

**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)

**MOTION PURSUANT TO DEL. BANKR. L.R. 9006-1(e)
FOR ORDER SHORTENING TIME FOR NOTICE OF HEARING TO
CONSIDER MOTION OF DYMAS FUNDING COMPANY, LLC,
GARRISON CREDIT INVESTMENTS I LLC, AND GARRISON
CREDIT OPPORTUNITIES HOLDINGS L.P. FOR 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 (the “Motion to Shorten”), pursuant to Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an order shortening the time for notice to consider the *Joint Motion of*

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”); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity

*Dymas Funding Company, LLC, Garrison Credit Investments I LLC, and Garrison Credit Opportunities Holdings L.P. for an Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Authorizing Discovery from Harris N.A. and Moneris Solutions, Inc. (the “Motion”).*²

BACKGROUND

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. As set forth more fully in the Motion, a dispute has arisen between the Movants and Harris N.A. (“Harris”), Cynergy’s sponsoring bank pursuant to a BIN Sponsorship Agreement between Cynergy and Harris, dated November 1, 2008 (the “BIN Agreement”), regarding the entitlement to proceeds of the proposed and impending sale of Debtors’ assets. Although the list designating the executory contracts that the proposed purchaser intends to assume as part of the sale has not been circulated yet, the Movants expect that the BIN Agreement will be among such contracts. Harris and its affiliate, Moneris Solutions, Inc. (“Moneris”), contend that, as a result of claimed “default” by Cynergy under the BIN Agreement, they are entitled to recover \$21 million from the estate to make up a purported “shortfall” in “Rolling Reserves” they contend should have been on deposit at Harris.

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 used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

3. The Movants do not regard the various contracts at issue as supporting the position asserted by Harris and Moneris with respect to Rolling Reserves. As set forth in the Motion, based upon the information presently available to the Movants, Harris and Moneris do not appear to be justified in claiming that they entitled to payment of \$21 million from Cynergy. Based upon the information available to the Movants, it appears that Harris and Moneris in fact delivered to Cynergy the funds they now claim should be on deposit with Harris, knowing that those funds constituted the now disputed Rolling Reserves. Given the proposed and impending sale of assets by the Debtors, currently scheduled for approval by this Court October 7, 2009, it is essential to determine the validity of the Harris/Moneris position.

RELIEF REQUESTED

4. Local Rule 9006-1(c) provides for a sixteen (16) day notice period (if service is by overnight delivery) for motions, like motions pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), not otherwise governed by the Bankruptcy Rules or the Local Rules. Pursuant to Local Rule 9006-1(e), however, such periods may be shortened by Order of the Court upon written motion specifying the exigencies supporting shortened notice.

5. The Movants submit that there is sufficient cause to justify shortening the notice period for the hearing on the Motion. Pursuant to the Court's September 15, 2009 Order (the "Bid Procedures Order"), a hearing on the proposed sale of the Debtors' assets is scheduled to be held on Wednesday, October 7, 2009, and the Debtors are required to deliver cure notices no later than 10 days prior to that date. Pursuant to the Order, objections to the proposed cure amounts and to the proposed sale are due on Tuesday, October 6, 2009. In light of the foregoing, Movants submit that consideration of the Motion at the Court's earliest convenience is necessary so that the Movants may determine and assess the validity and factual basis of Harris/Moneris's

assertion of a “default” under the BIN Agreement prior to filing any objection to Harris’s expected position on the application of the sale proceeds.

NOTICE

6. The 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.

WHEREFORE, the Movants respectfully request that the Court enter an order, substantially in the form attached hereto, scheduling a hearing on the relief requested in the Motion at the Court’s earliest convenience and establishing an objection deadline.

Dated: September 21, 2009
Wilmington, Delaware

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

In re:

CYNERGY DATA, LLC, *et al.*,³

Debtors.

Chapter 11

Case No. 09-13038 (KG)

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Ref. No. _____

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Upon consideration of the motion (the “Motion to Shorten”) of Dymas Funding Company, LLC, Garrison Credit Investments I LLC, and Garrison Credit Opportunities Holdings L.P. (the “Movants”), pursuant to Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, for entry of an order shortening the time for notice to consider Movants’ *Motion for an Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Authorizing Discovery from Harris N.A. and Moneris Solutions, Inc.* (the “Motion”); and the Court having determined that granting the relief requested in the Motion to Shorten is in the best interests of the Debtors, their estates and creditors and other parties in interest; and it appearing that due and adequate notice of the Motion to Shorten has been given under the circumstances, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Motion to Shorten is granted; and it is further

ORDERED, that the Motion shall be heard on _____; and it is further

ORDERED, that objections to the relief requested in the Motion shall be filed and served upon counsel to the Movants no later than _____; and it is further

ORDERED, that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: September ____, 2009
Wilmington, Delaware

Honorable Kevin Gross
United States Bankruptcy Court

³ 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.