

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

(Jointly Administered)

**JOINT MOTION OF DYMAS FUNDING COMPANY, LLC,
GARRISON CREDIT INVESTMENTS I LLC, AND GARRISON
CREDIT OPPORTUNITIES HOLDINGS L.P. FOR AN
ORDER UNDER RULE 2004 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE AUTHORIZING DISCOVERY FROM
HARRIS N.A. AND MONERIS SOLUTIONS, INC.**

Dymas Funding Company, LLC, as agent (in such capacities, the “Junior Agent”) for (a) certain lenders (the “Term B Lenders”) under the Credit Agreement, dated as of August 1, 2008, among the Debtors and the various lenders party thereto from time to time (the “Prepetition Senior Credit Agreement”) and (b) the lenders (the “Second Lien Lenders”) under the Financing Agreement, dated as of November 15, 2007, among Cynergy and the various lenders party thereto from time to time (the “Second Lien Credit Agreement”), and Garrison Credit Investments I LLC and Garrison Credit Opportunities Holdings L.P., Term B Lenders (“Garrison” and, together with the Junior Agent, the “Movants”), hereby move this Court for entry of an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule 2004”) directing the oral examination of corporate representative(s) of, and the production of documents from, Harris N.A. (“Harris”) and Moneris Solutions, Inc. (“Moneris”), and in support thereof, represents as follows:

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

BACKGROUND

A. Status of Bankruptcy Case

1. On September 1, 2009 (the "Petition Date"), each Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to manage their properties and operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only.

2. Pursuant to 28 U.S.C. § 1334, the Court has subject matter jurisdiction over this Motion, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 1109(b) of the Bankruptcy Code and Bankruptcy Rule 2004.

B. Relationship Between the Parties

3. As of the Petition Date, all Debtors were either borrowers or guarantors under the Prepetition Senior Credit Agreement and under the Second Lien Credit Agreement, with approximately \$27 million owing to the Term B Lenders under the Prepetition Senior Credit Agreement, and approximately \$53 million owing to the Second Lien Lenders. All of the Debtors' obligations to the Term B Lenders and the Second Lien Lenders are secured, respectively, by validly perfected first and second priority liens on substantially all of the Debtors' assets.

4. Cynergy is a provider of payment processing and related merchant services for credit card and other electronic transactions, currently serving approximately 80,000 merchants. In order to engage in its business, Cynergy must work in conjunction with a sponsoring bank that is both a licensed financial institution and a member of the Visa,

MasterCard and similar credit card networks, and therefore has permission and ability to clear and settle credit card and debit card transactions. Until November 2008, Bank of America, N.A. ("BofA") was Cynergy's sponsoring bank. Since November 2008, Harris has been Cynergy's sponsoring bank. Moneris is a sister company or affiliate of Harris and works alongside Harris and Cynergy in providing payment processing services to Cynergy's merchant customers.

5. The relationship among Harris, Cynergy, and the merchant customer is memorialized in a standard form of merchant processing agreement (the "MPA"). A separate MPA is entered into with each merchant customer. Harris's sponsoring bank relationship with Cynergy is documented in a BIN Sponsor Agreement, dated November 1, 2008 (the "BIN Agreement"). Although the BIN Agreement purports to grant certain liens on Cynergy's assets in favor of Harris, Harris agreed, in an intercreditor agreement dated as of April 2009 (the "Harris-ICA") among Harris and the agents for the lenders under the Prepetition Senior Credit Agreement, the Second Lien Credit Agreement and certain other senior debt that, with limited exceptions not applicable here, its liens are subordinated to the existing liens of these lenders.

C. Rolling Reserves

6. In a typical credit card transaction, after a retail customer swipes his or her credit card at a merchant's credit card terminal, the retail customer's bank will transmit payment through the credit card network to the merchant. Harris, which handles the funds on the credit card network, is responsible for the delivery of the payment to the merchant. Before effecting delivery, however, Harris deducts fees and other charges applicable to the credit card transaction, including, among other things, its own charges, credit card association charges, and Cynergy's processing fees.

7. If the retail customer returns the merchandise purchased in the credit card transaction, a chargeback or reject of a merchant/consumer transaction occurs. The merchant is obligated to return the payment it received, and Harris is required to effect a refund to the retail credit card customer's bank. Harris's obligation to make the refund exists whether or not the merchant has returned the payment it received through Harris. To protect against the risk that a merchant may fail to make reimbursement for a chargeback or reject, the MPA entitles Harris, should it so elect, to require the merchant customer to establish a reserve account with Harris, funded by withholdings of funds transmitted to Harris from retail customers' banks, to constitute a reserve to offset potential future losses caused by a possible merchant nonpayment (the "Rolling Reserves")

8. It is Movants' understanding that Harris, like Cynergy's previous sponsoring bank, BofA, did not elect to require the creation of reserve accounts under their control to hold the Rolling Reserves. Instead, like BofA before it, Harris chose to remit Rolling Reserve funds directly to Cynergy's operating account along with fees and processing revenue that Cynergy was entitled to receive from merchants. It appears that the Rolling Reserves thus transferred to Cynergy were not separately identified by Harris. It further appears that, like BofA before it, Harris did not require that Cynergy segregate or separately hold and maintain the Rolling Reserve funds.

9. In July 2009, however, after learning of the Debtors' financial difficulties, Harris/Moneris, in a letter originating with Moneris, informed Cynergy that Cynergy was "in default" because it was holding Rolling Reserve funds in the amount of \$21 million that, Moneris claimed, should have been on deposit with Harris. Moneris threatened that "Harris/Moneris [would] immediatly exercis[e] its right of set off" to intercept funds flowing to

Cynergy through the credit card networks to make up for the purported shortfall. *See* Moneris Letter dated 7/19/09, attached hereto as Exhibit A.

10. The assertion of default by Harris/Moneris in July 2009 was inconsistent with how the Movants understand Harris/Moneris and BofA before it had chosen to operate under their agreements with Cynergy. Having knowingly transmitted the Rolling Reserve funds to Cynergy for more than eight months (exactly as its predecessor had for years before that), Harris/Moneris suddenly asserted that this conduct gave rise to a default by Cynergy. Harris/Moneris continues to claim that it is entitled to receive \$21 million from the estate to cover the purported “shortfall” in Rolling Reserves on deposit at Harris.

11. The Movants’ reading and understanding of the various contracts is at odds with the position asserted by Harris/Moneris with respect to Rolling Reserves. Based upon the information presently available to Movants, Harris/Moneris does not appear to be justified in claiming that it is entitled to payment of \$21 million from Cynergy. Given the proposed and impending sale of assets by the Debtors, it is essential to determine the validity of the Harris/Moneris position

RELIEF REQUESTED

12. The Movants therefore seek entry of an order substantially in the form annexed hereto (the “Proposed Order”), authorizing it to obtain production of documents from, and the oral examinations of, Harris and Moneris, as more specifically set forth in the Schedules to the Proposed Order (the “Requests”), to determine, among other things, the basis for Harris’s/Moneris’s claim of entitlement to funds from the estate to cover the claimed shortfall in Rolling Reserve funds on deposit with Harris.

13. Upon receiving and reviewing the documents responsive to the Requests, the Movants may determine that further discovery from Harris or Moneris is necessary. Because the scope of such additional discovery will not be fully determined until after the Movants have had a meaningful opportunity to review the documents responsive to the Requests, the Movants respectfully request that this Court also authorize the Movants to serve, without further order of this Court, additional discovery requests beyond those specifically made in the Requests, to the extent such additional discovery relates to the Rolling Reserves or Harris's/Moneris's claim of entitlement to funds from the estate to cover the claimed shortfall in Rolling Reserve funds.

BASIS FOR RELIEF

14. Bankruptcy Rule 2004 provides, in relevant part, as follows:
- (a) Examination on Motion. On motion of any party in interest, the court may order the examination of any entity.
 - (b) Scope of Examination. The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.
 - (c) Compelling Attendance and Production of Documentary Evidence. The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial.

Examinations under Bankruptcy Rules 2004 may include within their scope, among many other things: any matter which may relate to the property and assets of the estate; the financial condition of the debtor; any matter which may affect the administration of a debtor's estate; and, in a chapter 11 case, any matter relevant to the case or to the formulation of a plan. See Bankruptcy Rule 2004(b). "The scope of a Rule 2004 examination is "unfettered and broad." In re Wash. Mut., Inc., 2009 Bankr. LEXIS 1988, Case No. 08-12229 (MFW), *10 (Bankr. D. Del.,

June 24, 2009) (quoting In re Bennett Funding Group, Inc., 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996)). A Rule 2004 examination “is commonly recognized as more in the nature of a ‘fishing expedition.’” Bennett Funding, 203 B.R. at 28. Rule 2004 Examinations can be used for the purposes of, *inter alia*, “discovering assets, examining transactions, and determining whether wrongdoing has occurred.” In re Enron Corp., 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002).

15. The oral examinations and documents sought by the Movants are clearly within the allowable scope of a Bankruptcy Rule 2004 examination. The information requested is needed to determine the extent and treatment of the Rolling Reserves and the estates’ potential liability for same. This information clearly pertains to the Debtors’ property and liabilities, and will affect the administration of the Debtors’ estates. This information is within Harris’s and Moneris’s control.

16. Pursuant to Bankruptcy Rule 2004(d), the Movants request the right to provide Harris and Moneris with five (5) days notice of the proposed oral examinations. In addition, the Movants seek to compel production of the documents requested from Harris and Moneris, as specified in the Proposed Order, within seven (7) days from the date of entry of the Proposed Order.

17. Pursuant to Local Rule 2004-1, undersigned counsel for the Junior Agent communicated with counsel for Harris and Moneris (as set forth in the Certification of Michael L. Hirschfeld, Esq.) in an attempt to arrange mutually agreeable dates, times and places for the requested examinations. Although the Junior Agent thus attempted in good to obtain the requested information through negotiation, Harris and Moneris did not respond substantively to the Junior Agent's requests, but rather indicated an inability to do so within the time requested by the Junior Agent. Undersigned counsel for the Junior Agent has also spoken with counsel to the Debtors with respect to the discovery attached hereto as Exhibit B. The Debtors have indicated that they are inclined to comply and cooperate with the requested discovery, subject only to the limitations that the constraints and strictures of the ongoing sale process may impose upon their ability to comply fully within the requested time period.

NOTICE

18. Movants have provided notice to (i) counsel for the Debtors, (ii) counsel for Harris and Moneris, (iii) counsel for the Official Committee of Unsecured Creditors appointed in these cases; (iv) the Office of the United States Trustee for the District of Delaware and (v) all other persons that have requested notice or copies of pleadings filed in these cases under Rule 2002 of the Federal Rules of Bankruptcy Procedure.

NO PREVIOUS REQUEST

19. No previous request for the relief sought in this Motion has been made by the Movants to this or any other court of competent jurisdiction.

WHEREFORE, the Movants respectfully requests entry of the Proposed Order (i) directing Harris and Moneris to produce witnesses as requested by the Movants on five (5) days notice and to produce the documents described in the respective schedules annexed to the Motion

as "Schedule Of Documents To Be Produced By Harris" and "Schedule of Documents To Be Produced By Moneris" within seven (7) days of entry of the Proposed Order, and (ii) granting the Movants such other and further relief as is just and proper.

Dated: September 21, 2009
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP LANDIS RATH & COBB LLP

/s/ Mark M. Billion

Laura Davis Jones (No. 2436)
Timothy P. Cairns (No. 4228)
Mark M. Billion (No. 5263)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

-and-

Scott K. Rutsky
Steven M. Kayman
Proskauer Rose LLP
1585 Broadway
New York, NY 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

-and-

Peter J. Antoszyk
Proskauer Rose LLP
One International Place
Boston, MA 021000-2600
Telephone: (617) 526-9600
Facsimile: (617) 526-9899

*Attorneys for Garrison Credit Investments I LLC
and Garrison Credit Opportunities Holdings L.P.*

/s/ William E. Chipman, Jr.

Adam G. Landis (No. 3407)
William E. Chipman, Jr. (No. 3818)
919 Market Street, Suite 1800
Wilmington, DE 19801
Telephone: (302) 467-4400
Facsimile: (302) 467-4450

-and-

Gregory A. Bray
Milbank, Tweed, Hadley & McCloy LLP
601 South Figueroa Street, 30th Floor
Los Angeles, CA 90017
Telephone: (213) 892-4000
Facsimile: (213) 629-5063

-and-

Michael L. Hirschfeld
Lena Mandel
Robert C. Hora
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

*Attorneys for Dymas Funding Company
LLC*

SCHEDULE OF DOCUMENTS TO BE PRODUCED BY HARRIS N.A.

DEFINITIONS

1. The term “document” shall have the broadest possible meaning under Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts of the following items, whether printed or recorded (through a sound, video or other electronic, magnetic, or digital recording system) or published (in print or online) or reproduced by hand, including, but not limited to, letters, correspondence, telegrams, telexes, memoranda, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, Photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data, tapes or readable computer-produced interpretations or transcriptions thereof, electronic files or documents or any electronically stored information of any kind (including any associated metadata), electronically transmitted messages (“email”), voice-mail messages, interoffice communications, advertising, packaging and promotional materials and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out, within the possession, custody or control of any Plaintiff. Without limiting the term “control” as used in the preceding

sentence, a person is deemed to be in control of a document if the person has the right or practical ability to secure the document or a copy thereof from another person having actual possession thereof.

2. “Concerning” means relating to, referring to, describing, evidencing or constituting.

3. “Communication” means the transmittal of information of whatever sort and by whatever means and includes, but is not limited to, the reduction of thoughts to writing (even if not distributed to individuals or entities other than the transcriber), memoranda, correspondence, notes, facsimiles, e-mails, tape recordings, phone calls and conversations.

4. “Bank of America” means Bank of America, N.A., any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

5. “BIN Agreement” means the BIN Sponsor Agreement dated as of November 1, 2008, by and between Harris N.A. and Cynergy Data, LLC, and any amendments thereto.

6. “Merchant Processing Agreements” means the merchant processing agreements entered into by Harris, Cynergy, and merchants, a form of which is annexed as Exhibit D to the BIN Agreement.

7. “Cynergy” means Cynergy Data, LLC, any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

8. “Harris”, “you”, and “your” means Harris N.A., and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

9. “Moneris” means Moneris Solutions, Inc. and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

10. The “July 16 Letter” means the letter dated July 16, 2009 from Gregory Cohen of Moneris Solutions, Inc. to Messrs. Charles Moore, Marcelo Paladini, and Dean Leavitt of Cynergy, *inter alia* notifying Cynergy that it was purportedly “in default” under the BIN Agreement.

11. The “Forbearance Agreement” means the letter agreement dated as of July 24, 2009, between Cynergy Data, LLC, Cynergy Prosperity Plus, LLC, Cynergy Data Holdings, Inc., Harris, Moneris, Comerica Bank, Wells Fargo Foothill, LLC, Dymas Funding Company, LLC, Ableco Finance LLC, A3 Funding LP, and Garrison Credit Investments I LLC.

12. The “Reserves” means the reserves referenced in the July 16 Letter, or any part thereof, which, according to the July 16 Letter, Cynergy purportedly had been “holding” instead of “turning over” to Harris/Moneris.

13. The “Association Rules” means the credit card “association rules” referenced in the July 16 Letter.

14. “TSYS” means Total System Services, Inc. and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

15. “Person” shall mean natural persons, corporations, partnerships, joint ventures, unincorporated associations, trusts, government entities and all other entities.

16. The terms “and” and “or” mean “and/or” and the terms “any” and “all” mean “any and all.” “Including” means “including but not limited to.”

17. The use of a verb in any tense shall be construed as the use of the verb in all other tenses whenever necessary to bring within the scope of the request all documents and things that might otherwise be construed outside their scope.

18. A plural noun shall be construed as a singular noun and a singular noun shall be construed as a plural noun whenever necessary to bring within the scope of the request all documents and things that might otherwise be construed outside their scope.

19. The singular form of the masculine gender, when used herein, shall include, respectively, the plural and feminine and/or neuter as appropriate. The feminine gender, when used herein, shall include the masculine and/or neuter as appropriate.

INSTRUCTIONS

1. The documents covered by this request include all documents in your possession, custody or control. Unless otherwise specified, each request herein seeks all documents generated or received by you during the period from January 1, 2008 through and including the date of production.

2. Documents are to be produced in the same form and the same order as they are kept in the ordinary course of business. Documents are to be produced in the boxes, file

folders, bindings, or other containers in which the documents are found. The titles, labels, and any other descriptions on the boxes, file folders, bindings, or other containers are to be left intact. Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced, such copies should be legible and bound or stapled in the same manner as their respective originals.

3. In the event that you claim that a request is overbroad, you are requested to respond to that portion of the request which is unobjectionable and specifically to identify the respect in which the request is allegedly overbroad.

4. In the event you claim that a request is unduly burdensome, you are requested to respond to that portion of the request that is unobjectionable and specifically to identify the respect in which the request is allegedly unduly burdensome.

5. For purposes of these requests, terms not specifically defined shall be given their ordinary meanings as you understand them to be used in the trade.

6. If you object to any portion of a request, please provide all documents and things requested by any portion of the request to which you do not object.

7. If any document responding to all or any part of the request for documents is not currently available, include a statement to that effect and furnish whatever documents are available. Include in your statement when such documents were most recently in your possession or subject to your control and what disposition was made of them, and identify the name, job title and the last known address of each person currently in possession or control of such documents. If any such documents were destroyed, identify the name, job title and the last known address of each person who directed that the documents be destroyed, and state the reasons the documents were destroyed.

8. If any documents or portion thereof which is relevant to any request is withheld under a claim of privilege, furnish a list identifying each such document or portion thereof for which the privilege is asserted, together with (a) the date of the document; (b) the name(s) and title(s) of the author(s) and address(es) of the document; (c) a description of the subject matter of the document; and (d) the reasons for asserting the privilege. For purposes of this request, the term "privilege" includes the work product doctrine.

9. Each request calls not only for information known to you, but also calls for information available to you through reasonable inquiry, including, but not limited to, inquiry of your representatives and agents.

10. These requests shall be deemed continuing so as to require supplemental responses if you obtain other documents called for these requests between the time the responses are served and the time of arbitration.

11. If you believe that any request herein is ambiguous in any respect, set forth the portion deemed ambiguous and the construction used in responding.

ITEMS TO BE PRODUCED

12. All documents concerning the construction or interpretation of any provision of the BIN Agreement or the Merchant Processing Agreements that you contend relates in any way to the Reserves.

13. Copies of the Association Rules referenced in the July 16, 2009 Letter, and all documents concerning the construction or interpretation of any provision of the Association Rules that you contend relates in any way to the Reserves.

14. All documents concerning the July 16, 2009 Letter, including but not limited to all documents concerning the Letter's assertions that Cynergy has been improperly

“holding merchant reserves rather than turning over these reserves to Harris/Moneris,” “is in default under the [BIN Agreement],” and is in “violation of association rules.”

15. All documents concerning any diligence materials or reports concerning the creation or maintenance of any reserves under the Bank of America sponsoring bank relationship with Cynergy.

16. All documents concerning whether the Reserves include reserves created or maintained pursuant to the Bank of America sponsoring bank relationship with Cynergy.

17. All documents concerning the Reserves, including, but not limited to, all documents concerning any oral or written communications, meetings, deliberations, analyses, summaries, reports, or memoranda regarding the Reserves and regarding the discovery that the Reserves were not held at Harris.

18. All documents concerning any communications between you and Moneris concerning the Reserves.

19. All documents concerning any communications between you or Moneris and any credit card association, including, but not limited to, Visa or MasterCard, concerning the Reserves.

20. All documents concerning any communications between you or Moneris and any potential purchasers of Cynergy concerning the Reserves.

21. All documents concerning any communications between you or Moneris and Cynergy concerning the Reserves.

22. All documents concerning any communications between you or Moneris and any of Cynergy’s lenders concerning the Reserves.

23. All documents concerning any intention, threat or attempt, whether or not completed, to set off monies flowing to Cynergy to fund deposit of the Reserves at Harris.

24. All documents concerning any efforts by Harris or Moneris (a) to establish accounts to hold Reserves, (b) to withhold Reserves from Cynergy, (c) to direct Cynergy to place Reserves in one or more segregated accounts, or (d) to monitor Cynergy's treatment or use of Reserves.

25. All documents and information provided to or available to you or Moneris concerning the Reserves, including, but not limited to, all documents and information provided to you or Moneris by Cynergy concerning the Reserves or supplied by Cynergy to TSYS or any other Person or information system to which you or Moneris had access.

26. All agreements between you and TSYS, or between TSYS and Cynergy, that relate to TSYS's provision of services in connection with the processing of electronic payments to Cynergy merchant customers.

27. All documents concerning any communications between you and TSYS concerning the Reserves or otherwise concerning the withholding of funds to create reserves under the BIN Agreement or the Merchant Processing Agreements.

28. All documents concerning any requests by merchants for the return of Reserves.

29. All documents concerning any instances in which Cynergy failed to fund an obligation that you contend was to be funded by a payment from the Reserves.

30. All documents concerning any losses you or Moneris claim to have incurred related to the Reserves.

31. All documents concerning any instances in which you contend or believe that Cynergy committed fraud or otherwise misled you or Moneris with respect to Reserves or otherwise supplied you or Moneris with incomplete or inaccurate information with respect to Reserves.

32. All documents concerning the Forbearance Agreement.

33. All documents concerning any audits of Cynergy's performance under the BIN Agreement or Merchant Processing Agreements.

TOPICS OF EXAMINATION

1. The respective roles of Harris, Moneris, Cynergy, issuing banks, merchants, the credit card associations, and other parties in processing or facilitating the processing of credit card, debit card, or other electronic transactions.

2. The Reserves, including, but not limited to, Harris's/Moneris's treatment of Reserves before July 16, 2009, and Harris's/Moneris's treatment of Reserves on and after July 16, 2009, and communications concerning the Reserves.

3. The flow of funds from Harris/Moneris to Cynergy, including the transmittal of revenue and Reserves withheld from (or received from) merchants from Harris/Moneris to Cynergy.

4. Cynergy's treatment and accounting of the Reserves.

5. Any efforts by Harris or Moneris to establish accounts to house Reserves, to withhold Reserves from Cynergy, to direct Cynergy to place Reserves in segregated accounts, or to otherwise monitor Cynergy's treatment or use of Reserves.

6. Any instances in which you contend or believe that Cynergy committed fraud or otherwise misled you or Moneris with respect to Reserves or otherwise supplied you or Moneris with incomplete or inaccurate information with respect to Reserves.

7. Harris's access or lack of access to information concerning the Reserves, including, but not limited to, access to information provided by Cynergy or access to information supplied by Cynergy to TSYS or any other Person or information system.

8. The BIN Agreement, including, but not limited to, due diligence performed in connection with Harris's entry into the BIN Agreement.

9. The Merchant Processing Agreements.

10. Any audits of Cynergy performed by Harris or Moneris.

11. The July 16 Letter, including, but not limited to, the assertions that Cynergy has been improperly "holding merchant reserves rather than turning over these reserves to Harris/Moneris," "is in default under the [BIN Agreement]," and is in "violation of association rules."

12. The Forbearance Agreement.

13. Requests by merchants for the return of Reserves and any instances in which Cynergy failed to fund an obligation that you contend was to be funded by a payment from the Reserves.

SCHEDULE OF DOCUMENTS TO BE PRODUCED BY MONERIS SOLUTIONS, INC.

DEFINITIONS

1. The term “document” shall have the broadest possible meaning under Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts of the following items, whether printed or recorded (through a sound, video or other electronic, magnetic, or digital recording system) or published (in print or online) or reproduced by hand, including, but not limited to, letters, correspondence, telegrams, telexes, memoranda, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, Photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data, tapes or readable computer-produced interpretations or transcriptions thereof, electronic files or documents or any electronically stored information of any kind (including any associated metadata), electronically transmitted messages (“email”), voice-mail messages, interoffice communications, advertising, packaging and promotional materials and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out, within the possession, custody or control of any Plaintiff. Without limiting the term “control” as used in the preceding

sentence, a person is deemed to be in control of a document if the person has the right or practical ability to secure the document or a copy thereof from another person having actual possession thereof.

2. “Concerning” means relating to, referring to, describing, evidencing or constituting.

3. “Communication” means the transmittal of information of whatever sort and by whatever means and includes, but is not limited to, the reduction of thoughts to writing (even if not distributed to individuals or entities other than the transcriber), memoranda, correspondence, notes, facsimiles, e-mails, tape recordings, phone calls and conversations.

4. “Bank of America” means Bank of America, N.A., any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

5. “BIN Agreement” means the BIN Sponsor Agreement dated as of November 1, 2008, by and between Harris N.A. and Cynergy Data, LLC, and any amendments thereto.

6. “Merchant Processing Agreements” means the merchant processing agreements entered into by Harris, Cynergy, and merchants, a form of which is annexed as Exhibit D to the BIN Agreement.

7. “Cynergy” means Cynergy Data, LLC, any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

8. “Harris” means Harris N.A., and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

9. “Moneris”, “you”, and “your” means Moneris Solutions, Inc. and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

10. The “July 16 Letter” means the letter dated July 16, 2009 from Gregory Cohen of Moneris Solutions, Inc. to Messrs. Charles Moore, Marcelo Paladini, and Dean Leavitt of Cynergy, *inter alia* notifying Cynergy that it was purportedly “in default” under the BIN Agreement.

11. The “Forbearance Agreement” means the letter agreement dated as of July 24, 2009, between Cynergy Data, LLC, Cynergy Prosperity Plus, LLC, Cynergy Data Holdings, Inc., Harris, Moneris, Comerica Bank, Wells Fargo Foothill, LLC, Dymas Funding Company, LLC, Ableco Finance LLC, A3 Funding LP, and Garrison Credit Investments I LLC.

12. The “Reserves” means the reserves referenced in the July 16 Letter, or any part thereof, which, according to the July 16 Letter, Cynergy purportedly had been “holding” instead of “turning over” to Harris/Moneris.

13. The “Association Rules” means the credit card “association rules” referenced in the July 16 Letter.

14. “TSYS” means Total System Services, Inc. and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers,

employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

15. “Person” shall mean natural persons, corporations, partnerships, joint ventures, unincorporated associations, trusts, government entities and all other entities.

16. The terms “and” and “or” mean “and/or” and the terms “ any” and “all” mean “any and all.” “Including” means “including but not limited to.”

17. The use of a verb in any tense shall be construed as the use of the verb in all other tenses whenever necessary to bring within the scope of the request all documents and things that might otherwise be construed outside their scope.

18. A plural noun shall be construed as a singular noun and a singular noun shall be construed as a plural noun whenever necessary to bring within the scope of the request all documents and things that might otherwise be construed outside their scope.

19. The singular form of the masculine gender, when used herein, shall include, respectively, the plural and feminine and/or neuter as appropriate. The feminine gender, when used herein, shall include the masculine and/or neuter as appropriate.

INSTRUCTIONS

1. The documents covered by this request include all documents in your possession, custody or control. Unless otherwise specified, each request herein seeks all documents generated or received by you during the period from January 1, 2008 through and including the date of production.

2. Documents are to be produced in the same form and the same order as they are kept in the ordinary course of business. Documents are to be produced in the boxes, file folders, bindings, or other containers in which the documents are found. The titles, labels, and any other descriptions on the boxes, file folders, bindings, or other containers are to be left intact.

Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced, such copies should be legible and bound or stapled in the same manner as their respective originals.

3. In the event that you claim that a request is overbroad, you are requested to respond to that portion of the request which is unobjectionable and specifically to identify the respect in which the request is allegedly overbroad.

4. In the event you claim that a request is unduly burdensome, you are requested to respond to that portion of the request that is unobjectionable and specifically to identify the respect in which the request is allegedly unduly burdensome.

5. For purposes of these requests, terms not specifically defined shall be given their ordinary meanings as you understand them to be used in the trade.

6. If you object to any portion of a request, please provide all documents and things requested by any portion of the request to which you do not object.

7. If any document responding to all or any part of the request for documents is not currently available, include a statement to that effect and furnish whatever documents are available. Include in your statement when such documents were most recently in your possession or subject to your control and what disposition was made of them, and identify the name, job title and the last known address of each person currently in possession or control of such documents. If any such documents were destroyed, identify the name, job title and the last known address of each person who directed that the documents be destroyed, and state the reasons the documents were destroyed.

8. If any documents or portion thereof which is relevant to any request is withheld under a claim of privilege, furnish a list identifying each such document or portion

thereof for which the privilege is asserted, together with (a) the date of the document; (b) the name(s) and title(s) of the author(s) and address(es) of the document; (c) a description of the subject matter of the document; and (d) the reasons for asserting the privilege. For purposes of this request, the term "privilege" includes the work product doctrine.

9. Each request calls not only for information known to you, but also calls for information available to you through reasonable inquiry, including, but not limited to, inquiry of your representatives and agents.

10. These requests shall be deemed continuing so as to require supplemental responses if you obtain other documents called for these requests between the time the responses are served and the time of arbitration.

11. If you believe that any request herein is ambiguous in any respect, set forth the portion deemed ambiguous and the construction used in responding.

ITEMS TO BE PRODUCED

1. All documents concerning the construction or interpretation of any provision of the BIN Agreement or the Merchant Processing Agreements that you contend relates in any way to the Reserves.

2. Copies of the Association Rules referenced in the July 16, 2009 Letter, and all documents concerning the construction or interpretation of any provision of the Association Rules that you contend relates in any way to the Reserves.

3. All documents concerning the July 16, 2009 Letter, including but not limited to all documents concerning the Letter's assertions that Cynergy has been improperly "holding merchant reserves rather than turning over these reserves to Harris/Moneris," "is in default under the [BIN Agreement]," and is in "violation of association rules."

4. All documents concerning any diligence materials or reports concerning the creation or maintenance of any reserves under the Bank of America sponsoring bank relationship with Cynergy.

5. All documents concerning whether the Reserves include reserves created or maintained pursuant to the Bank of America sponsoring bank relationship with Cynergy.

6. All documents concerning the Reserves, including, but not limited to, all documents concerning any oral or written communications, meetings, deliberations, analyses, summaries, reports, or memoranda regarding the Reserves and regarding the discovery that the Reserves were not held at Harris.

7. All documents concerning any communications between you and Harris concerning the Reserves.

8. All documents concerning any communications between you or Harris and any credit card association, including, but not limited to, Visa or MasterCard, concerning the Reserves.

9. All documents concerning any communications between you or Harris and any potential purchasers of Cynergy concerning the Reserves.

10. All documents concerning any communications between you or Harris and Cynergy concerning the Reserves.

11. All documents concerning any communications between you or Harris and any of Cynergy's lenders concerning the Reserves.

12. All documents concerning any intention, threat or attempt, whether or not completed, to set off monies flowing to Cynergy to fund deposit of the Reserves at Harris.

13. All documents concerning any efforts by Moneris or Harris (a) to establish accounts to hold Reserves, (b) to withhold Reserves from Cynergy, (c) to direct Cynergy to place Reserves in one or more segregated accounts, or (d) to monitor Cynergy's treatment or use of Reserves.

14. All documents and information provided to or available to you or Harris concerning the Reserves, including, but not limited to, all documents and information provided to you or Harris by Cynergy concerning the Reserves or supplied by Cynergy to TSYS or any other Person or information system to which you or Harris had access.

15. All agreements between you and TSYS, or between TSYS and Cynergy, that relate to TSYS's provision of services in connection with the processing of electronic payments to Cynergy merchant customers.

16. All documents concerning any communications between you and TSYS concerning the Reserves or otherwise concerning the withholding of funds to create reserves under the BIN Agreement or the Merchant Processing Agreements.

17. All documents concerning any requests by merchants for the return of Reserves.

18. All documents concerning any instances in which Cynergy failed to fund an obligation that you contend was to be funded by a payment from the Reserves.

19. All documents concerning any losses you or Harris claim to have incurred related to the Reserves.

20. All documents concerning any instances in which you contend or believe that Cynergy committed fraud or otherwise misled you or Harris with respect to Reserves or

otherwise supplied you or Harris with incomplete or inaccurate information with respect to Reserves.

21. All documents concerning the Forbearance Agreement.

22. All documents concerning any audits of Cynergy's performance under the BIN Agreement or Merchant Processing Agreements.

TOPICS OF EXAMINATION

1. The respective roles of Moneris, Harris, Cynergy, issuing banks, merchants, the credit card associations, and other parties in processing or facilitating the processing of credit card, debit card, or other electronic transactions.

2. The Reserves, including, but not limited to, Harris's/Moneris's treatment of Reserves before July 16, 2009, and Harris's/Moneris's treatment of Reserves on and after July 16, 2009, and communications concerning the Reserves.

3. The flow of funds from Harris/Moneris to Cynergy, including the transmittal of revenue and Reserves withheld from (or received from) merchants from Harris/Moneris to Cynergy.

4. Cynergy's treatment and accounting of the Reserves.

5. Any efforts by Moneris or Harris to establish accounts to house Reserves, to withhold Reserves from Cynergy, to direct Cynergy to place Reserves in segregated accounts, or to otherwise monitor Cynergy's treatment or use of Reserves.

6. Any instance in which you contend or believe that Cynergy committed fraud or otherwise misled you or Harris with respect to Reserves or otherwise supplied you or Harris with incomplete or inaccurate information with respect to Reserves.

7. Moneris's access or lack of access to information concerning the Reserves, including, but not limited to, access to information provided by Cynergy or access to information supplied by Cynergy to TSYS or any other Person or information system.

8. The BIN Agreement, including, but not limited to, due diligence performed in connection with Harris's entry into the BIN Agreement.

9. The Merchant Processing Agreements.

10. Any audits of Cynergy performed by Moneris or Harris.

11. The July 16 Letter, including, but not limited to, the assertions that Cynergy has been improperly "holding merchant reserves rather than turning over these reserves to Harris/Moneris," "is in default under the [BIN Agreement]," and is in "violation of association rules."

12. The Forbearance Agreement.

13. Requests by merchants for the return of Reserves and any instances in which Cynergy failed to fund an obligation that you contend was to be funded by a payment from the Reserves.

EXHIBIT A

VIA ELECTRONIC AND COURIER DELIVERY

July 16, 2009

Mr. Charles Moore
Mr. Marcelo Paladini
Mr. Dean Leavitt
Cynergy Data, LLC
30-30 47th Ave.
Long Island City, NY 11101

Re: BIN Sponsor Agreement, as amended, dated November 1, 2008 between Cynergy Data, LLC, and Harris N.A. (the "Agreement")

Gentlemen:

The purpose of this letter is to notify you that Cynergy Data, LLC is in default under the Agreement. Specifically, Cynergy has been holding merchant reserves rather than turning over these reserves to Harris/Moneris. This is in violation of Section 2.1 F of the Agreement. Further, holding merchant reserves is a violation of association rules. Failure to observe the rules as required under Section 5.2 of the Agreement constitutes an additional event of default.

We hereby demand that Cynergy immediately pay over to us all merchant reserves. Also, please be advised that Harris/Moneris is immediately exercising its right of set off under Section 4.5 C of the Agreement to fund the merchant reserves and to recover monies owed to it, and will continue to do so as necessary in the future.

Very truly yours,



Gregory Cohen

Woodfield Corporate Center
150 N. Martingale Road, Suite 900
Schaumburg, IL 60173
Phone: 800-471-9511 Fax: 847-240-6583

EXHIBIT B

SCHEDULE OF DOCUMENTS TO BE PRODUCED BY DEBTORS

DEFINITIONS

1. The term “document” shall have the broadest possible meaning under Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts of the following items, whether printed or recorded (through a sound, video or other electronic, magnetic, or digital recording system) or published (in print or online) or reproduced by hand, including, but not limited to, letters, correspondence, telegrams, telexes, memoranda, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, Photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data, tapes or readable computer-produced interpretations or transcriptions thereof, electronic files or documents or any electronically stored information of any kind (including any associated metadata), electronically transmitted messages (“email”), voice-mail messages, interoffice communications, advertising, packaging and promotional materials and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out, within the possession, custody or control of any Plaintiff. Without limiting the term “control” as used in the preceding

sentence, a person is deemed to be in control of a document if the person has the right or practical ability to secure the document or a copy thereof from another person having actual possession thereof.

2. “Concerning” means relating to, referring to, describing, evidencing or constituting.

3. “Communication” means the transmittal of information of whatever sort and by whatever means and includes, but is not limited to, the reduction of thoughts to writing (even if not distributed to individuals or entities other than the transcriber), memoranda, correspondence, notes, facsimiles, e-mails, tape recordings, phone calls and conversations.

4. “Bank of America” means Bank of America, N.A., any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

5. “BIN Agreement” means the BIN Sponsor Agreement dated as of November 1, 2008, by and between Harris N.A. and Cynergy Data, LLC, and any amendments thereto.

6. “Merchant Processing Agreements” means the merchant processing agreements entered into by Harris, Cynergy, and merchants, a form of which is annexed as Exhibit D to the BIN Agreement.

7. “Cynergy”, “you”, and “your” means Cynergy Data, LLC, any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

8. “Harris” means Harris N.A., and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

9. “Moneris” means Moneris Solutions, Inc. and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers, employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

10. The “July 16 Letter” means the letter dated July 16, 2009 from Gregory Cohen of Moneris Solutions, Inc. to Messrs. Charles Moore, Marcelo Paladini, and Dean Leavitt of Cynergy, *inter alia* notifying Cynergy that it was purportedly “in default” under the BIN Agreement.

11. The “Forbearance Agreement” means the letter agreement dated as of July 24, 2009, between Cynergy Data, LLC, Cynergy Prosperity Plus, LLC, Cynergy Data Holdings, Inc., Harris, Moneris, Comerica Bank, Wells Fargo Foothill, LLC, Dymas Funding Company, LLC, Ableco Finance LLC, A3 Funding LP, and Garrison Credit Investments I LLC.

12. The “Reserves” means the reserves referenced in the July 16 Letter, or any part thereof, which, according to the July 16 Letter, Cynergy purportedly had been “holding” instead of “turning over” to Harris/Moneris.

13. The “Association Rules” means the credit card “association rules” referenced in the July 16 Letter.

14. “TSYS” means Total System Services, Inc. and any of its subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, directors, officers,

employees, agents, assigns, representatives, advisors, attorneys, accountants, consultants, associates or any other person acting, or purporting to act, on its behalf.

15. “Person” shall mean natural persons, corporations, partnerships, joint ventures, unincorporated associations, trusts, government entities and all other entities.

16. The terms “and” and “or” mean “and/or” and the terms “ any” and “all” mean “any and all.” “Including” means “including but not limited to.”

17. The use of a verb in any tense shall be construed as the use of the verb in all other tenses whenever necessary to bring within the scope of the request all documents and things that might otherwise be construed outside their scope.

18. A plural noun shall be construed as a singular noun and a singular noun shall be construed as a plural noun whenever necessary to bring within the scope of the request all documents and things that might otherwise be construed outside their scope.

19. The singular form of the masculine gender, when used herein, shall include, respectively, the plural and feminine and/or neuter as appropriate. The feminine gender, when used herein, shall include the masculine and/or neuter as appropriate.

INSTRUCTIONS

1. The documents covered by this request include all documents in your possession, custody or control. Unless otherwise specified, each request herein seeks all documents generated or received by you during the period from January 1, 2008 through and including the date of production.

2. Documents are to be produced in the same form and the same order as they are kept in the ordinary course of business. Documents are to be produced in the boxes, file folders, bindings, or other containers in which the documents are found. The titles, labels, and any other descriptions on the boxes, file folders, bindings, or other containers are to be left intact.

Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced, such copies should be legible and bound or stapled in the same manner as their respective originals.

3. In the event that you claim that a request is overbroad, you are requested to respond to that portion of the request which is unobjectionable and specifically to identify the respect in which the request is allegedly overbroad.

4. In the event you claim that a request is unduly burdensome, you are requested to respond to that portion of the request that is unobjectionable and specifically to identify the respect in which the request is allegedly unduly burdensome.

5. For purposes of these requests, terms not specifically defined shall be given their ordinary meanings as you understand them to be used in the trade.

6. If you object to any portion of a request, please provide all documents and things requested by any portion of the request to which you do not object.

7. If any document responding to all or any part of the request for documents is not currently available, include a statement to that effect and furnish whatever documents are available. Include in your statement when such documents were most recently in your possession or subject to your control and what disposition was made of them, and identify the name, job title and the last known address of each person currently in possession or control of such documents. If any such documents were destroyed, identify the name, job title and the last known address of each person who directed that the documents be destroyed, and state the reasons the documents were destroyed.

8. If any documents or portion thereof which is relevant to any request is withheld under a claim of privilege, furnish a list identifying each such document or portion

thereof for which the privilege is asserted, together with (a) the date of the document; (b) the name(s) and title(s) of the author(s) and address(es) of the document; (c) a description of the subject matter of the document; and (d) the reasons for asserting the privilege. For purposes of this request, the term "privilege" includes the work product doctrine.

9. Each request calls not only for information known to you, but also calls for information available to you through reasonable inquiry, including, but not limited to, inquiry of your representatives and agents.

10. These requests shall be deemed continuing so as to require supplemental responses if you obtain other documents called for these requests between the time the responses are served and the time of arbitration.

11. If you believe that any request herein is ambiguous in any respect, set forth the portion deemed ambiguous and the construction used in responding.

ITEMS TO BE PRODUCED

1. All documents concerning any communications between you and Harris or Moneris concerning the Reserves or the withholding of funds to create reserves under the BIN Agreement or the Merchant Processing Agreements.

2. All documents concerning any efforts by Harris or Moneris (a) to establish accounts to hold Reserves, (b) to withhold Reserves from Cynergy, (c) to direct Cynergy to place Reserves in one or more segregated accounts, or (d) to monitor Cynergy's treatment or use of Reserves.

3. All documents provided or made available to Harris or Moneris concerning the Reserves, including but not limited to diligence materials provided to Harris and Moneris in connection with the BIN Agreement or Merchant Processing Agreements and

information supplied to TSYS or any other Person or information system to which Harris or Moneris had access.

4. All documents concerning whether the Reserves include reserves created or maintained pursuant to the Bank of America sponsoring bank relationship with Cynergy.

5. All documents concerning the July 16, 2009 Letter, including but not limited to all documents concerning the Letter's assertions that Cynergy has been improperly "holding merchant reserves rather than turning over these reserves to Harris/Moneris," "is in default under the [BIN Agreement]," and is in "violation of association rules."

6. Documents sufficient to show the types and categories of information supplied to TSYS by Cynergy's VIMAS software, including but not limited to information concerning the Reserves and other deductions to be made by Harris before transmitting funds to Cynergy's merchant customers.

7. All documents concerning the Reserves, including, but not limited to, all documents concerning any oral or written communications, meetings, deliberations, analyses, summaries, reports, or memoranda regarding the Reserves and regarding the claimed discovery by Harris or Moneris that the Reserves were not held at Harris.

8. All agreements between Harris or Moneris and TSYS, or between TSYS and Cynergy, that relate to TSYS's provision of services in connection with the processing of electronic payments to Cynergy merchant customers.

9. All documents concerning any requests by merchants for the return of Reserves.

10. All documents concerning any instances in which Cynergy failed to fund an obligation that Harris or Moneris contends was to be funded by a payment from the Reserves.

11. All documents concerning any losses Harris or Moneris claims to have incurred related to the Reserves.

12. All documents concerning any assertion by Harris or Moneris of fraud or other attempt to mislead with respect to the Reserves.

13. All documents concerning any assertion by Harris or Moneris that Cynergy provided them incomplete or inaccurate information with respect to the Reserves.

14. All documents concerning the Forbearance Agreement.

15. All documents concerning any audits of Cynergy's performance under the BIN Agreement or Merchant Processing Agreements.

TOPICS OF EXAMINATION

1. The respective roles of Cynergy, Harris, Moneris, issuing banks, merchants, the credit card associations, and other parties in processing or facilitating the processing of credit card, debit card, or other electronic transactions.

2. The Reserves, including, but not limited to, Cynergy's treatment and accounting of the Reserves, Harris's/Moneris's treatment of Reserves before July 16, 2009, Harris's/Moneris's treatment of Reserves on and after July 16, 2009, and communications concerning the Reserves.

3. The flow of funds from Harris/Moneris to Cynergy, including the transmittal of revenue and Reserves withheld from (or received from) merchants from Harris/Moneris to Cynergy.

4. Any efforts by Moneris or Harris to establish accounts to house Reserves, to withhold Reserves from Cynergy, to direct Cynergy to place Reserves in segregated accounts, or to otherwise monitor Cynergy's treatment or use of Reserves.

5. Any assertion by Harris or Moneris of fraud or other attempt to mislead with respect to the Reserves and any assertion by Harris or Moneris that Cynergy provided them incomplete or inaccurate information with respect to the Reserves.

6. Harris's and Moneris's access or lack of access to information concerning the Reserves, including, but not limited to, access to information provided by Cynergy or access to information supplied by Cynergy to TSYS or any other Person or information system.

7. The BIN Agreement, including, but not limited to, due diligence performed in connection with Harris's entry into the BIN Agreement.

8. The Merchant Processing Agreements.

9. Any audits of Cynergy performed by Moneris or Harris.

10. The July 16 Letter, including, but not limited to, the assertions that Cynergy has been improperly "holding merchant reserves rather than turning over these reserves to Harris/Moneris," "is in default under the [BIN Agreement]," and is in "violation of association rules."

11. The Forbearance Agreement.

12. Requests by merchants for the return of Reserves and any instances in which Cynergy failed to fund an obligation that Harris or Moneris contends was to be funded by a payment from the Reserves.

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

(Jointly Administered)

Ref. No. _____

**ORDER UNDER FED. R. BANKR. P. 2004, DIRECTING
EXAMINATION OF AND PRODUCTION OF DOCUMENTS BY
HARRIS N.A. AND MONERIS SOLUTIONS, INC.**

Upon the Motion of Dymas Funding Company, LLC, as the Junior Agent, and Garrison Credit Investments I LLC and Garrison Credit Opportunities Holdings L.P., Term B Lenders, for an Order under Rule 2004 (“Rule 2004”) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), directing Harris N.A. (“Harris”) and Moneris Solutions, Inc. (“Moneris”) to designate corporate representative(s) to submit to oral examinations and to produce documents (the “Motion”);² and adequate and sufficient notice of the Motion having been provided to all parties in interest; and objections, if any, to the Motion having been overruled, settled or withdrawn; and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is granted in its entirety; and it is further

ORDERED that each of Harris and Moneris are directed to produce on a rolling basis, and in any event no later than seven (7) days of the date of this order, the documents requested in the schedules attached to the Motion as “Schedule of Documents To Be Produced

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

By Harris” and “Schedule of Documents To Be Produced By Moneris” (the “Requests”); and it is further

ORDERED that the witnesses of each of Harris and Moneris shall be available for depositions by the Movants on at least seven (7) days written notice made to counsel; and it is further

ORDERED that the Movants may videotape any oral examinations of individuals representing Harris and Moneris; and it is further

ORDERED that, as provided by Bankruptcy Rule 7062, this Order shall be effective and enforceable immediately upon entry; and it is further

ORDERED that the Movants are hereby authorized to serve such other and additional discovery requests, including, without limitation, document requests and deposition notices upon Harris and Moneris, without further order of the Court, to the extent the Movants deem necessary; and it is further

ORDERED that this Court retains jurisdiction to resolve any disputes arising under or related to this Order, including any disputes relating to the breadth or propriety of discovery that may arise between or among the parties, and to interpret, implement and enforce the provisions of this Order.

Dated: _____, 2009
Wilmington, Delaware

Honorable Kevin Gross
United States Bankruptcy Court