

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

In re:

CD LIQUIDATION CO., LLC, f/ka  
CYNERGY DATA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**Objection Deadline: October 14, 2010 at 4:00 p.m. EST**

**Hearing Date: October 21, 2010 at 10:30 a.m. EST**

**SECOND OMNIBUS (SUBSTANTIVE)  
OBJECTION OF THE DEBTORS TO CLAIMS PURSUANT  
TO 11 U.S.C. § 502(B), FED. R. BANKR. P. 3003 AND 3007 AND LOCAL RULE 3007-1**

The above-captioned debtors and debtors-in-possession (the “Debtors”), by and through their undersigned counsel, hereby object, pursuant to section 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the claims listed on **Exhibit A** attached hereto (the “Objection”) for the reasons hereinafter described. The Objection is based upon this pleading, the Declaration In Support of The Debtors’ Second Omnibus (Substantive) Objection of the Debtors to Claims Pursuant to 11 U.S.C. § 502(b), Fed. R. Bankr. P. 3003 and 3007 and Local Rule 3007-1 (the “York Declaration”), and, if applicable, the record in this case. In essence, objection to the listed claims is justified because the obligation underlying each of the listed claims has been fully satisfied and therefore, according to the Debtors’ books and records, no amount is owed to the claimants. In support of this Objection, the Debtors represents as follows:

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<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

## **JURISDICTION**

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

2. The statutory predicates for the relief requested herein are Bankruptcy Code section 502(b), Bankruptcy Rules 3001, 3003, and 3007, and Local Rule 3007-1.

## **BACKGROUND**

3. On September 1, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. On September 11, 2009, the Office of the United States Trustee (the “Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”).

5. No request has been made for the appointment of a trustee or examiner in these cases.

### **A. The Debtors’ Business**

6. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the declaration of Charles M. Moore, filed in support of various first day motions and fully incorporated herein by reference (the “Moore Declaration”). Additional facts in support of the specific relief sought in this Objection are set forth below.

7. As more fully set forth in the Moore Declaration, the Debtors provided payment processing and related merchant services. The Debtors generated their relationships with merchants either through a direct sales force or through independent sales organizations (“ISOs”). The primary agreement that set forth the terms and conditions that guided the relationship between the Debtors and each merchant was a Merchant Processing Agreement

(collectively the “Merchant Processing Agreements”), which was a tri-party agreement between the Debtors, the merchant and the Debtors’ BIN Sponsor. The Debtors’ primary BIN Sponsor was Harris Bank, N.A. (“Harris”).

8. Pursuant to the Merchant Processing Agreements, the Debtors were entitled to establish a Merchant Reserve, referred to by the Debtors as a “Rolling Reserve,” pursuant to which funds from a merchant would be paid over and held in reserve to cover a Merchant Loss. The Debtors did not establish a Rolling Reserve with each merchant with which they did business. Rather, they did so when they were concerned that the merchant might owe them money in the future and they desired to have a fund from which to satisfy that obligation (a “Merchant Loss”).

9. According to the Merchant Processing Agreements, the merchant’s funds paid over to establish or supplement a Rolling Reserve were to be held in a bank account at the Debtors’ BIN Sponsor. However, the Debtors did not fully fund the Rolling Reserves with Harris and used in the normal course of their business some of the merchant’s funds paid over to establish or supplement a Rolling Reserve. Accordingly, the Rolling Reserves were underfunded when these chapter 11 cases began.

10. After the Petition Date, however, the Debtors did fund the Rolling Reserve in the normal course of their business. As such, the underfunding of the Rolling Reserve is attributable solely to the pre-petition period. Also, certain of the merchants’ Rolling Reserve are partially unfunded rather than fully unfunded because the portion of the Rolling Reserve to be funded post-petition were in fact funded.

**B. The 363 Sale**

11. On the Petition Date, the Debtors initiated a process by which their businesses were sold by filing the *Debtors' 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).

12. As part of the sales process proposed in the Sale Motion, and specifically in connection with the proposed assumption and assignment to the Purchaser of substantially all of their Merchant Processing Agreements, agreements with various Independent Sales Organizations (the "ISOs") and the BIN Sponsor Agreement between the Debtors and Harris, the Debtors served upon those merchants for whom the Debtors had maintained an unfunded, or underfunded Rolling Reserve, a Cure Notice that listed by merchant the amount of the unfunded Rolling Reserve as of the Petition Date.<sup>2</sup> The amount of the unfunded Rolling Reserve for each merchant was subject to change on a daily basis as a result of ongoing transactions during the Debtors' continued business operations. The cure amount the Debtors proposed to pay over to

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<sup>2</sup> Merchants without unfunded merchant reserves had their merchant processing agreements assigned to the Purchaser pursuant to the terms of the merchant processing agreements. There being no default, no cure was required.

Harris, to hold in the merchant reserves pursuant to the BIN Sponsor Agreement, was the amount of the unfunded or underfunded Rolling Reserve as of the closing of the sale.

13. In response to the Cure Notice, a number of merchants, ISOs and other parties filed objections (the “Cure Objections”). The Cure Objections filed by merchants generally raising disputes about the amount of the applicable Rolling Reserve. In addition, Moneris Solutions, Inc. (“Moneris”), in its capacity as agent for Harris, filed an objection<sup>3</sup> in which it asserted that before the Debtors could assume and assign to the Purchaser the BIN Sponsor Agreement and in order to cure all defaults in the BIN Sponsor Agreement, they first needed not only to turn over to Harris, for the account of the affected merchant, all the then unfunded Rolling Reserves, but also to pay any legal fees and costs incurred by Harris or Moneris. Further, Dymas Funding Company LLC, individually and as agent for the Term B Lenders and as agent for the Second Lien Lenders (“Dymas”) and Abelco Finance LLC and A3 Funding LLC, each as Term B Lender and Second Lien Lender and Garrison Credit Investments I LLC, as Term B Lender (collectively, the “Term B Parties”) also filed an objection<sup>4</sup> in which the Term B Parties argued, in direct opposition to the objection filed by Moneris, that there was no basis for the proposed cure by the Debtors of the then unfunded Rolling Reserves as part of the assumption and assignment of the applicable Merchant Processing Agreements or the BIN Sponsor Agreement and that any claims by merchants or Harris on account of the unfunded Rolling Reserves were simply general unsecured claims.

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<sup>3</sup> *Objection by Moneris Solutions, Inc. to the Proposed Assumption and Assignment of Assumed Contracts and Proposed Cure Amounts, dated October 6, 2010 [Docket No. 207]*

<sup>4</sup> *Objection of Term B Parties And Second Lien Parties to the Debtor’ Notice of Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Cure Amounts, filed on of October 6, 2009 [Docket No. 204].*

14. On October 9, 2009, the Court entered an order (the “Sale Order”) approving the Sale Motion.<sup>5</sup> The Sale Order provided that the Debtors would reserve “an amount sufficient to pay in full all Cure Amounts” (the “Cure Reserve”) relating to “any default identified by the Debtors and such higher amount identified by any objecting party to be disbursed pursuant to further order of the Court.”<sup>6</sup>

15. The Debtors, in consultation with the Committee, the secured lenders and other parties in interest, in order to meet the Cure Reserve requirements under the Sale Order, set aside \$38,000,000.00 of the sale proceeds to fund the Cure Reserve.

16. Also in accordance with the terms of the Sale Order, 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 an escrow (the “Cure Escrow”) established to hold the funds necessary to satisfy the requirements for the Cure Reserve. The Escrow Agreement requires the Escrow Agent to hold funds in the Cure Escrow until it receives proper notification directing disbursement.

17. With the establishment of the Cure Escrow containing, *inter alia*, all monies asserted to be owed on account of the previously unfunded Rolling Reserves, the sale closed on October 26, 2009 (the “Sale Closing Date”) with all Merchant Processing Agreements, including those with unfunded Rolling Reserves, all ISO Agreements and the Harris BIN Sponsor Agreement assumed and assigned to the Purchaser.

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<sup>5</sup> *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*, entered on October 9, 2009 [Docket No. 258].

<sup>6</sup> Sale Order at 13.

C. **The Settlement Motion and Order**

18. Moneris' and Term B Lenders' Objections have now been resolved. On August 10, 2010, the Debtors filed the *Motion for an Order Approving, Pursuant to Section 105(a) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 9019, the Settlement Between and Among the Debtors, Harris, N.A., Moneris Solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data, LLC Regarding Reconciliation of Amounts Related to the Rolling Reserve Funds and For Certain Related Relief* [Docket No. 863] (the "Settlement Motion")<sup>7</sup> seeking to approve a settlement (the "Settlement") reflected in that certain settlement term sheet attached thereto as Exhibit A (the "Settlement Term Sheet"). In essence, the Settlement resulted in the Debtors taking from the Cure Escrow an amount sufficient to fully fund all unfunded Rolling Reserves as of the Sale Closing Date of October 26, 2010. These funds have been deposited into a Settlement Escrow Account where they are available to Moneris so that Moneris can exercise whatever rights or obligations it has under the Merchant Processing Agreements relative to the previously unfunded Rolling Reserves. The Settlement also resolved the proper amount of each merchant's Rolling Reserve as of the Sale closing date.

19. Notice of the Settlement Motion was served on each merchant with an unfunded Rolling Reserve. The Notice and the accompanying Settlement Motion advised each merchant of the amount of such merchant's Rolling Reserve as of the Closing Date and the fact that the unfunded portion of that Rolling Reserve had been fully funded.

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<sup>7</sup> Further background facts relating to the Rolling Reserve, the Merchant Claims, the Cure Reserve, and the Settlement are set forth in the Motion.

20. Pursuant to the Court's Order Approving the Settlement Motion, entered on September 13, 2010 [Docket No. 935] (the "Settlement Order"),<sup>8</sup> \$11,294,304.00 (the "Settlement Escrowed Funds") was transferred from the Cure Escrow to a settlement escrow account (the "Settlement Escrow Account") established pursuant to the terms of the Settlement Order. Settlement Order ¶5.

21. Because the Settlement Escrow Account now contains sufficient funds to fully fund the previously unfunded Rolling Reserves, all defaults under the Merchant Processing Agreements have been fully cured. As a result, the Settlement Order provides that merchants holding claims for unfunded Rolling Reserve hold no further claim against the Debtors or Moneris relating to unfunded reserves. Settlement Order ¶19. Such claims include, among other things, the Affected Claims. Specifically, paragraph 19 of the Settlement Order provides that:

Notice of this Motion having been given to each merchant with an unfunded Rolling Reserve as of October 26, 2009 to advise such merchant of the disposition of their applicable portion of the Cure Escrow as was designed to address issues regarding the Rolling Reserves and the amount so transferred on such merchant's behalf, upon the entry of this order each such merchant shall have no further claim against the Debtors or Moneris relating to unfunded reserves.

### **THE CLAIMS PROCESS**

22. On September 2, 2009, the Bankruptcy Court entered an order appointing Kurtzman Carson Consultants, LLC, as claims agent in these cases (the "Claims Agent"). The Claims Agent is authorized to maintain all proofs of claim filed against the Debtors' estates and to docket all proofs of claim on an official claims register that includes, among other things, the

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<sup>8</sup> *Order Approving, Pursuant to Section 105(A) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, the Settlement Between and Among the Debtors, Harris N.A., Moneris Solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data, LLC Regarding Reconciliation of Amounts Related to the Rolling Reserve Funds and For Certain Related Relief*

name and address of each claimant, the date each claim was received, the number assigned to the claim and the amount and classification of the claim.

23. On December 18, 2009, the Bankruptcy Court entered an order (the “Bar Date Order”)<sup>9</sup> fixing applicable bar dates in these cases. The Bar Date Order fixed February 1, 2010 as the general claims bar date in these cases (the “General Bar Date”) and fixed February 8, 2010 as the last day for governmental entities to file proofs of claim against the Debtors (the “Governmental Bar Date”, together with the General Bar Date, the “Bar Dates”).

24. To date, 422 proofs of claim have been filed in these chapter 11 cases.

25. A substantial number of the proofs of claim were filed by merchants with unfunded Rolling Reserves and assert the amount relating to the Rolling Reserves as of a point in time. A number of the Rolling Reserve-related claims were filed in the wrong amount (often because the claimants assert claims relating to Rolling Reserve amounts which, as discussed in paragraph 10 above, the Debtors funded post-petition or because of the fluctuation in the amount of Rolling Reserve due to Merchant Loss), classified incorrectly, or filed against the wrong Debtor. Regardless of any of the foregoing issues relating to the Rolling Reserve-related claims, however, Moneris’ and Term B Lenders’ Objections have now been resolved and all Rolling Reserves have been fully funded. Accordingly, all proofs of claim setting forth amounts for Rolling Reserves should be disallowed in full and expunged from the claims register maintained in these chapter 11 cases.

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<sup>9</sup> [Docket No. 126].

## RELIEF REQUESTED

26. By this Objection, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit B**, pursuant to Bankruptcy Code section 502(b), Bankruptcy Rules 3001, 3003, and 3007, and Local Rule 3007-1, disallowing in full and expunging each of the claims listed on **Exhibit A** hereto (the “Affected Claims”) on the basis that the obligation to fund the Rolling Reserve, which obligation forms the basis of each such claim, has been fully satisfied by the establishment of the Settlement Escrow Account and therefore, according to the Debtors’ books and records, no amount is owed to such claimant.

27. Accordingly, the Debtors hereby request that, pursuant to the terms of the Settlement Order, the Affected Claims be disallowed in full and expunged from the claims register maintained in these chapter 11 cases.<sup>10</sup>

## NOTICE

28. A copy of this Objection will be served on: (i) all parties who have asserted Affected Claims subject to this Objection; (ii) the United States Trustee for the District of Delaware; (iii) counsel to the Committee; (iv) counsel to Comerica Bank; (v) counsel to Wells Fargo Foothill LLC; (vi) counsel to Dymas Funding Company LLC; (vii) counsel to Ableco Finance LLC; (viii) counsel to A3 Funding LP; (ix) counsel to Garrison Credit Investments; (x) counsel to Harris, N.A; and (xi) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

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<sup>10</sup> Certain of the Affected Claims should also be modified or disallowed on the basis that they are incorrectly classified. An objection of such claims on the basis of incorrect classification is unnecessary if the Court grants the relief sought herein. To the extent that such Affected Claims are not disallowed pursuant to an order approving this Objection, the Debtor will file a separate objection to such claims on the basis of incorrect classification.

### **ADJOURNMENT OF HEARING**

29. The Debtors reserve the right to seek an adjournment of the hearing on any response to the Objection. In the event the Debtors seek such an adjournment, it will be noted on the agenda for the hearing, and such agenda will be served on the affected claimant by serving the person designated in the response.

### **RESERVATION OF RIGHTS**

30. The Debtors expressly reserve the right to amend, modify or supplement this Objection, and to file objections to any remaining claims (filed or not) that may be asserted against the assets of the Debtors. Should one or more of the grounds for objection stated in this Objection be overruled or not otherwise sustained in full, the Debtors reserve the right to object to the claims on any other ground.

### **COMPLIANCE WITH LOCAL RULE 3007-1**

31. The undersigned certifies that to the best of her belief and knowledge, this Objection complies with Local Rule 3007-1. To the extent that this Objection does not comply with Local Rule 3007-1, undersigned counsel respectfully suggests that such non-compliance is not material, and respectfully requests that such non-compliance be waived.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

WHEREFORE, the Debtors respectfully request that the Court enter an order (a) disallowing in full and expunging from the claims register each of the Amended Claims listed on **Exhibit A** hereto, and (b) granting the Debtors such other and further relief as is just and proper.

Dated: September 21, 2010  
Wilmington, Delaware

Respectfully submitted,  
PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer  
David B. Stratton (DE No. 960)  
Evelyn J. Meltzer (DE No. 4581)  
John H. Schanne, II (DE No. 5260)  
Hercules Plaza, Suite 5100  
1313 Market Street  
P.O. Box 1709  
Wilmington, DE 19899-1709  
Telephone: (302) 777-6500  
Facsimile: (302) 421-8390

-and-

NIXON PEABODY LLP  
Mark N. Berman  
Dennis J. Drebsky  
Lee Harrington (DE No. 4046)  
437 Madison Avenue  
New York, New York 10022  
Telephone: (212) 940-3000  
Facsimile: (212) 940-3111

*Counsel for the Debtors  
and Debtors in Possession*

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

In re:  CD LIQUIDATION CO., LLC, f/ka CYNERGY DATA, LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11  Case No. 09-13038 (KG)  Jointly Administered  <b>Hearing Date: October 21, 2010 at 10:30 a.m. (EST)</b> <b>Response Deadline: October 14, 2010 at 4:00 p.m. (EST)</b>
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**NOTICE OF SECOND OMNIBUS (SUBSTANTIVE) OBJECTION  
OF THE DEBTORS TO CLAIMS PURSUANT TO 11 U.S.C. § 502(B), FED. R.  
BANKR. P. 3003 AND 3007 AND LOCAL RULE 3007-1**

**PARTIES RECEIVING THIS OBJECTION SHOULD CONSULT EXHIBIT A TO THE OBJECTION TO DETERMINE WHETHER THEIR NAMES AND THEIR CLAIMS ARE LISTED ON SUCH EXHIBIT.**

TO: (i) All parties that have filed a Notice of Appearance in these Chapter 11 cases Pursuant to Bankruptcy Rule 2002; and (ii) all affected claimants listed on Exhibit A.

PLEASE TAKE NOTICE that on September 21, 2010, the above-captioned debtors (the “Debtors”) filed the **Second Omnibus (Substantive) Objection of the Debtors to Claims Pursuant to 11 U.S.C. § 502(b), Fed. R. Bankr. P. 3003 and 3007 and Local Rule 3007-1** (the “Objection”), with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE FURTHER NOTICE that responses to the Objection, if any, must be filed on or before **October 14, 2010 at 4:00 p.m. (EST)** (the “Response Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801. At the same time, you must also serve a copy of the response upon the undersigned counsel to the Debtors so that the response is received on or before the Response Deadline.

PLEASE TAKE FURTHER NOTICE that every response to the Objection must contain at a minimum the following:

- (a) a caption setting forth the name of the Court, the case number and the title of the Objection to which the response is directed;
- (b) the name of the Claimant and description of the basis for the amount of the Claims, if applicable;

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<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

- (c) a concise statement setting forth the reasons why the Claim should not be disallowed or modified for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the responding party will rely in opposing the Objection;
- (d) all documentation or other evidence of the Claim or assessed value, to the extent not included with the Proof of Claim previously filed with the Bankruptcy Court, upon which the responding party will rely in opposing the Objection at the Hearing;
- (e) the address(es) to which the Debtors must return any replay to the response, if different from that presented in the Claim; and
- (f) the name, address and telephone number of the person (which may be the Claimant or his/her/its legal representative) possessing ultimate authority to reconcile, settle or otherwise resolve the Claim or response to the Objection on behalf of the responding party.

PLEASE TAKE FURTHER NOTICE that questions about the Objection should be directed the undersigned counsel. CLAIMANTS SHOULD NOT CONTACT THE CLERK OF THE COURT TO DISCUSS THE MERITS OF THE CLAIMS.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE OBJECTION WILL BE HELD ON **OCTOBER 21, 2010 AT 10:30 A.M. (EST)** BEFORE THE HONORABLE KEVIN GROSS IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6<sup>TH</sup> FLOOR, COURTROOM NO. 3, WILMINGTON, DE 19801. YOU HAVE THE RIGHT TO APPEAR TELEPHONICALLY AT THE HEARING ON THE OBJECTION. A COPY OF THE BANKRUPTCY COURT'S PROCEDURES REGARDING TELEPHONIC APPEARANCES IS ENCLOSED WITH THIS NOTICE.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 21, 2010  
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer

David B. Stratton (DE No. 960)

Evelyn J. Meltzer (DE No. 4581)

John H. Schanne, II (DE No. 5260)

Hercules Plaza, Suite 5100

1313 Market Street

P.O. Box 1709

Wilmington, DE 19899-1709

Telephone: (302) 777-6500

Facsimile: (302) 421-8390

-and-

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NIXON PEABODY LLP  
Mark N. Berman  
Dennis J. Drebsky  
Lee Harrington (DE No. 4046)  
437 Madison Avenue  
New York, New York 10022  
Telephone: (212) 940-3000  
Facsimile: (212) 940-3111

*Counsel for the Debtors  
and Debtors in Possession*

## Exhibit A (Second Omnibus Objection to Claims)

Claim No.	Name	ClaimAmount	Reason for Disallowance
297	September Sunrise LLC dba SlimSplash	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
381	SHIP MERCHANT SYSTEMS, INC	\$98.50	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
233	SOMALAB	\$11,858.55	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
141	Spectrum Beach Club Management LLC dba The Beach Club Lodging	\$250,000.00	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
74	SUNSHINE PROMOTIONS LLC	\$182,362.59	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.

Claim No.	Name	ClaimAmount	Reason for Disallowance
207	SUPER SAVINGS TODAY	\$84,939.88	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
208	Synergy Teleservices Corporation	\$358,690.43	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
176	TENIBAC DISTRIBUTING	\$6,737.53	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
42	TERRIF TRAV 800 741 9124	\$28,618.63	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
42	TERRIF TRAV 800 741 9124	\$0.02	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
304	Thunder Avenue LLC dba Thin Action	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.

Claim No.	Name	ClaimAmount	Reason for Disallowance
212	TI ENTERPRISES LLC	\$63,843.08	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
209	TI ENTERPRISES LLC MERCHANT	\$62,071.75	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
151	TOP SAVINGS	\$62,286.22	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
315	Total Mobile Control LLC dba ColoSlim	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
318	Total Mobile Control LLC dba PrecisionNicheProducts	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
269	TRAVEL SERVICES	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.

Claim No.	Name	ClaimAmount	Reason for Disallowance
339	TRAVEL TO GO	\$100,930.11	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
305	University & Folsom LLC dba The Ultimate Facial	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
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53	WWW 501C3CDCOM 8004862129	\$6,093.78	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
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65	WWWMYGRANTSITENET 8774951145	\$1,369,804.94	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
52	WWWSELFHELPFFCOM800957 6988	\$22,959.60	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.

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

In re:

CD LIQUIDATION CO., LLC, f/ka  
CYNERGY DATA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**DECLARATION OF JESSE L. YORK  
IN SUPPORT OF THE SECOND OMNIBUS (SUBSTANTIVE)  
OBJECTION OF THE DEBTORS TO CLAIMS PURSUANT  
TO 11 U.S.C. § 502(B), FED. R. BANKR. P. 3003 AND 3007 AND LOCAL RULE 3007-1**

Under 28 U.S.C. § 1746, Jesse L. York declares as follows under the penalty of perjury:

1. I am a Senior Associate at CM&D Management Service, LLC (“CM&D”).

Pursuant to an order of this Court [Docket No. 110], CM&D has been employed as Financial Advisor to the above-captioned debtors-in-possession (the “Debtors”) since the Petition Date (defined below).

2. My duties in these cases include providing support to Charles M. Moore, the Debtors’ Chief Restructuring Officer and Interim Chief Executive Officer, and Lorraine B. Ossolinski, the Debtors Interim Chief Financial Officer in their day-to-day duties. I am familiar with the Debtors’ operations, business affairs and books and records.

3. On September 1, 2009 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. I submit this declaration (the “Declaration”) in support of the Debtors’ Second Omnibus (Substantive) Objection to Claims Pursuant to 11 U.S.C. § 502(b), Fed. R.

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<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

Bankr. P. 3003 and 3007 and Local Rule 3007-1 (the “Second Omnibus Objection”).

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Second Omnibus Objection.

5. I make this Declaration on the basis of the review by myself and the Debtors’ employees of the Debtors’ books and records (the “Books and Records”), the register of claims in these chapter 11 cases (the “Claims Register”) prepared and provided by the Kurtzman Carson Consultants LLC. (the “Claims Agent”), the claims agent appointed in this case, and the proofs of claim filed in these chapter 11 cases.

6. I assisted in the claims reconciliation process and in the preparation of the Second Omnibus Objection. In this regard, either I or another employee of the Debtors who worked in tandem with me (a) participated in the review of (i) the Claims Register, identifying the claims that should be disallowed and expunged, and (ii) the Debtors’ Books and Records with respect to the claims described in the Second Omnibus Objection, (iii) the Settlement Motion, the Settlement Order, exhibits thereto and documents relating thereto, and (b) read the Second Omnibus Objection and the exhibit attached thereto. Accordingly, I am familiar with the information contained therein.

7. To the best of my knowledge, information and belief, the claims (“Affected Claims”) listed in Exhibit A to the Second Omnibus Objection are asserted on the basis of amounts related to the Debtors’ obligation to fund the Rolling Reserve.

8. Pursuant to the Settlement Order, the Debtors transferred Settlement Escrow Funds into the Settlement Escrow Account, thus fully satisfying the Debtors’ obligation to fund the Rolling Reserve. Accordingly, any and all Rolling Reserve related claims, including the Affected Claims, should be fully disallowed in full and expunged from the Claims Register.

9. By the Second Omnibus Objection, the Debtors object to Affected Claims and seek the entry of an order disallowing in full and expunging the Affected Claims from the Claims Register.

**CONCLUSION**

10. Based upon my review of the Claims Register, the relevant proofs of claim, and the Debtors' Books and Records, the Settlement Motion, the Settlement Order, and all documents relating to the foregoing, I believe that granting the relief requested in the Second Omnibus Objection is in the best interests of the Debtors and their creditors.

Dated: Sep 21, 2010

  
\_\_\_\_\_  
Jesse L. York

# **EXHIBIT B**

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

In re:

CD LIQUIDATION CO., LLC, f/ka  
CYNERGY DATA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**Related Docket No:**

**ORDER SUSTAINING SECOND OMNIBUS (SUBSTANTIVE)  
OBJECTION OF THE DEBTORS TO CLAIMS PURSUANT  
TO 11 U.S.C. § 502(B), FED. R. BANKR. P. 3003 AND 3007 AND LOCAL RULE 3007-1**

UPON CONSIDERATION OF the Second Omnibus (Substantive) Objection of the Debtor to Claims Pursuant To 11 U.S.C. § 502(b), Fed. R. Bankr. P. 3003 And 3007 And Local Rule 3007-1 (the “Objection”) filed by above-captioned debtors and debtors-in-possession (the “Debtors”); no responses having been filed and not withdrawn with respect to any of the claims set forth on Exhibit A to this order (collectively, the “Affected Claims”); the Court having reviewed the Objection and 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); (c) notice to the holders of the Affected Claims of the filing of, response deadline of, and hearing date regarding the Objection was sufficient under the circumstances; and (d) the Court having determined that the Affected Claims should be disallowed in full as more fully set forth below; IT IS HEREBY ORDERED AS FOLLOWS:

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<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

1. The Objection is SUSTAINED, with respect to each of the Affected Claims. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Objection.

2. Each of the claims identified on Exhibit A attached hereto is hereby DISALLOWED IN FULL AND EXPUNGED FROM THE CLAIMS REGISTER.

3. Nothing herein shall prejudice the right of any party to object to any of the claims asserted in these chapter 11 case, on any basis.

4. Each Affected Claim and the objection to such claim, as addressed in the Objection and as set forth on Exhibit A hereto, constitutes a separate contested matter as contemplated by Rule 9014 of the Bankruptcy Rules and Local Rule 3007-1. This Order shall be deemed a separate Order with respect to each Affected Claim. Any stay of this Order pending appeal by any claimant whose Affected Claim are subject to this Order shall only apply to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

5. This Court shall retain jurisdiction with respect to all matter arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2010  
Wilmington, DE

\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

## Exhibit A (Second Omnibus Objection to Claims)

Claim No.	Name	ClaimAmount	Reason for Disallowance
297	September Sunrise LLC dba SlimSplash	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
381	SHIP MERCHANT SYSTEMS, INC	\$98.50	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
233	SOMALAB	\$11,858.55	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
141	Spectrum Beach Club Management LLC dba The Beach Club Lodging	\$250,000.00	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
74	SUNSHINE PROMOTIONS LLC	\$182,362.59	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.

Claim No.	Name	ClaimAmount	Reason for Disallowance
207	SUPER SAVINGS TODAY	\$84,939.88	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
208	Synergy Teleservices Corporation	\$358,690.43	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
176	TENIBAC DISTRIBUTING	\$6,737.53	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
42	TERRIF TRAV 800 741 9124	\$28,618.63	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
42	TERRIF TRAV 800 741 9124	\$0.02	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
304	Thunder Avenue LLC dba Thin Action	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.

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209	TI ENTERPRISES LLC MERCHANT	\$62,071.75	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
151	TOP SAVINGS	\$62,286.22	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
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318	Total Mobile Control LLC dba PrecisionNicheProducts	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.
269	TRAVEL SERVICES	UNLIQUIDATED	This claim was asserted by a claimant on the basis of purported rights with respect to the Rolling Reserve. Pursuant to the terms of the Settlement Order, the Debtor have fully satisfied their obligation to fund the Rolling Reserve and all Rolling Reserve-related claims are to be disallowed in full and expunged.

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