

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

In re:  CYNERGY DATA, LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11  Case No. 09-_____ (     )  Jointly Administered
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**DEBTORS’ APPLICATION FOR (A) AUTHORIZATION TO EMPLOY  
AND RETAIN KURTZMAN CARSON CONSULTANTS LLC  
AS CLAIMS, NOTICING, SOLICITATION, BALLOTING, AND  
TABULATION AGENT FOR THE DEBTORS, AND (B) APPOINTMENT  
OF KURTZMAN CARSON CONSULTANTS LLC  
AS AGENT OF THE BANKRUPTCY COURT**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), submit this application (the “Application”) for entry of an order substantially in the form annexed hereto as Exhibit A (a) authorizing the Debtors to employ and retain Kurtzman Carson Consultants LLC (“KCC”) as claims, noticing, solicitation, balloting, and tabulation agent for the Debtors, and (b) appointing KCC as agent of the Bankruptcy Court. In support thereof, the Debtors respectfully represent:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this Application pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

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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): 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.



## **RELIEF REQUESTED**

2. By this Application, the Debtors, pursuant to 28 U.S.C. section 156(c) and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seek to employ KCC as the Debtors’ claims, noticing, solicitation, balloting, and tabulation agent (the “Agent”) in connection with these chapter 11 cases pursuant to the terms and conditions of the Services Agreement, dated August 19, 2009, a copy of which is attached hereto as Exhibit B (the “Services Agreement”).

## **BACKGROUND**

3. On the date hereof (the “Petition Date”), the Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their business and manage their properties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108.

5. No creditors’ committee has been appointed in these cases. No trustee or examiner has been appointed.

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 first-day affidavit of Charles M. Moore (the “Moore Declaration”)<sup>2</sup>, filed concurrently herewith and fully incorporated herein by reference.

Additional facts in support of the specific relief sought in this Application are set forth below.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Moore Declaration.

## **BASIS FOR RELIEF REQUESTED**

7. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of the Court, authorizes the Court to use facilities other than those of the office of the clerk of the bankruptcy court (the “Clerk’s Office”) for the administration of bankruptcy cases. It provides as follows:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States.

28 U.S.C. section 156(c).

8. Moreover, Local Rule 2002-1(f) requires in all cases with over 200 creditors, that the debtor file a Application to retain a noticing agent within 10 days after the commencement of the debtor’s case.

9. The Debtors estimate that there are significantly more than 200 creditors in these chapter 11 cases. The Debtors expect many of the creditors to file proofs of claims. It is likely that the noticing, receiving, docketing, and maintaining of proofs of claims in this volume would be unduly time-consuming and burdensome for the Office of the Clerk of Court.

10. The Debtors believe that the retention of KCC as the Court’s outside agent is in the best interests of their estates and parties in interest. As set forth more fully in the Declaration of Michael J. Frishberg (the “Frishberg Declaration”), attached hereto as Exhibit C, KCC is a nationally recognized specialist in chapter 11 administration and has vast experience in noticing and claims administration in chapter 11 cases of similar size and complexity. See, e.g., In re Eddie Bauer Holdings, Inc., Case No. 09-12099 (MFW) (Bankr. D. Del. June 18, 2009); In re Premier Int’l Holdings Inc., Case no. 09-12019 (CSS) (Bankr. D. Del. June 15, 2009); In re

Visteon, Case No. 09-11786 (CSS) (Bankr. D. Del. May 29, 2009); In re Anchor Blue Retail Group, Inc., Case No.09-11770 (PJW) (Bankr. D. Del. May 28, 2009); In re Accredited Home Lender Holding Co., Case No. 09-11516 (MFW) (Bankr. D. Del. May 6, 2009); In re Source Interlink Cos., Inc., Case No. 09-11424 (KG) (Bankr. D. Del. Apr. 29, 2009); In re Gottschalks Inc., Case No. 09-10157 (Bankr. D. Del. 2009); In re Aleris International Inc., et al., Case No. 09-10478 (Bankr. D. Del. 2009); In re HPG International, Inc., et al., Case No. 09-10231 (Bankr. D. Del. 2009); In re Washington Mutual, Inc., et al., Case No. 08-12229 (Bankr. D. Del. 2008); In re Motor Coach Industries International, Inc., et al., Case No. 08-12136 (Bankr. D. Del. 2008); In re Boscov's, Inc., et al., Case No. 08-11637 (Bankr. D. Del. 2008); In re Mervyn's Holdings, LLC, et al., Case No. 08-11586 (Bankr. D. Del. 2008); and In re Linens Holding Co., et al., Case No. 08-10832 (CSS) (Bankr. D. Del. 2008). KCC has developed efficient and economical methods to properly handle claims administration and voluminous mailings associated with noticing of creditors and parties in interest.

11. The appointment of KCC as the Court's outside agent will relieve the Court and the Clerk's Office of heavy administrative and other burdens. In addition, the retention of KCC as the claims and noticing agent will promote the effective administration of the Debtors' estates.

A. Scope of Services

12. Subject to the Court's approval, KCC has agreed to provide, upon request of the Debtors, the following services, among others, in these chapter 11 cases:

- a. Preparing and serving required notices in the chapter 11 cases, including:
  - i. notice of the commencement of the chapter 11 cases and the initial meeting of creditors under Bankruptcy Code § 341(a);
  - ii. a notice of the claims bar date;
  - iii. notices of objections to claims and objections to transfers of claims;

- iv. notices of hearings on Applications filed by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”);
  - v. notices of transfers of claims;
  - vi. notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization; and
  - vii. such other miscellaneous notices as the Debtors or Court may deem necessary or appropriate for an orderly administration of the chapter 11 cases.
- b. Within seven days after the mailing of a particular notice, filing with the Court a copy of the notice served with a certificate of service attached indicating the name and complete address of each party served.
- c. Receiving, examining, and maintaining copies of all proofs of claim and proofs of interest filed in the chapter 11 cases.
- d. Maintaining official claims registers in the chapter 11 cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:
  - i. the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
  - ii. the date the proof of claim or proof of interest was received by KCC and/or the Court;
  - iii. the claim number assigned to the proof of claim or proof of interest;
  - iv. the asserted amount and classification of the claim; and
  - v. the applicable Debtor against which the claim or interest is asserted.
- e. Recording all transfers of claims pursuant to Bankruptcy Rule 3001(e).
- f. Revising the creditor matrix after the objection period expires.
- g. Recording any order entered by the Court which may affect a claim by making a notation on the claims register.
- h. Monitoring the Court’s docket for any claims related pleading filed and making necessary notations on the claims register.
- i. Maintaining a separate claims register for each debtor if the chapter 11 cases are jointly administered.

- j. Filing a quarterly updated claims register with the Court in alphabetical and numerical order. If there was no claims activity, a certification of no claim activity may be filed.
- k. Maintaining an up-to-date mailing list of all creditors and all entities who have filed proofs of claim or proofs of interest and/or request for notices in the case and providing such list to the Court or any interested party upon request (within 48 hours).
- l. Providing access to the public for examination of claims and the claims register at no charge.
- m. Forwarding all claims, an updated claims register and an updated mailing list to the Court within 10 days of entry of an order converting a case or within 30 days of entry of a final decree. The claims register and mailing list will be provided in both paper and on disc and in alphabetical and numerical order. The mailing list disc will be in .txt format.
- n. Implementing necessary security measures to ensure the completeness and integrity of the claims registers.
- o. Complying with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements.
- p. Providing temporary employees to process claims as necessary.
- q. Promptly complying with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe.
- r. Providing such other claims processing, noticing, and administrative services as may be requested from time to time by the Debtors

13. In addition to the foregoing, KCC will assist with, among other things:

- (a) maintaining and updating the master mailing lists of creditors; (b) to the extent necessary, gathering data in conjunction with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims; and
- (d) performing other administrative tasks pertaining to the administration of these chapter 11 cases, as may be requested by the Debtors or the Clerk's Office. KCC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk of the Court and the Judicial Conference of the United States and as may be entered by the Court's order.

14. KCC also has agreed to provide noticing services in these cases to the U.S. Trustee.

B. Compensation

15. The Debtors request authority to compensate and reimburse KCC in accordance with the terms of the pricing schedule appended to the Services Agreement for all services rendered and expenses incurred in connection with these chapter 11 cases. The Debtors believe that such compensation is reasonable and appropriate for services of this nature and comparable to those other providers charge for similar services. In an effort to reduce the administrative expenses related to KCC's retention, the Debtors seek authorization to pay KCC's fees and expenses in accordance with the Services Agreement without the necessity of KCC filing formal fee applications. The Debtors propose that the cost of KCC's services be paid from the Debtors' estates as provided by 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A)

16. KCC will continue to perform the services contemplated by the Services Agreement in the event these chapter 11 cases are converted to chapter 7 cases. In the event that KCC's services are terminated, KCC shall perform its duties until the occurrence of a complete transition with the Clerk's Office or any successor claims, noticing, solicitation, balloting, and tabulation agent.

C. KCC's Disinterestedness

17. The Debtors have been advised that, except as set forth more fully in the Frishberg Declaration, based on the results of the search performed to date, (a) KCC has no materially adverse connection with the Debtors, their creditors, or other parties in interest in this case, and (b) KCC does not hold or represent an interest adverse to the Debtors' estates.

18. To the best of the Debtors' knowledge, KCC is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code. KCC has represented to the Debtors that it will not represent any entities or individuals other than the Debtors in these chapter 11 cases or in connection with any matters that would be adverse to the interests of the Debtors.

19. As set forth in the Frishberg Declaration, KCC does not hold a prepetition claim against the Debtors.

20. If any new facts or circumstances relevant to KCC's disclosures in the Frishberg Affidavit are discovered, KCC will supplement its disclosure to the Court.

21. Because the claims-related services are necessary in these cases and required pursuant to the Local Rules, the Debtors submit that the employment of KCC for the services set forth above is appropriate and in the best interests of the Debtors' estates. Therefore, the Debtors request authority to employ and retain KCC on the terms and conditions set forth herein.

22. Relief similar to that requested herein has been approved by this Court in similar chapter 11 cases. See, e.g., In re Eddie Bauer Holdings, Inc., Case No. 09-12099 (MFW) (Bankr. D. Del. June 18, 2009); In re Premier Int'l Holdings Inc., Case no. 09-12019 (CSS) (Bankr. D. Del. June 15, 2009); In re Visteon, Case No. 09-11786 (CSS) (Bankr. D. Del. May 29, 2009); In re Anchor Blue Retail Group, Inc., Case No.09-11770 (PJW) (Bankr. D. Del. May 28, 2009); In re Accredited Home Lender Holding Co., Case No. 09-11516 (MFW) (Bankr. D. Del. May 6, 2009); In re Source Interlink Cos., Inc., Case No. 09-11424 (KG) (Bankr. D. Del. Apr. 29, 2009); In re Gottschalks Inc., Case No. 09-10157 (Bankr. D. Del. 2009); In re Aleris International Inc., et al., Case No. 09-10478 (Bankr. D. Del. 2009); In re HPG International, Inc., et al., Case No. 09-10231 (Bankr. D. Del. 2009); In re Washington Mutual, Inc., et al., Case No.



08-12229 (Bankr. D. Del. 2008); In re Motor Coach Industries International, Inc., et al., Case No. 08-12136 (Bankr. D. Del. 2008); In re Boscov's, Inc., et al., Case No. 08-11637 (Bankr. D. Del. 2008); In re Mervyn's Holdings, LLC, et al., Case No. 08-11586 (Bankr. D. Del. 2008); and In re Linens Holding Co., et al., Case No. 08-10832 (CSS) (Bankr. D. Del. 2008).

23. Accordingly, the appointment and retention of KCC is in the best interests of the Debtors and their estates and creditors and should be approved.

### **NOTICE**

24. The Debtors have provided notice of this Application by facsimile, electronic transmission, overnight delivery, or hand delivery to: (a) the United States Trustee for the District of Delaware; (b) the Debtors' twenty-five (25) largest unsecured creditors on a consolidated basis; (c) counsel to Comerica Bank; (d) counsel to Wells Fargo Foothill LLC; (e) counsel to Dymas Funding Company LLC; (f) counsel to Ableco Finance LLC; (g) counsel to A3 Funding LP; (h) counsel to Garrison Credit Investments; (i) counsel to Harris, N.A; and (j) all other parties required to receive notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is necessary.

### **NO PRIOR REQUEST**

25. No prior request for the relief sought in this Application has been made to this or any other court.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: September 1, 2009  
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer

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*Proposed Counsel for the Debtors  
and Debtors in Possession*

**EXHIBIT A**  
**Proposed Order**

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

In re:  CYNERGY DATA, LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11  Case No. 09-_____ (     )  Jointly Administered
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**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 Declaration<sup>2</sup> 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

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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): 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.

<sup>2</sup> 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  
\_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT B**



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 19th day of August, 2009, between Cynergy Data, LLC (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”).

In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **Terms and Conditions**

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the KCC Fee Structure.

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.

## KCC AGREEMENT FOR SERVICES

parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company.

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services, expenses and supplies at the rates or prices set by KCC and in effect on the day such services and/or supplies are provided to the Company, in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment.

B. Company agrees to pay fees set by KCC related to transportation, lodging, meals, publications, printing, postage and other third-party charges, in addition to the hourly consulting fees set forth in the KCC Fee Structure.

C. In addition to all fees for services and expenses hereunder, Company shall pay to KCC (i) reasonable fees and expenses related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate and agreed upon in writing by all parties.

E. KCC agrees to submit its invoices to the Company monthly, provided, however, where total fees and expenses are expected to exceed \$10,000 in any single month, KCC may require advance payment which will be due and payable prior to the performance of services hereunder. Company agrees that the amount invoiced is due and payable within ten (10) days of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, notice shall be given to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) ("Section 156(c)") and that all fees and expenses due under this Agreement shall be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause a motion to be filed with the Bankruptcy Court seeking entry of an order pursuant to Section

## KCC AGREEMENT FOR SERVICES

156(c) approving this Agreement in its entirety (the “Section 156(c) Order”). The form and substance of the motion and the Section 156(c) Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with Section 156(c) and under the terms of this Agreement.

G. KCC shall receive a retainer in the amount of \$25,000 for services to be performed and expenses to be incurred in this matter due upon execution of this Agreement.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term “program” shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC’s performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for Company’s use during and in connection with the services provided by KCC under this Agreement.

### IV. NON-SOLICITATION

Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days’ written notice to the other party, release the required information.

## KCC AGREEMENT FOR SERVICES

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon fourteen (14) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined below). As used herein, the term "Cause" means (i) gross negligence or wanton misconduct of KCC that causes serious and material harm to the Company's reorganization under Chapter 11 of the Bankruptcy Code or (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and shall provide all necessary staff, services and assistance required for an orderly transfer. Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Section 156(c) Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility under Section 156(c) and this Agreement.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. KCC may dispose of the data or media, and be reimbursed for the expense of such disposition, after giving the Company thirty (30) days' notice if the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days. Notwithstanding any term herein to the contrary, following entry of the Section 156(c) Order, the disposition of any data or media shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.

## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request, KCC shall be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement, other than Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to Company or any person claiming through or under Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC's liability to Company for any Losses, whether direct or indirect, arising out of this Agreement, unless due to gross negligence or willful misconduct, exceed the total amount billed to Company and actually paid to KCC for the services contemplated under the Agreement. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

C. Company is responsible for the accuracy of the programs and data it or any Company Party submits for processing to KCC and for the output. Company agrees to initiate and maintain backup files that would allow Company to regenerate or duplicate all programs and data submitted by Company to KCC.

D. Company agrees that except as set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

## KCC AGREEMENT FOR SERVICES

### X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

### XI. INDEPENDENT CONTRACTORS

Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
2335 Alaska Ave.  
El Segundo, CA 90245  
Attn: James Le  
Tel: (310) 823-9000  
Fax: (310) 823-9133

Cynergy Data, LLC  
Address  
City, ST Zip  
Attn: Stephen A. Aschettino, Esq.  
Tel:  
Fax:

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or



## KCC AGREEMENT FOR SERVICES

law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of Company and an officer of KCC.

### XV. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other.

### XVI. ARBITRATION


Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in the Los Angeles County, State of California.

### XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

  
BY: Michael Frishberg      DATE: 8/19/09  
TITLE: VP, Corporate Restructuring Services

Cynergy Data, LLC

\_\_\_\_\_  
BY: Stephen A. Aschettino, Esq.      DATE:  
TITLE: Chief Legal Officer





## KCC AGREEMENT FOR SERVICES

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Kurtzman Carson Consultants LLC

\_\_\_\_\_  
 BY: Michael Frishberg                      DATE:  
 TITLE: VP, Corporate Restructuring Services

Cynergy Data, LLC

 8/19/09  
 BY: Stephen A. Aschettino, Esq.      DATE:  
 TITLE: Chief Legal Officer



# **EXHIBIT C**

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

In re:	Chapter 11
CYNERGY DATA, LLC, <i>et al.</i> , <sup>1</sup>	Case No. 09-_____ (     )
Debtors.	Jointly Administered

**DECLARATION OF MICHAEL FRISHBERG IN SUPPORT OF  
DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING  
EMPLOYMENT AND RETENTION OF KURTZMAN CARSON  
CONSULTANTS LLC AS NOTICE, CLAIMS AND SOLICITATION AGENT**

1. I, Michael Frishberg, being duly sworn, state the following under penalty of perjury:
2. I am the Vice President of Corporate Restructuring Services of Kurtzman Carson Consultants LLC ("KCC"), a company specializing in the administration of large bankruptcy cases.
3. I submit this Declaration in support of the application (the "Application")<sup>2</sup> of the Debtors for authorization pursuant to 28 U.S.C. § 156(c) to employ and retain KCC as claims, noticing, solicitation, balloting, and tabulation agent in connection with the Chapter 11 Cases. Except as otherwise noted, I have personal knowledge of the matters set forth herein.

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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): 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.

<sup>2</sup> All capitalized terms used but otherwise not defined herein shall have the same meanings set forth in the Application.

### **KCC's Qualifications**

4. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, balloting and other related services critical to the effective administration of chapter 11 cases. Indeed, KCC has developed efficient and cost-effective methods to handle properly the voluminous mailings associated with the noticing, claims processing and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, KCC will work with the Clerk's Office to ensure that such methodology conforms with all of the Court's procedures, the Local Rules and the provisions of any orders entered by this Court.

5. KCC has substantial experience in matters of this size and complexity and has acted as the official notice, claims and solicitation agent in many large bankruptcy cases in this District and other districts nationwide. See, e.g., In re Eddie Bauer Holdings, Inc., Case No. 09-12099 (MFW) (Bankr. D. Del. June 18, 2009); In re Premier Int'l Holdings Inc., Case no. 09-12019 (CSS) (Bankr. D. Del. June 15, 2009); In re Visteon, Case No. 09-11786 (CSS) (Bankr. D. Del. May 29, 2009); In re Anchor Blue Retail Group, Inc., Case No.09-11770 (PJW) (Bankr. D. Del. May 28, 2009); In re Accredited Home Lender Holding Co., Case No. 09-11516 (MFW) (Bankr. D. Del. May 6, 2009); In re Source Interlink Cos., Inc., Case No. 09-11424 (KG) (Bankr. D. Del. Apr. 29, 2009); In re Gottschalks Inc., Case No. 09-10157 (Bankr. D. Del. 2009); In re Aleris International Inc., et al., Case No. 09-10478 (Bankr. D. Del. 2009); In re HPG International, Inc., et al., Case No. 09-10231 (Bankr. D. Del. 2009); In re Washington Mutual, Inc., et al., Case No. 08-12229 (Bankr. D. Del. 2008); In re Motor Coach Industries International,

Inc., et al., Case No. 08-12136 (Bankr. D. Del. 2008); In re Boscov's, Inc., et al., Case No. 08-11637 (Bankr. D. Del. 2008); In re Mervyn's Holdings, LLC, et al., Case No. 08-11586 (Bankr. D. Del. 2008); and In re Linens Holding Co., et al., Case No. 08-10832 (CSS) (Bankr. D. Del. 2008).

### **Services to be Provided**

6. Specifically, the Debtors seek to engage KCC to provide certain noticing, claims processing and balloting administration services including, without limitation:

- a. Preparing and serving required notices in the chapter 11 cases, including:
  - i. notice of the commencement of the chapter 11 cases and the initial meeting of creditors under Bankruptcy Code § 341(a);
  - ii. a notice of the claims bar date;
  - iii. notices of objections to claims and objections to transfers of claims;
  - iv. notices of hearings on motions filed by the Office of the United States Trustee for the District of Delaware (the "United States Trustee");
  - v. notices of transfers of claims;
  - vi. notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization; and
  - vii. such other miscellaneous notices as the Debtors or Court may deem necessary or appropriate for an orderly administration of the chapter 11 cases.
- b. Within seven days after the mailing of a particular notice, filing with the Court a copy of the notice served with a certificate of service attached indicating the name and complete address of each party served.

- c. Receiving, examining, and maintaining copies of all proofs of claim and proofs of interest filed in the chapter 11 cases.
- d. Maintaining official claims registers in the chapter 11 cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:
  - i. the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
  - ii. the date the proof of claim or proof of interest was received by KCC and/or the Court;
  - iii. the claim number assigned to the proof of claim or proof of interest;
  - iv. the asserted amount and classification of the claim; and
  - v. the applicable Debtor against which the claim or interest is asserted.
- e. Recording all transfers of claims pursuant to Bankruptcy Rule 3001(e).
- f. Revising the creditor matrix after the objection period expires.
- g. Recording any order entered by the Court which may affect a claim by making a notation on the claims register.
- h. Monitoring the Court's docket for any claims related pleading filed and making necessary notations on the claims register.
- i. Maintaining a separate claims register for each debtor if the chapter 11 cases are jointly administered.
- j. Filing a quarterly updated claims register with the Court in alphabetical and numerical order. If there was no claims activity, a certification of no claim activity may be filed.
- k. Maintaining an up-to-date mailing list of all creditors and all entities who have filed proofs of claim or proofs of

interest and/or request for notices in the case and providing such list to the Court or any interested party upon request (within 48 hours).

- l. Providing access to the public for examination of claims and the claims register at no charge.
- m. Forwarding all claims, an updated claims register and an updated mailing list to the Court within 10 days of entry of an order converting a case or within 30 days of entry of a final decree. The claims register and mailing list will be provided in both paper and on disc and in alphabetical and numerical order. The mailing list disc will be in .txt format.
- n. Implementing necessary security measures to ensure the completeness and integrity of the claims registers.
- o. Complying with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders, and other requirements.
- p. Providing temporary employees to process claims as necessary.
- q. Promptly complying with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe.
- r. Providing such other claims processing, noticing, and administrative services as may be requested from time to time by the Debtors.

7. In addition to the foregoing, KCC will assist with, among other things:

- (a) maintaining and updating the master mailing lists of creditors; (b) to the extent necessary, gathering data in conjunction with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims; and (d) performing other administrative tasks pertaining to the administration of the chapter 11 cases, as may be requested by the Debtors or the Clerk's Office. KCC will follow the notice and claim

procedures that conform to the guidelines promulgated by the Clerk of the Court and the Judicial Conference of the United States and as may be entered by the Court's order.

8. KCC also has agreed to provide noticing services in these cases to the U.S. Trustee.

#### **Professional Compensation**

9. The Services Agreement sets forth the fees KCC charges for the services it will provide to the Debtors. The proposed compensation arrangement is consistent with, and typical of, arrangements of KCC and its competitor firms to provide claims and noticing agent services in chapter 11 cases.

10. KCC requests that the Debtors pay their fees and expenses in accordance with the terms of the Services Agreement. KCC will submit invoices summarizing, in reasonable detail, the services and expenses for which compensation is sought.

#### **KCC's Disinterestedness**

11. Although the Debtors do not propose to retain KCC under § 327 of the Bankruptcy Code, KCC has nonetheless conducted a conflicts analysis and, to the best of its knowledge, KCC neither holds nor represents an interest materially adverse to the Debtors' estates nor has a material connection to the Debtors, their creditors or their related parties with respect to any matter for which KCC will be employed. KCC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent for another chapter 11 debtor. To the best of my knowledge, such relationships are unrelated to these chapter 11 cases. In addition, KCC personnel may have relationships with some of the Debtors' creditors or other parties in

interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal financial nature and completely unrelated to these chapter 11 cases. KCC has and will continue to represent clients in matters unrelated to these chapter 11 cases. In addition, KCC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' cases in matters unrelated to these cases.

12. KCC is an indirect subsidiary of Computershare Limited. Computershare Limited is a financial services and technologies provider for the global securities industry. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare Limited and its affiliates maintain do not create an interest of KCC that would be materially adverse to the Debtors' estates or any class of creditors or equity security holders. Administar, a claims and noticing agent, is also an indirect subsidiary of Computershare Limited. On June 10, 2009, the marketing and operation of Administar's restructuring services were consolidated under KCC.

13. To the best of my knowledge and except as disclosed herein, KCC neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed and that it is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 as referred to in section 327(a) of the Bankruptcy Code. KCC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require disclosure.



14. KCC represents, among other things, that:

- a. it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Agent;
- b. by accepting employment in this bankruptcy case, KCC waives any right to receive compensation from the United States government;
- c. in its capacity as Agent, KCC will not be an agent of the United States and will not act on behalf of the United States; and
- d. KCC will not employ any past or present employees of the Debtors in connection with its work as Agent.

15. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to file promptly a supplemental affidavit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 2009

By:  \_\_\_\_\_  
Michael Frishberg  
Vice President of Corporate Restructuring  
Services