁸ *Anderson*, A.P. Rulings Rel. No. 5461.

⁹ *Timothy W. Carnahan, et al*, Exchange Act Rel. No. 10457.

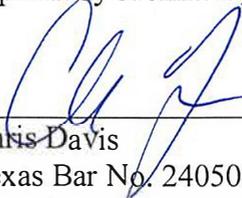
¹⁰ Since the Commission's February 8, 2018 order states that the parties need not restate their prior arguments, the Division does not do so. Rather, it incorporates by reference the arguments from its March 31, 2016 brief.

This is even more true now than it was the first time these issues were briefed. Judge Elliot has now considered the relevant facts and law not once, but twice. Pursuant to the Commission's November 30, 2017 Order, he allowed the Respondents to submit new evidence supporting their case and to challenge his rulings, findings, and conclusions. Given this opportunity, they offered "no new evidence." Despite their failure, Judge Elliot "scrutinized the record" and determined that the initial decision should be ratified.

In light of the extensive due process accorded the Respondents and the fact that they have offered no evidence contradicting the initial decision, it would be a tremendous waste of Commission resources to relitigate these issues. It would also be particularly inappropriate here—where they have been given not one, but two opportunities to present evidence and arguments to the administrative law judge. The Commission should reject the Petition.

March 12, 2018

Respectfully submitted,



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SERVICE LIST

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' Petition for Review* was served on the following on March 12, 2018 via United Parcel Service, Overnight Mail:

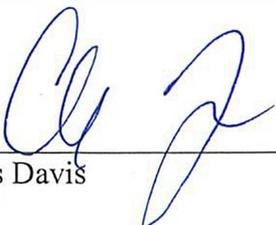
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