

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

IN RE:

CYNERGY DATA, INC., *et al.*

Debtors

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**OBJECTION OF CPS OF NEW YORK INC. TO DEBTORS' NOTICE OF DEBTORS'
INTENT TO ASSUME AND ASSIGN CERTAIN
UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND
SETTING FORTH THE CURE AMOUNTS**

CPS OF NEW YORK INC. ("CPS"), a creditor and party in interest herein, by and through its undersigned counsel, hereby files this Objection to Debtors' Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts (this "Objection"), objecting to Debtors' Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts (the "Notice") to the extent the Notice relates to the executory contract as between CPS and Cynergy Data, LLC ("Cynergy"). In support of this objection, CPS would respectfully show the Court as follows:

I. FACTUAL BACKGROUND

1. On or about September 1, 2009 (the "Petition Date"), 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. CPS is an independent sale organization, commonly referred to as an "ISO," that

identifies and solicits merchants to contract for credit and debit card processing to enable those merchants to allow their customers to pay for products and/or services with credit and debit cards. In this regard, CPS and Cynergy entered into a certain ISO Processing Agreement dated June 28, 2004, under which CPS would solicit merchants for processing services and engage Cynergy to provide those services, which was amended by that certain Settlement and Modification Agreement (the "Modification Agreement") entered into between CPS, Merchant Processing Services Corp., and Cynergy dated June 24, 2009 and certain other amendments thereto (as amended, the "ISO Agreement").

3. On or about September 25, 2009, the Debtors issued its Notice which reflects the Debtors' intention to assume and assign to the successful purchaser its executory contract with CPS. The Notice further identifies CPS twice and indicates that the Debtors contend that there is no cure amount due CPS in either instance for purposes of assumption under 11 U.S.C. § 365(b)(1).

II. OBJECTION TO ASSUMPTION NOTICE AND CURE AMOUNT

4. CPS objects to the Notice in six respects. First, CPS objects to the Notice on the basis that the Notice fails to provide adequate notice of precisely which executory contract(s) the Debtors are seeking to assume and assign. Particularly since CPS was identified twice in the Notice, there is no indication whether the Debtors are seeking to assume just the ISO Agreement or some other agreement between the parties. The precise agreement(s) the Debtors seek to assume will determine the cure amounts due CPS in accordance with 11 U.S.C. § 365(b)(1). CPS does not object generally to the assumption of its agreements; however, the Debtors should be required to specify which agreement(s) they intend to assume and assign.

5. Second, CPS objects to the Notice on the basis that it is unclear which cure

amount identified therein relates to which executory contract that the Debtors are seeking to assume.

6. Third, CPS objects to the Notice on the basis that it is unclear whether the cure amounts identified therein relates to those amounts held by Cynergy in a reserve account for the benefit of CPS pursuant to the ISO Agreement.

7. Fourth, CPS objects to the Notice on the basis that the cure amounts identified therein, zero (\$0), is inaccurate. CPS's books and records reflect that as of the filing date of this Objection Cynergy was indebted to it with respect to the ISO Agreement in the sum of \$26,985.18 (the "ISO Agreement Debt"), which amount does not include any amounts of CPS in the reserve account. Generally upon receipt of its statements regarding its compensation from Cynergy, CPS reconciles such statements with its own books and records and provides notice to Cynergy of any discrepancies related thereto, hereinafter referred to as "suspended funds". CPS notified Cynergy of these suspended funds and Cynergy agreed to pay such amounts to CPS by e-mail. A copy of this e-mail is attached hereto as part of an e-mail chain as Exhibit A. No such payment was ever made to CPS despite Cynergy's agreement to do so.

8. As stated previously, it is unclear whether amounts in the reserve account constitute an amount for cure under 11 U.S.C. § 365(b)(1). To the extent that it does, CPS's books and records reflect that it has an amount equal to \$182,595.63 in its reserve account as of the filing date of this Objection (the "Reserve Account Debt" and, together with the ISO Agreement Debt, the "Default Amount"). Cynergy has an account with Comerica Bank that holds these reserves for the benefit of CPS. A copy of a statement from Comerica Bank setting forth the Reserve Account Debt is attached hereto as Exhibit B. CPS believes that the Default

Amount constitutes that amount due it for purposes of assumption under 11 U.S.C. § 365(b)(1)¹.

9. Fifth, CPS objects to the Notice on the basis that if any of the cure amounts identified for any of the ISO Merchants (as defined below) are incorrect, CPS would be liable for merchant chargebacks pursuant to the ISO Agreement to the extent that there were insufficient funds in the Rolling Reserve (as defined in that certain Asset Purchase Agreement dated August 26, 2009, by and among Cynergy Holdings, LLC, Cynergy Data, LLC and Cynergy Prosperity Plus, LLC) as a result of such incorrect cure amounts for such merchants.² “ISO Merchants” means those merchants identified on Schedule 1 of the Notice that have been solicited and referred to Cynergy for credit and debit card processing by CPS.

10. Sixth, the Notice fails to consider actual pecuniary loss suffered by CPS by virtue of Cynergy’s defaults under the ISO Agreement and, to the extent applicable, any other agreement between the parties that is assumed and assigned by the Debtors.

III. PRAYER

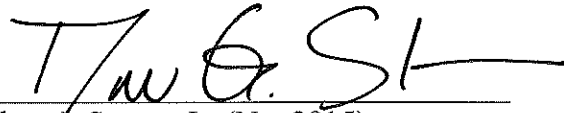
WHEREFORE, CPS of New York Inc. requests that the Court (i) require Cynergy to identify the contract(s) between the parties that it seeks to assume, (ii) after appropriate notice and opportunity for hearing, determine the proper “cure amount” and actual pecuniary loss due CPS as to the specific contract, and (iii) grant CPS such other and further relief to which it may be justly entitled.

¹ The Default Amount represents that amount due CPS as of the filing date of this Objection. Because of the nature of the merchant processing business, the amount balance between the parties will fluctuate on a daily basis.

² Any incorrect cure amounts identified in the Notice with respect to any ISO Merchant will affect the Default Amount due CPS for purposes of assumption under 11 U.S.C. § 365(b)(1).

Dated: October 6, 2009
Wilmington, Delaware

Respectfully submitted,



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Attorneys for CPS of New York Inc.

EXHIBIT A

**OBJECTION OF CPS OF NEW YORK INC. TO DEBTORS' NOTICE OF DEBTORS' INTENT TO ASSUME AND
ASSIGN CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND SETTING FORTH
THE CURE AMOUNTS – Page 8**

From: vimastrackit@cynergydata.com [mailto:vimastrackit@cynergydata.com]
Sent: Wednesday, May 27, 2009 12:52 PM
To: vlad@mpsaccess.com
Subject: Vimas TrackIT Case Number 1420126 Resolved

Please do not reply to this email address as it is system generated.

Cynergy data has resolved your Vimas TrackIT Case Number **1420126**:

SPIRT WALK
3899000000152601

It was resolved as follows:

Reconciliation has been completed -- please review file to breakdown regarding payment amounts and residual effective dates. As per ISOs contract, items not disputed after 90 days after recovery are no longer eligible for payment to ISO.

MID: 3899000000152601

DBA Name: SPIRT WALK

Original Sender Name: ISO(9742)

Department Sent To: ISO Relations

Original question or issue: Please forward the attached spreadsheet to Claudine Epps in Accounting to review the discrepecies between Suspended funds and ACH Uncollected. MPS - CPSNY is due \$26,985.18.

Resolved By: Giovanni Difebo

Response: **Reconciliation has been completed -- please review file to breakdown regarding payment amounts and residual effective dates. As per ISOs contract, items not disputed after 90 days after recovery are no longer eligible for payment to ISO.**

EXHIBIT B

**OBJECTION OF CPS OF NEW YORK INC. TO DEBTORS' NOTICE OF DEBTORS' INTENT TO ASSUME AND
ASSIGN CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND SETTING FORTH
THE CURE AMOUNTS – Page 9**

80111

CYNERGY DATA LLC
FBO CPS OF NEW YORK INC
45 W 36TH ST FL 6
NEW YORK NY 10018-7635

**Business Money Market Account
statement**

September 1, 2009 to September 30, 2009
Account number [REDACTED]

Account summary

Beginning balance on September 1, 2009	\$ [REDACTED]
Plus deposits	
Interest	\$ [REDACTED]
Transfers from other accounts	\$ [REDACTED]
Less withdrawals	
Fees and service charges	-\$ [REDACTED]
Ending balance on September 30, 2009	\$182,595.63

Interest rates on September 30, 2009

Interest rates we paid at the end of this statement period:

- on balances of \$1 to \$4,999 : 0.05%
- on balances of \$5,000 to \$14,999 : 0.05%
- on balances of \$15,000 to \$24,999 : 0.15%
- on balances of \$25,000 to \$49,999 : 0.15%
- on balances of \$50,000 to \$99,999 : 0.15%
- on balances of \$100,000 to \$499,999 : 0.30%
- on balances of \$500,000 to \$999,999 : 0.40%
- on balances of \$1,000,000 or more: 0.50%

Summary of interest earned

- Interest paid to you this statement period: \$ [REDACTED]
- Total interest paid to you this year: \$ [REDACTED]

To contact us

Call
(313) 564-5717
Hearing impaired (TDD 800 822-6546)

Visit our web site
www.comerica.com

Write to us

COMERICA BANK
PO BOX 75000
DETROIT, MI 48275-8111

Important information

Capturing deposits has never been more convenient. With Comerica Business Deposit Capture (SM) you can scan and send checks directly from your office to your Comerica business checking account anytime you want. It saves you time and cost from trips to the bank, and gives you extended hours for making deposits. Please contact your Treasury Management Sales Officer today for more details.

The FDIC Charge for September is \$.20/\$1,000.

Thank you

Thank you for being a Comerica customer. We value the trust and confidence that you continue to place in us.

Business Money Market Account statement
September 1, 2009 to September 30, 2009

Business Money Market Account account details: [REDACTED]

Other deposits this statement period

Date	Amount (\$)	Activity	Reference numbers	
			Customer	Bank
Sep 30	[REDACTED]	[REDACTED]		[REDACTED]
Total Other Deposits: \$ [REDACTED]				
Total number of Other Deposits: [REDACTED]				

Transfers from other accounts this statement period

Date	Amount (\$)	Activity	Bank reference number
Total Transferred from Other Accounts: \$ [REDACTED]			
Total number of Transfers from Other Accounts: [REDACTED]			

Fees and service charges this statement period

Date	Amount (\$)	Activity	Bank reference number
Total Fees and Service Charges: -\$ [REDACTED]			
Total number of Fees and Service Charges: [REDACTED]			

\$ Lowest daily balance

Your lowest daily balance this statement period was \$ [REDACTED] on September 14, 2009.

Business Money Market Account statement
September 1, 2009 to September 30, 2009

Business Money Market Account: _____

Please examine this statement promptly.

If there is an inaccuracy between your records and this statement contact us as soon as possible at the telephone number or address printed on the front page. You may want to retain this statement for your records.

Reconciling Your Account Before you start, please be sure to enter any transactions (interest, deposits, checks, withdrawals, including Comerica ATM Card transactions and Comerica VISA Check Card or other charges) including those shown on your statement that are not listed in your account register.

Compare the amount of each check, plus other deposits and withdrawals listed on this statement, with the amount written in your account register.

<p>A. List any deposits not shown on this statement</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Date</th> <th style="width: 70%;">Amount</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table> <p>Total A: \$ _____</p>	Date	Amount																					<p>B. List all checks and other withdrawals not shown on this statement</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Check Number</th> <th style="width: 70%;">Amount</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table> <p>Total B: \$ _____</p>	Check Number	Amount																					<p>Enter Balance from last date on this statement \$ _____</p> <p>Plus Total A +\$ _____</p> <p>Equals = \$ _____</p> <p>Minus Total B -\$ _____</p> <p>Equals Your Current Balance = \$ _____</p>
Date	Amount																																													
Check Number	Amount																																													

Case of Errors or Questions About Your Electronic Transfers
If you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement, call or write us as possible at the telephone number and address printed on the front page. For pre-authorized transfers (e.g. insurance payments, etc.) called on the front page of this statement or write the Electronic Services Department, Attn: Research, P.O. Box 75000, Detroit, Michigan 48275-7570. For Comerica ATM Card or Comerica Visa Check Card transactions, call the number printed on the front page of this statement. For business account electronic transactions, we must be notified no later than 30 days after we sent the FIRST statement on which the problem or error appeared.

- I. tell us your name and account number;
- II. describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why information;
- III. tell us the dollar amount of the suspected error.

CERTIFICATE OF SERVICE

I, Drew G. Sloan, do hereby certify that on the 6th day of October, 2009, I caused a copy of the foregoing **Objection of CPS of New York Inc. to Debtors' Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts** to be served upon each of the parties and in the manner indicated below.

Via Email and Hand Delivery

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Lockbox 35
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thomas.p.tinker@usdoj.gov

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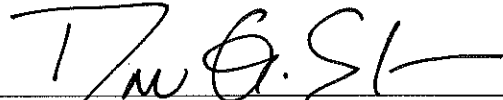
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