

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

CD LIQUIDATION CO., LLC, f/k/a  
CYNERGY DATA, LLC, *et al.*,

Debtors. <sup>1</sup>

)  
) Chapter 11  
)

) Case No. 09-13038 (KG)  
)

) (Jointly Administered)  
)  
)

**RESPONSE OF EDEN CONCEPTS, LLC d/b/a MINERAL ELEMENTS TO DEBTORS'  
FIRST OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS PURSUANT TO 11  
U.S.C. § 502(B), FED. R. BANKR. P. 3003 AND 3007 AND LOCAL RULE 3007-1**

EDEN CONCEPTS, LLC d/b/a MINERAL ELEMENTS ("Eden"), a creditor and party in interest herein, by and through its undersigned counsel, hereby files this **Response to Debtors' First Omnibus (Substantive) Objection to Claims Pursuant to 11 U.S.C. § 502(b), Fed. R. Bankr. P. 3003 and 3007 and Local Rule 3007-1**, filed by the Debtors on September 21, 2010. In response, Eden respectfully states as follows:

**FACTUAL BACKGROUND**

1. On or about September 1, 2009, Cynergy Data, LLC, Cynergy Data Holdings, Inc., and Cynergy Prosperity Plus, LLC (collectively, the "Debtors") filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") commencing their respective bankruptcy cases in this Court, which have since been ordered jointly administered under the above-referenced bankruptcy case.

2. Eden, a merchant, is a party to that certain Merchant Processing Agreement along with Pivotal Payments, Inc., Cynergy Data, LLC ("Cynergy"), and Harris, N.A. ("Harris")

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<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

executed on November 25, 2008 (the "Agreement"). Pursuant to the Agreement, Eden contracted with Cynergy for credit and debit card processing to enable its customers to pay for products and/or services with credit and debit cards.

3. Pursuant to the Agreements, funds due Eden were withheld from settlement of certain card transactions in order to eliminate the risk to Harris and Cynergy for chargebacks and/or fraudulent charges on those charges made by Eden's customers. These funds are hereinafter referred to as "suspended funds." Pursuant to the Agreement, after a given charge was determined to be valid, the suspended funds with respect to that charge were due back to Eden. Suspended funds are different than amounts commonly referred to as the "rolling reserve."

4. During this case, Eden submitted two proofs of claim, based on its two processing accounts with Cynergy. One of these proofs of claim asserted a general unsecured claim based on a "rolling reserve" amount. The second proof of claim asserted a general unsecured claim, as of the Petition Date, in the sum of \$127,737.89 plus interest and attorneys fees (the "Eden Claim"). The principal amount of the Eden Claim is comprised of two parts: first, the sum of \$52,737.89 representing amounts due Eden on its rolling reserve account (the "Reserve Amount"); and second, the sum of \$75,000.00 representing an amount of suspended funds being held by Cynergy and Harris (the "Suspense Amount").

5. On or about September 21, 2010, the Debtors filed their First Omnibus (Substantive) Objection to Claims Pursuant to 11 U.S.C. § 502(b), Fed. R. Bankr. P. 3003 and 3007 and Local Rule 3007-1 (the "Claim Objection") seeking disallowance of various claims filed, including the Eden Claim, based solely on the belief that such claims involve "rolling

reserve” amounts which were the subject of certain previously entered Court orders and approved agreements.

### **RESPONSE TO OBJECTION**

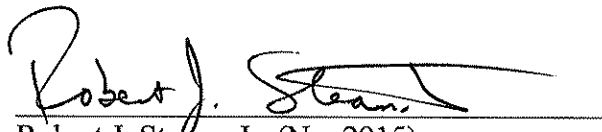
6. The Claim Objection as to the Eden Claim should be denied to the extent such claim relates to funds owed Eden from the Suspense Account. These funds do not constitute amounts relating to the “rolling reserve.” Consequently, the Claim Objection is meritless with respect to the Suspense Amount.

7. Based on the foregoing, Eden requests that the Court deny the Claim Objection to the extent the Eden Claim represents the Suspense Amount due Eden, and that the Court allow such claim in the amount of \$75,000.00, plus interest and attorneys’ fees and costs as allowed under applicable law.

**PRAYER**

WHEREFORE, EDEN CONCEPTS, LLC d/b/a MINERAL ELEMENTS respectfully requests that the Court (i) deny the Claim Objection as to Suspense Amount -- amounts claimed that do not constitute funds relating to the "rolling reserve," (ii) allow Eden a claim in the amount of \$75,000.00, plus interest and attorneys' fees and costs as allowed under applicable law, and (iii) grant Eden such other and further relief to which it may be justly entitled.

Dated: October 14, 2010  
Wilmington, Delaware



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**CERTIFICATE OF SERVICE**

I, Julie A. Finocchiaro, Esq., do hereby certify that a true and correct copy of the foregoing document was served on the parties listed below via email, hand delivery, and/or First Class Mail on the 14<sup>th</sup> day of October, 2010.

  
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