

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

In re: CD LIQUIDATION CO., LLC, f/k/a CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 09-13038 (KG) Jointly Administered <u>Hearing Date:</u> May 20, 2010 at 2:00 p.m. (EST) <u>Objection Deadline:</u> May 10, 2010 at 4:00 p.m. (EST) Related Docket Nos. 13, 106, 121, 222, 258 and 389
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**MOTION TO ENFORCE THE SALE ORDER AND TO COMPEL DEBTORS TO
CAUSE TO BE RELEASED FROM ESCROW CERTAIN EP RESERVE CURE COSTS**

Cynergy Holdings, LLC, the Purchaser (the "Purchaser") under the Asset Purchase Agreement between and among Cynergy Data, LLC and Cynergy Prosperity Plus, LLC, the Sellers (the "Debtors" or "Sellers") dated August 26, 2009 (the "APA"), which was approved by Order of this Court dated October 9, 2009 (the "Sale Order") [Dk No. 258] by this motion (the "Motion"), seek entry of an order pursuant to sections 105, 363 and 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") to enforce the Sale Order and to compel the Debtors to cause certain EP Reserve Cure Costs to be released from funds held in escrow to satisfy cure obligations related to the Debtors' assumption and assignment of certain executory contracts in connection with the sale of substantially all of the Debtors' assets to Purchaser. In support of this Motion, the Purchaser states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. The predicates for the relief requested herein are sections 105, 363 and 365 of the Bankruptcy Code.

4. Pursuant to the Sale Order, this Court retained jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of the Sale Order, the APA and all documents executed in connection therewith. Sale Order, ¶ 19, p. 25.

BACKGROUND

5. On September 1, 2009, the Debtors filed a Motion for an Order Pursuant to Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014 (I)(a) Authorizing and Scheduling an Auction at Which the Debtors will Solicit Higher and Better Offers in Connection with the Sale of Certain Assets, (b) Approving the Bid Procedures for Such Assets, (c) Approving Break-Up Fee and Expense Reimbursement and (d) Approving the Form and Scope of Notice of the Bid Procedures and Auction; (II) Approving the Sale of the Assets Free and Clear of All Liens, Claims, and Encumbrances; (III) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief as Requested Herein (the “Sale Motion”) (Docket No. 13).

6. On September 15, 2009, the Court entered the Order (a) Authorizing and Scheduling an Auction and Hearing to Approve the Sale of Substantially all of the Assets of the Debtors, (b) Approving the Bid Procedures for Such Assets, (c) Approving Break-Up Fee and Expense Reimbursement and (d) Approving the Form and Scope of Notice of the Bid Procedures and Auction, (e) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (f) Granting Related Relief (the “Bid Procedures Order”) (Docket No. 106).

7. On September 17, 2009, the Court entered the Order (Amended) (a) Authorizing and Scheduling an Auction and Hearing to Approve the Sale of Substantially All of the Assets of the Debtors, (b) Approving the Bid Procedures for Such Assets, (c) Approving Break Up Fee and Expense Reimbursement, (d) Approving the Form and Scope of Notice of the Bid Procedures and Auction, (e) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (f) Granting Related Relief (the “Amended Bid Procedures Order”) (Docket No. 121).

8. On or about September 24, 2009, pursuant to the Amended Bid Procedures Order, the Debtors served on certain non-debtor parties (the “Non-Debtor Parties”) to unexpired leases and executory contracts the Notice of Debtors’ Intent to Assume and Assign Unexpired Leases and Executory Contracts and Setting Forth Cure Costs (the “Cure Notice”) in which the Debtors set forth the Cure Costs (the “Cure Costs”) with respect to certain unexpired leases and executory contracts.

9. While certain Non-Debtor Parties filed objections (the “Cure Objections”) to the Cure Costs by the objection deadline of October 6, 2009 (the “Cure Objection Deadline”), other Non-Debtor Parties did not object to the stated Cure Costs by the Objection Deadline. The Amended Bid Procedures Order provides that “to the extent that any counterparty to the Transferred Assets did not object to its Cure Amount(s) (as set forth in the respective Cure Notice), by the Cure Objection Deadline (as defined in the Cure Motion), such counterparty is deemed to have consented to such Cure Costs and the assumption and assignment of their respective Assumed Contracts to the Purchaser as of the closing as set forth in the APA.” Sale Order, ¶ S, p. 14. Accordingly, those non-objecting Non-Debtor Parties are, therefore, deemed to have accepted the Debtors’ stated Cure Amount as set forth in the Cure Notice.

10. On October 9, 2009, the Court entered the Sale Order authorizing and approving (a) the sale of Transferred Assets free and clear of liens and encumbrances and (b) assumption and assignment of certain executory contracts and unexpired leases. (Docket No. 258).

11. The Sale Order required, among other things, the Debtors to establish a reserve, out of the Sale proceeds in an amount sufficient to pay in full all Cure Costs (the "Cure Reserve") relating to any default identified by the Debtors in the Cure Notice or any higher amount identified by any Non-Debtor Parties in the Cure Objections. Pursuant to the Sale Order, the Cure Reserves are to be disbursed pursuant to further order of the Court.

12. The Debtors transferred \$38 million of the sale proceeds into escrow to fund the Cure Reserve. Furthermore, the Debtors provided the Purchaser with written confirmation that the Cure Costs would not exceed that amount. Out of the \$38 million approximately \$21 million represents cure costs relating to the unfunded rolling reserves, which are the subject of dispute between and among Harris N.A., Term A Lenders and Term B Lenders (the "Disputed Cure Reserve"). The remaining \$17 million are not subject to the dispute among Harris N.A., Term A Lender and Term B Lenders (the "Undisputed Cure Reserves") and are the subject of the within motion.

13. On October 26, 2009, the Debtors entered into an agreement (the "Escrow Agreement") with Wilmington Trust Company pursuant to which Wilmington Trust Company agreed to serve as escrow agent (the "Escrow Agent") with respect to the Cure Reserve. The Escrow Agreement requires the Escrow Agent to hold the Cure Reserve until it receives a certified final order of the Court directing disbursement.

14. The closing of the sale to Purchaser was effective October 26, 2009 at 12:01 a.m. (the "Closing").

15. On November 20, 2009 the Court entered the Order (I) Authorizing The Debtors to Direct Disbursements From Escrow and (II) Approving the Procedure for Escrow Disbursements Pursuant To 11 U.S.C. § 363 And 365 (the “Escrow Disbursement Order”). (Docket No. 389).

16. Pursuant to the Escrow Disbursement Order, the Debtors are required to give notice of any proposed cure resolution (each a “Cure Resolution Notice”) by filing a Cure Resolution Notice with the Court and serving the Cure Resolution Notice on those parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002.

17. Neither the Amended Bid Procedures Notice nor the Escrow Disbursement Order, however, provides an express mechanism for the Debtors’ payment out of the Cure Reserve of those stated Cure Costs set forth in the Cure Notice for which the Debtors received no objection and are not related to the Disputed Cure Reserve. The Debtors have certain cure obligations to non-objecting Non-Debtor Parties to assumed executory contracts that require disbursements by the Escrow Agent from the Undisputed Cure Reserve, the only available source of funding for these cure payments.

18. A list of certain Non-Debtor Parties to assumed ISO agreements for which the Debtors have outstanding obligations related to unfunded EP Reserves and their respective Cure Costs (the “Unfunded EP Cure Costs”) is attached hereto as **Schedule A**. Two of the parties listed on Schedule A filed objections to the Cure Amount, but the Debtors have represented that the objections do not pertain to Unfunded EP Cure Costs.

19. The Purchaser seeks to enforce the Sale Order to prohibit the Debtors from asserting any claim or interest, by way of offset or otherwise against the Transferred Assets and to compel the Debtors to satisfy the Unfunded EP Cure Costs from the Undisputed Cure Reserve

as set forth on Schedule A. The Purchaser seek an order compelling the Debtors to direct disbursements, in the aggregate from the Undisputed Cure Reserve in the amount of \$832,605.66 in satisfaction of the Unfunded EP Cure Costs. As part of the Sale, the Debtors were obligated to transfer fully "cure" contracts. The Purchaser is now seeking the benefit of its bargained and paid for rights to these contracts.

20. In early February 2010, the Debtors provided the Purchaser with a draft motion for approval of proposed cure disbursements (the "Draft Motion"). By the Draft Motion the Debtors sought to cause, among other things, certain Unfunded EP Cure Reserves to be released from the Undisputed Cure Reserves. The Purchaser noted discrepancies among the Unfunded EP Cure Costs listed in the Draft Motion and the various financials and other documents provided to the Purchaser as part of its due diligence. The Purchaser has tried on numerous occasions to resolve these discrepancies directly with the Debtors, but has been unable to do so. Given time constraints, as further detailed below, the Purchaser needs to resolve these discrepancies immediately and cause the Debtors to have these funds listed on Schedule A released from the Undisputed Cure Reserve.

DISCREPANCIES

21. The basis of the discrepancies between the Debtors' and Purchaser's Unfunded EP Cure Costs calculations appears to that the Debtors are now seeking to assert pre-Closing losses against the Restricted Cash (as defined below), including EP Reserves that were transferred to Purchaser post-Closing, pursuant to the APA as part of the Transferred Assets purchased by the Purchaser.¹

¹ The Purchaser believes that the Debtors are also seeking to offset pre-Closing losses allocable to specific ISOs against Restrict Cash that is not allocated to any particular ISO.

22. The EP Reserves were transferred to the Purchaser free and clear of all liens and encumbrances, pursuant to both the APA and the Sale Order.

23. The Sale Order provides that:

The transfer of the Transferred Assets to the Purchaser will be a legal, valid and effective transfer of the Transferred Assets free and clear of all liens (as defined in section 101(37) of the Bankruptcy Code, whether consensual, statutory, possessory, judicial or otherwise), claims (as defined in section 101(5) of the Bankruptcy Code and including without limitation successor liability claims, and claims related to the Excluded Assets and Excluded Liabilities), or other interests, of any kind or nature whatsoever, whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or after the Petition Date, and whether imposed by agreement, understanding, law, equity or otherwise, accruing, arising or relating thereto any time prior to the closing date (collectively, the "Interests"). Sale Order, ¶, M, pp. 8-9.

24. The Sale Order further provides that:

[A]s of the Closing Date, the Debtors shall transfer, and the Purchaser shall take title to and possession of, the Transferred Assets free and clear of all Interests.... Sale Order, ¶, 4, p.16.

25. The APA defines Transferred Assets to include all of Seller's bank accounts and Restricted Cash. APA § 2.1(g), p.8-9. Restricted Cash is defined as "funds held in connection with a Contract that will be assumed by the Seller and assigned to the Purchaser, on deposit, which are utilized to offset liabilities, losses, fines, penalties and/ or uncured contractual obligations, including but not limited to, as related to merchants, independent sales organizations, executive partners, or other contractual relationships." ("Restricted Cash") APA § 1.1, p. 5. This definition clearly and specifically encompasses the EP Reserves held by the Debtors and subsequently transferred to the Purchaser as part of the Transferred Assets.

26. The EP Reserves were transferred to the Purchaser to fund losses that may arise **post- Closing** in the continuing operations of the business and the relationship between the Purchaser and the counterparties to the ISO agreements. As part of the APA and as bargained for by the Purchaser, the Debtors were responsible for calculating all "Cure Costs", which were to be paid out of the Purchaser Price. The APA provides that the purchase and sale of assets shall include

All Contracts, including, without limitation, the Seller's 401(k) plan and any merchant agreements, whether active, inactive or cancelled (the "Assumed Contracts"); provided, however, the Purchaser acknowledges that it shall be obligated to pay any and all pre- or post-petition date costs and expenses (not to exceed the dollar amount set forth in Section 8.7) when they become due and payable as provided herein and as required by the Sale Approval Order to be paid to cure any and all monetary defaults as of the closing under all Assumed Contracts for which necessary consents and/or Bankruptcy Court approval to transfer have been received (the "Cure Costs") as a component of the consideration for the purchaser of the Transferred Assets. ² APA §2.1(a) p.8.

27. In accordance with the APA the "Cure Costs" are the amounts currently in the Cure Reserve. Purchaser was not and is not responsible for any additional cures, whether directly, by additional cash outlays or indirectly, by offsets against EP Reserves transferred post-Closing. Further, in accordance with Sale Order the Debtors were obligated to transfer *all* of the "Cure Costs" into the Cure Escrow. Sale Order ¶ 5, p. 12. The Debtors provided written confirmation to the Purchaser that the Cure Costs would not exceed \$38 million, the amount transferred by the Debtors into the Cure Reserves.

² As a result of the dispute regarding the Disputed Cure Reserve, Debtors were required to transfer, from the Sale proceeds to an escrow funds sufficient to pay all "Cure Costs." The Purchaser was no longer obligated to pay the Cure Costs, once the Sale proceeds in excess of \$81 million were paid and the Debtors deposited the "Cure Costs" in escrow.

28. The Debtors are now attempting to assert **pre-Closing** losses against the Restricted Cash that was transferred **post-Closing** to the Purchaser, under circumstances where the cure amount placed by the Debtors in the Cure Cost Reserve may not sufficient to cover the **pre-Closing** losses. The Debtors are seeking to reduce the Cure Amount allocated to each ISO by the amounts transferred as Restricted Cash to Purchaser contrary to terms of the Sale Order.

29. The Sale Order prohibits and specifically and permanently enjoins all persons and entities, including the Debtors, from asserting any claims or Interests against the Purchaser or any of the Transferred Assets. The Sale Order provides:

Except as expressly permitted by the APA or by this Order, all persons and entities (including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants and other creditors) holding Interests in or against all or any portion of the Transferred Assets arising under, out of, or in connection with, or in any way relating to the Debtors, the Transferred Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Transferred Assets to the Purchaser, hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such person's or entity's Interests against the Purchaser, any of its Affiliates, successors or assigns, any property of any of the foregoing, or any of the Transferred Assets.

Sale Order, ¶ 6, p. 17

30. The Debtors cannot assert any Interests in, to or against the Restricted Cash for **pre-Closing** losses. These losses are the sole responsibility of the Debtors and should be paid from the Undisputed Cure Reserve. If the Debtors did not adequately reserve for these losses prior to Closing, the Purchaser should not be penalized.³ The Purchaser is entitled to the benefit of its bargain – i.e. Transferred Assets free and clear of all claims, Interests and encumbrances.

³ The Purchaser cannot understand how the at least \$17 million in the Undisputed Cure Reserve is not sufficient to cover these losses. The Debtors have represented to this Court, on numerous occasions that they have a significant cushion in the amount of funds that have been placed in escrow.

31. As a result of the Debtors' attempt to offset these losses, the relationships between the Purchaser and the counterparties to the ISO agreements have become strained. The ISOs are looking to the Purchaser to fund the **pre-Closing** Cure Costs.

32. The Purchaser is seeking to enforce the Sale Order and compel the Debtors to release \$832,605.66 from the Undisputed Cure Reserve, pursuant to the assumption of the ISO agreements. The continued delay in releasing these funds is damaging the Purchaser's current business relationships with the ISOs, the counterparties to the related agreements.

33. As this Court has been advised at numerous court hearings, maintaining good and productive on-going relationships with the ISO counterparties to Assumed Contracts was and is critical to the viability of Purchaser's business operations going forward. Satisfaction of cure claims is mandated by the Bankruptcy Code, Sale Order and APA and is essential to those on-going relationships.

34. Furthermore, the Purchaser, as part of the Transferred Assets purchased all Claims against the counterparties to the Assumed Contracts. The purchase of these Claims were carefully and specifically negotiated to prevent further damage to the fragile relationship that existed between the Debtors and counterparties to Assumed Contracts. Section 2.1(j) of the APA sets forth the claims purchased and provides: any rights and Claims (including claims under chapter 5 of the Bankruptcy Code) of Seller (i) relating to the Assumed Contracts; (ii) set forth on Schedule 4.8; and (iii) against counter parties to an Assumed Contract if such counter party is a merchant, independent sales organization or Harris Bank; and (iv) relating to the Ordonez Indebtedness (collectively, the "Transferred Claims").

35. The Debtors do not deny that the Purchaser purchased their rights and Claims, but assert that the losses are "due from independent sales organizations" and thus somehow may be

collected or charged against the EP Reserves transferred to Purchaser. The Debtors have pointed to the Excluded Assets section of the APA, more specifically section 2.2(e) which provides "All notes receivable set forth in Schedule 2.2(e), and all revenue or other amounts earned by the Seller or due from an independent sales organization or a merchant pursuant to merchant agreements in each case that arose or arise out of the operation of the Business prior to the Closing (including any revenues under such merchant agreements not accrued at Closing but that arise out of the operation of the business prior to the Closing), together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto payable by an independent sales organization or a merchant."

36. Relying on the ". . .or due from independent sale organizations. . .," the Debtors hope to write out of the APA and the Sale Order all of the free and clear language and all of the language making them responsible for determining and paying the "Cure Costs." They further wish to write into the APA's definition of Restricted Cash, language that provides them with the right to offset **pre-Closing** losses against the Restricted Cash transferred free and clear.

37. Section 2.2(m) of the APA provides the Debtors with the only set off rights they have retained **post-Closing**, which were solely to be used defensively . ¶ Section 2.2(m) provides. "Any rights or Claims of Seller against those Persons that are subject of Transferred Claims, to the extent arising out of either (i) counterclaims, setoffs, recoupment or other similar defensive rights (but in no event seeking affirmative recoveries), (ii) objections by such Persons to Seller's assertion of appropriate Cure Costs or (iii) or relating to the Excluded Assets provided for in Section 2.2(e); provided that nothing in this Section 2.2(m) shall be interpreted to expand the definition of Assumed Liabilities." Those set off and similar rights can only be used defensively, as part of the cure costs reconciliation process against those Persons that are subject

to the Transferred Claims. Nothing provides the Debtors with set off rights against the Transferred Assets.

38. Simply put, the Debtors are prohibited by the Sale Order from asserting any Interests in, to or against the Restricted Cash. Nothing in APA changes this result. The Court should enforce the Sale Order and prohibit the Debtors from setting off any pre-Closing losses against any Transferred Asset and compel the Debtors to cause the disbursement of the total amount of the Unfunded EP Reserves out of the Undisputed Cure Reserve.

NOTICE AND PRIOR MOTIONS

39. Notice of this Motion has been given to (a) the Debtors, (b) the United States Trustee for the District of Delaware, (c) counsel to the Committee, (d) counsel to Comerica Bank; (e) counsel to Wells Fargo Foothill LLC; (f) counsel to Dymas Funding Company LLC; (g) counsel to Ableco Finance LLC; (h) counsel to A3 Funding LP; (i) counsel to Garrison Credit Investments; (j) counsel to Harris, N.A; (k) all parties on Schedule A; and (l) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002.

40. In light of the nature of the relief requested herein, the Purchaser submits that no further notice of the Motion is necessary or required.

41. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Purchaser respectfully requests that this Court enter an Order (i) prohibiting the Debtors from directly or indirectly setting off or asserting in any way any claim or Interest against the Transferred Asset; (ii) compelling the Debtors to release certain Unfunded EP Reserve from the Undisputed Cure Reserve to satisfy the Unfunded EP Cure Costs; and (iii) granting such other and further relief as is just and proper.

Dated: April 22, 2010
Wilmington, Delaware

Respectfully submitted,

MESSANA ROSNER & STERN LLP

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*Attorneys for Cynergy Holdings, LLC, its
successors and assigns*

Schedule A

EP CURE AMOUNTS

ABC Global Systems, Inc	\$ 5,072.29
Nationwide Payment Solutions	\$ 1,096.61
2c Processor	\$ 32,080.26
Chexdirect (Talented Integrated Solutions)	\$ 20,276.81
Sierra Payment Solutions.	\$ 69,373.54
Cynergy Data-Central Texas	\$ 14,990.37
Cps Of Texas	\$ 45,000.00
Capital Merchant Services	\$ 16,562.58
First Capital Bankcard	\$ 11,489.70
American Bankcard Services	\$ 24,898.51
Carlton Card & Check Service	\$ 20,795.21
CFS Merchant Services Inc	\$ 15,220.77
Payriot Inc	\$ 50,732.48
UsTransact	\$ 30,684.14
First Alliance Merchant Service	\$ 30,209.38
Merit Capital Advance	\$ 3,422.38
MCC LLC	\$ 32,410.28
Alfred Trexlet (Merchant Banking Services)	\$ 42,401.01
Signapay Ltd	\$ 141,295.71
Atlantic Processing	\$ 2,544.61
National Bank of California	\$ 44,786.82
Go To Billing	\$ 2,372.89
EMG Associates Inc	\$ 28,273.75
Tresys	\$ 1,918.74
America One	\$ 14,023.52
Banctek Solutions	\$ 20,147.26
Priority Payment Systems	\$ 26,374.63
Yapstone	\$ 84,151.41
	<u>\$ 832,605.66</u>

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

In re: CD LIQUIDATION CO., LLC, f/k/a CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 09-13038 (KG) Jointly Administered Related Docket No.:
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**ORDER ENFORCING THE SALE ORDER TO CAUSE DEBTORS TO
RELEASE FROM ESCROW CERTAIN EP RESERVE CURE COSTS**

Upon consideration of the motion (the "Motion")¹ of Cynergy Holdings, LLC, the Purchaser (the "Purchaser") under the Asset Purchase Agreement between and among Cynergy Data, LLC and Cynergy Prosperity Plus, LLC, the Sellers (the "Debtors" or "Sellers"), pursuant to sections 105, 363 and 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") to enforce the order dated October 9, 2009 approving the Sale of substantially all assets, free and clear of all claims, Interest and Encumbrances of the Debtors to the Purchaser (the "Sale Order") and to compel the Debtors to cause certain EP Reserve Cure Costs to be released from funds held in escrow to satisfy cure obligations related to the Debtors' assumption and assignment of certain executory contracts in connection with the Sale, and the Court having reviewed the Motion; and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (c) due and sufficient notice of the Motion has been given; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.

¹ All terms not otherwise defined herein or in the Motion shall have the meaning ascribed to them in the Sale Order.

2. The Debtors are directed to immediately cause to be released \$832,605.66 from the Undisputed Cure Reserve to satisfy the Unfunded EP Cure Costs, in accordance with and as set forth on Schedule A to the Motion.

3. The Debtors and any Person acting for them, or on their behalf hereby are forever barred, estopped and permanently enjoined from, directly or indirectly asserting, prosecuting or otherwise pursuing any Interests, including any and all losses, set offs and other claims that arose prior to the Closing against the Purchaser, any of its Affiliates, successors or assigns, any property of any of the foregoing, or any of the Transferred Assets, including the Restricted Cash.

4. This Order is without prejudice to the rights of the Purchaser to seek the further release of funds from escrow in the future.

5. This Court shall retain jurisdiction over all affected parties with respect to any matters, claims, or rights arising from or related to the implementation and interpretation of this Order.

Dated: Wilmington, Delaware
May __, 2010

Kevin Gross
United States Bankruptcy Judge

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

In re: CD LIQUIDATION CO., LLC, f/k/a CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 09-13038 (KG) Jointly Administered <u>Hearing Date:</u> May 20, 2010 at 2:00 p.m. (EST) <u>Objection Deadline:</u> May 10, 2010 at 4:00 p.m. (EST) Related Docket Nos. 13, 106, 121, 222, 258 and 389
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**NOTICE OF MOTION TO ENFORCE SALE ORDER AND TO
COMPEL DEBTORS TO CAUSE TO BE RELEASED FROM ESCROW
CERTAIN EP RESERVE CURE COSTS**

PLEASE TAKE NOTICE, Cynergy Holdings, LLC, the Purchaser (the "Purchaser") under the Asset Purchase Agreement between and among Cynergy Data, LLC and Cynergy Prosperity Plus, LLC (the "Debtors" or "Sellers") has filed a motion (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court") seeking entry of an order to enforce the Sale Order and to compel the Debtors to cause certain EP Reserve Cure Costs to be released from funds held in escrow to satisfy cure obligations related to the Debtors' assumption and assignment of certain executory contracts in connection with the sale of substantially all of the Debtors' assets to Purchaser;

PLEASE TAKE FURTHER NOTICE, that a hearing to consider the Motion has been scheduled for **May 20, 2010 at 2:00 p.m. (EST)** before the Honorable Kevin Gross, United States Bankruptcy Judge, United States Bankruptcy Court, District of Delaware, 824 Market Street, 6th Floor, Courtroom #3, Wilmington, Delaware 19801 (the "Court"); and

PLEASE TAKE FURTHER NOTICE, that objections to the Motion, if any, must be made in writing, must state with particularity the grounds therefor and must be filed with

the Court, with a courtesy copy delivered to the chambers of the Honorable Kevin Gross, United States Bankruptcy Judge, and served on (1) Messana Rosner & Stern LLP, 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801, Attn: Frederick B. Rosner, Esq., (2) Akerman Senterfitt LLP, 335 Madison Avenue, Suite 2600, New York, New York 10017, Attn: Susan F. Balaschak, Esq., and (3) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801. Attn: Thomas Patrick Tinker, Esq., so that it is actually received by all such parties at or before **4:00 p.m. (Prevailing Eastern Time) on May 10, 2010.**

Dated: April 22, 2010
Wilmington, Delaware

MESSANA ROSNER & STERN LLP

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