

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

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In re: : Chapter 11
: :
Cynergy Data, LLC, *et al.*, : Case No. 09-13038 (KG)
: :
Debtors. : Jointly Administered
: :
: **Objection Deadline: October 6, 2009 at 12:00 p.m.**
: **Hearing Date: October 7, 2009 at 2:00 p.m.**
: :
: **RE: D.I. 13, 106 and 121**
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**OBJECTION OF TSYS ACQUIRING SOLUTIONS, LLC TO NOTICE OF DEBTORS’
INTENT TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES AND
EXECUTORY CONTRACTS AND SETTING FORTH THE CURE AMOUNTS**

TSYS Acquiring Solutions, LLC (“TSYS”), a processor in the above-referenced bankruptcy cases, by and through undersigned counsel, files this Objection to Notice of Debtors’ Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts (the “Objection”). In support of this Objection, TSYS respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to hear and determine this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

BACKGROUND AND OBJECTION

2. On September 1, 2009 (the “Petition Date”), each of the Debtors filed a petition with the Court under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). The Debtors are operating their businesses and managing their

properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Cynergy Data, LLC and its Debtor subsidiaries ("Cynergy"), and Cynergy Holdings, LLC (the "Purchaser"), a Delaware limited liability company formed by The ComVest Group, entered into an Asset Purchase Agreement, dated as of August 26, 2009 (the "Purchase Agreement"), which contemplates a set of related transactions for the sale of substantially all of the Debtors' tangible, intangible and operating assets.

4. On September 1, 2009, the Debtors filed a motion with the Bankruptcy Court (Docket No. 13) (the "Sale Motion") seeking, among other things, (a) authority to sell substantially all of the Debtors' assets free and clear of all liens, claims, interests and encumbrances to the Purchaser or another bidder (the "Sale Transaction"); (b) approval of certain procedures (the "Bidding Procedures") for the solicitation of competing bids with respect to the Sale Transaction; (c) authority to assume and assign certain executory contracts and unexpired leases in connection with the Sale Transaction; and (d) scheduling of a final hearing with the Bankruptcy Court for approval of the Sale Transaction.

5. A hearing on the Sale Motion was held before the Bankruptcy Court on September 2, 2009, and was continued until September 15, 2009, after which the Bankruptcy Court entered an order (Docket No. 106) and an amended order (Docket No. 121) (the "Bidding Procedures Order") that, among other things, approved certain procedures (the "Contract Procedures") establishing a process for (a) the assumption of agreements by the Debtors and the assignment of these agreements to the Purchaser, (b) the determination of the amounts necessary to cure defaults under the assumed and assigned agreements (the "Cure Costs") and (c) the

resolution of other disputes in connection with the assumption and assignment of the agreements pursuant to section 365 of the Bankruptcy Code.

6. Consistent with the Contract Procedures, on September 25, 2009, the Debtors served certain contract parties with the Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts, which identifies (a) certain agreements, contracts, and leases that the Debtors identified as agreements that they intend to assume and assign to the Purchaser and (b) the corresponding Cure Costs under such agreements to be assumed and assigned as of a date uncertain ("Assumption Notice").

7. Pursuant to the Sale Motion and Assumption Notice, TSYS is party to agreements proposed to be assumed by the Debtors and assigned to the Purchaser (the "Designated Agreements").

8. In the Assumption Notice, the Debtors list the Cure Cost for TSYS's Designated Agreements as \$0, an amount that TSYS disputes.

9. TSYS and the Debtors are attempting to resolve the dispute over the Cure Cost without judicial intervention. However, due to time constraints, the Debtors have been unable to make any assurances with respect to resolving the Cure Cost prior to the Sale Hearing scheduled for October 7, 2009 at 2:00 p.m. Accordingly, TSYS is filing this objection as a protective measure to insure that its rights are protected.

10. The Debtors currently owe TSYS \$480,178.98 for processing fees incurred in the month of August 2009. The Debtors further owe TSYS an amount yet to be determined for processing fees incurred in the month of September 2009, although TSYS believes that the amount owed for September will be substantially similar to the amount owed for the month of

August.¹ The Debtors will additionally owe TSYS an amount yet to be determined for processing fees incurred during the month of October 2009 through the yet to be determined Closing Date, as that term is defined in the Purchase Agreement.² Thus, TSYS's total Cure Cost cannot be fully determined at this time.

11. TSYS objects to the Cure Cost on the grounds that the Agreements cannot be assumed without concurrent cure of all arrearages. "Section 365(b) of the executory contracts section of the [Bankruptcy] Code requires a debtor to cure pre-petition defaults as a precondition of assuming an executory contract." In re Stoltz, 315 F.3d 80, 86 (2nd Cir. 2002); see also 11 U.S.C. § 365(b).

MEMORANDUM OF LAW

12. Because the legal points and authorities upon which TSYS relies for purposes of this Objection are incorporated into the Objection, TSYS respectfully requests that the Court deem satisfied or, alternatively, waive any requirement of the filing of a separate memorandum of law.

RESERVATION OF RIGHTS

13. TSYS reserves its rights (a) to amend, supplement, or otherwise modify this Objection as necessary or proper; and (b) to raise such other and further objections to any proposed assumption and assignment, and/or the Cure Cost for the proposed assumption and assignment, of the Designated Agreements.

¹ The invoice for the amounts owed by the Debtors to TSYS for the month of September 2009 will be available October 9, 2009.


² The invoice for the amounts owed by the Debtors to TSYS for the month of October 2009 through the Closing Date will be available on or around November 9, 2009.

CONCLUSION

WHEREFORE, TSYS respectfully objects to the Cure Cost set forth in the Assumption Notice and requests that this Court enter an order (i) establishing TSYS's Cure Cost for the month of August 2009 as \$480,178.98, as set forth above, (ii) require Purchaser to pay to TSYS amounts owed for the month of September 2009 and October 2009 through the Closing Date as soon as said amounts are available for invoicing, and (iii) granting TSYS such other and further relief as may be just and proper.

Dated: October 5, 2009

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

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In re:) Chapter 11
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CYNERGY DATA, LLC, et al.,) Case No. 09-13038 (KG)
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Debtors.) Jointly Administered
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AFFIDAVIT OF WILLIAM WELLER, PARALEGAL

STATE OF DELAWARE :
: SS:
NEW CASTLE COUNTY :

I, William Weller, certify that I am, and at all times during the service, have been, an employee of Morris James LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on October 5, 2009, I caused service of the following:

**OBJECTION OF TSYS ACQUIRING SOLUTIONS, LLC TO NOTICE OF DETBORS'
INTENT TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES AND
EXECUTORY CONTRACTS AND SETTING FORTH THE CURE AMOUNTS**

Service was completed upon the following parties on the attached service as indicated thereon.

Date: October 5, 2009



William Weller

SWORN TO AND SUBSCRIBED before me this 5th day of October, 2009.



NOTARY

My commission expires: _____

RUTH F. SALOTTO
Notary Public - State of Delaware
My Comm. Expires June 9, 2011

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