

**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

Related Docket No. 12

**ORDER AUTHORIZING THE DEBTORS TO (A) EMPLOY AND RETAIN
KURTZMAN CARLSON CONSULTANTS LLC AS CLAIMS, NOTICING,
SOLICITATION, BALLOTING, AND TABULATION AGENT FOR THE DEBTORS;
AND (B) APPOINT KURTZMAN CARLSON CONSULTANTS LLC AS AGENT OF
THE BANKRUPTCY COURT**

Upon consideration of the application (the "Application") of the above-captioned Debtors (the "Debtors") for entry of an order (a) authorizing the Debtors to employ and retain Kurtzman Carlson Consultants LLC ("KCC") as claims, noticing, solicitation, balloting, and tabulation agent for the Debtors; and (b) appointing KCC as agent of the Bankruptcy Court, all as set forth in the Application; and upon the Frishberg Declaration² in support thereof; and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Application and the opportunity for a hearing on the Application was appropriate under the particular circumstances; and the Court having reviewed the Application and having considered the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set

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 used herein but not otherwise defined herein shall have the meanings ascribed to them in the Application.

forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Application is GRANTED as set forth below.

2. The Debtors are authorized to retain and employ KCC under the Services Agreement, effective as of the commencement of these chapter 11 cases, to perform the noticing and other services described in the Application and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases.

3. The terms of the Services Agreement are approved.

4. KCC is appointed as agent for the Clerk's Office and custodian of court record and, as such, is designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain an official claims register for each of the Debtors and to provide the Clerk's Office with a certified duplicate thereof as directed by the Clerk's Office.

5. KCC is authorized and directed to perform all related tasks to process the proofs of claim and maintain claims registers as set forth in the Application.

6. The indemnification provisions of the Services Agreement are approved, subject to the following clarifications:

- (a) Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, KCC, in accordance with the Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with KCC's performance of the services described in the Agreement;
- (b) KCC shall not be entitled to indemnification, contribution, or reimbursement for services other than the claims agent services provided under the Services Agreement, unless such services and the

indemnification, contribution, or reimbursement therefor are approved by the Court;

- (c) Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by this Order; and
- (d) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing the Chapter 11 Cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Agreement, including without limitation the advancement of defense costs, KCC must file an application before this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC.

7. Without further order of the Court, the Debtors are authorized to compensate KCC in accordance with the terms and conditions of the Services Agreement, upon KCC's submission to the Debtors of invoices summarizing in reasonable detail the services and expenses for which compensation is sought.

8. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC incurred pursuant to the Services Agreement shall be an administrative expense of the Debtors' estates.

9. Notwithstanding the terms of the Services Agreement, the retainer under the Services Agreement may only be held as security for the payment of expenses (and not fees) under the Services Agreement.

10. If these cases convert to cases under chapter 7, KCC will continue to be paid for its services until the claims filed in these chapter 11 cases have been completely processed; if claims agent's representation is necessary in the converted chapter 7 cases, KCC will continue to be paid in accordance with 28 U.S.C. section 156(c) under the terms set forth herein.

11. In the event KCC is unable to provide the services set out in this Order or KCC's services are terminated, KCC will immediately notify the Clerk's Office and the Debtors' attorneys and cause all original proofs of claim and computer information to be turned over to another claims agent with the advice and consent of the Clerk's Office and the Debtors' attorneys.

12. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

13. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a).

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware

Sept. 2, 2009


UNITED STATES BANKRUPTCY JUDGE