

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 BRIEF
IN OPPOSITION TO RESPONDENTS'
MOTION FOR CERTIFICATION OF
ORDER FOR APPEAL PURSUANT TO 28
U.S.C. § 1292(b)

**Division of Enforcement's Opposition to Respondents' Motion for Certification of Order
for Appeal Pursuant to 28 U.S.C. § 1292(b)**

The Court should reject the Respondents' October 5, 2018 Motion for Certification of Order for Appeal Pursuant to 28 U.S.C. § 1292(b). The motion is fatally flawed because under 28 U.S.C. § 1292(b), courts of appeal only have jurisdiction to hear interlocutory appeals from district judges. Based on that alone, the Court should dismiss the motion.

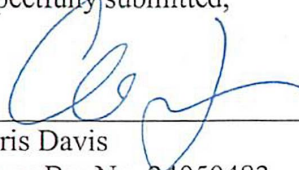
Even if considered as a petition for interlocutory review under Rule of Practice 400—the proper procedural mechanism for seeking an interlocutory review—the motion should be rejected.

The Commission's "emphatic preference—which embodies the 'general rule' disfavoring piecemeal, interlocutory appeals—is that claims should be presented in a single petition for review after 'the entire record [has been] developed' and 'after issuance by the law judge of an initial decision.'" A party's disagreement with a law judge's determination "does not make a ruling 'appropriate for interlocutory review.'" Interlocutory review is appropriate "only in a truly unusual case, where serious and prejudicial error [is] plainly apparent upon even a cursory review of the record, and where deferring review until issuance of an initial decision might well postpone an inevitable later vacatur and remand." Indeed, Rule 400 provides that petitions for interlocutory review are "disfavored" and will be granted only in "extraordinary circumstances" to "make clear that petitions for interlocutory review ... rarely will be granted." *In the Matter of Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch*

Partners Xiv, LLC, & Patriarch Partners Xv, LLC, Release No. 3796 (Aug. 24, 2016) (internal citations and notes omitted)

This is not a “truly unusual case” involving “extraordinary circumstances”—and therefore warranting interlocutory review. Respondents raise two issues: (1) the language of the Court’s October 1, 2018 order; and (2) whether the statute of limitations bars the claims against them. These are simple issues that can be readily determined by the Court—through motion practice, a hearing, or both. Consequently, the Respondents should properly raise them and allow the Court to make a ruling on them. There is no need for an interlocutory review.

Respectfully submitted,



Chris Davis
Texas Bar No. 24050483
United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 900-2638 (Davis)
(817) 978-4927 (facsimile)

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 Motion for Certification of Order for Appeal* was served on the following on October 10, 2018 via United Parcel Service, Overnight Mail:

Honorable Judge Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Timothy W. Carnahan
President and CEO and Chairman
CYIOS Corporation
Ronald Reagan Building
1300 Pennsylvania Ave., 700
Washington DC 20004

CYIOS Corporation
c/o Timothy W. Carnahan, President, CEO and Chairman
Ronald Reagan Building
1300 Pennsylvania Ave., 700
Washington, DC 20004


Chris Davis