

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
: :
Telogy, LLC, et al., : Case No. 10-10206 (MFW)
: :
Debtors. : Jointly Administered
: :
----- X Ref. Docket No.: 4

**ORDER AUTHORIZING THE APPOINTMENT
OF EPIQ BANKRUPTCY SOLUTIONS, LLC
AS NOTICE, CLAIMS AND BALLOTING AGENT TO THE
DEBTORS IN POSSESSION AND APPROVING RELATED AGREEMENT**

This matter having come before the Court upon consideration of the application (the "**Application**")¹ of the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**")² requesting entry of an order pursuant to 28 U.S.C. § 156(c), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), approving the Debtors' retention of Epiq Bankruptcy Solutions, LLC ("**Epiq**") as claims, notice and balloting agent in these chapter 11 cases; and upon the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings; and upon the Affidavit of Daniel C. McElhinney, a copy of which is attached to the Application as Exhibit B; and the Court being satisfied that Epiq is a "disinterested person" as such term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code; and

¹ All capitalized terms used and not defined herein have the meanings ascribed to such terms in the Application.

² The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors' executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of these estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Application is granted.
2. The Debtors are hereby authorized to retain and employ Epiq as the Claims Agent in these chapter 11 cases, pursuant to the terms of the Engagement Agreement annexed to the Application as Exhibit A, for the purposes set forth in the Application and the Engagement Agreement, effective as of the Petition Date.
3. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Epiq incurred pursuant to the Engagement Agreement shall be treated as an administrative expense of the Debtors' chapter 11 estates, and shall be paid by the Debtors in the ordinary course of business after the submission of an invoice in reasonable detail describing the basis for the fees and expenses requested to be paid to Epiq.
4. Epiq shall not cease providing services to the Debtors pursuant to the terms of the Engagement Letter for any reason, including nonpayment, without prior order of this Court authorizing Epiq to do so; provided, however, that Epiq shall be permitted to seek such an order on an expedited basis by filing a request for termination with the Court and providing notice of such request to counsel for the Debtors, counsel for any official committee of creditors appointed in these cases, and the Office of the United States Trustee by e-mail, facsimile or overnight delivery.

5. If Epiq's services are terminated, Epiq shall perform its duties until a complete transition with the Clerk's Office or any successor notice/claims/balloting agent occurs, provided, however, that the provision of such services shall be subject to the terms of the Engagement Agreement, including with respect to payment.

6. The Indemnification Provisions of the Engagement Agreement are approved, subject to the following modifications:

- a. Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify the Indemnified Persons, in accordance with the Engagement Agreement, for any claim arising from, related to or in connection with their performance of the services described in the Engagement Agreement; provided, however, that the Indemnified Persons shall not be indemnified for any claim arising from services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;
- b. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct, (ii) for a contractual dispute in which the Debtors allege breach of Epiq's obligations under the Engagement Agreement, or (iii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, 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 Engagement Agreement as modified by this Order; and
- c. 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 these cases, Epiq believes that it is entitled to payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including without limitation the advancement of defense costs, Epiq must file an application before this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the court shall have jurisdiction over any

request for fees and expenses for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Epiq.

7. The Debtors and Epiq are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

8. The Court shall retain jurisdiction over any matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
January 26, 2010



Mary F. Walrath
United States Bankruptcy Judge