

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

Related Docket No. 8

**ORDER UNDER BANKRUPTCY CODE SECTIONS 105, 363(b),
507(a), 541, 1107(a) AND 1108, AUTHORIZING DEBTORS, INTER ALIA, TO PAY
PREPETITION WAGES, COMPENSATION, AND EMPLOYEE BENEFITS**

Upon the motion (the "Motion")² of the Debtors for an order, under Bankruptcy Code sections 105, 363(b), 507(a), 541, 1107(a) and 1108 authorizing, but not directing, the Debtors, inter alia, to pay prepetition wages, compensation and employee benefits as set forth therein; and upon the Moore Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; 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 the Debtors, their estates, its creditors, and other parties in interest; and the Debtors having satisfied the standard for immediate relief under Fed R. Bankr. P 6003(b); and after due deliberation thereon and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth in this Order.
2. The Debtors shall be and hereby are authorized, but not directed, to pay

(including to any third parties that provide or aid in the monitoring, processing or administration

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



of the Prepetition Employee Obligations), in their sole discretion, the Employee Obligations, including but not limited to Employee Wage Claims, up to the limit set forth in 11 U.S.C. § 507(a)(4), Employee Benefit Obligations, up to the limit set forth in 11 U.S.C. § 507(a)(5), Employee Expense Obligations, Worker's Compensation Obligations, and Employer Taxes, as and when such obligations are due, upon entry of this order.

3. The Debtors shall be and hereby are authorized, but not directed, in their sole discretion, to honor and continue its Employee Benefit Obligations that were in effect as of the Petition Date; provided, however, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Obligations, including, policies, plans, programs, practices, and procedures, under Bankruptcy Code section 365(a).

4. The Debtors' banks shall be and hereby are authorized to receive, process, honor and pay all pre- and postpetition checks and fund transfers on account of the Employee Obligations that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

5. The Debtors shall be and hereby are authorized, but not directed, to issue new postpetition checks or effect new postpetition fund transfers on account of the Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

6. The Debtors may pay any and all withholding, including social security, FICA, federal and state income taxes, garnishments, health care payments, retirement fund withholding and other types of withholding, whether these relate to the period prior to the date of the Debtors' chapter 11 filing or subsequent thereto. Any party receiving payment from the Debtors is

authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this order.

7. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant to the relief) shall (a) be construed as a request for authority to assume any executory contract under 11 U.S.C. § 365; (b) waive, affect or impair any of the Debtors' rights, claims or defenses, including, but not limited to, those arising from Bankruptcy Code section 365, other applicable law and any agreement; (c) grant third-party beneficiary status or bestow any additional rights on any third party; or (d) be otherwise enforceable by any third party.

8. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant to the relief) shall be deemed to violate or permit a violation of 11 U.S.C. § 503(c).

9. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein, said Debtors retaining the business judgment to make or not make said payments, and in all instances subject to the condition that funds are available to effect any payment and in no event shall any person (the Debtors, officer, director, or otherwise) be personally liable for any amounts authorized for payment herein but not paid. This paragraph 9 does not apply to the payment of trust fund taxes.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

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

Dated: September 2 2009

Kevin J. Goss
UNITED STATES BANKRUPTCY JUDGE