

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

In re:)	Chapter 11
)	
CD LIQUIDATION CO., LLC f/k/a)	
CYNERGY DATA, LLC, <i>et al.</i> ,)	Case No. 09-13038 (KG)
)	
)	Jointly Administered
Debtors.)	
)	Proposed Objection Deadline: January 23, 2012 at 4:00 p.m. (ET)
)	Proposed Hearing Date: January 25, 2012 at 2:30 p.m. (ET)
)	Re: Docket No. 1472

**MOTION OF LIQUIDATION TRUSTEE CHARLES M. MOORE TO FILE UNDER
SEAL EXHIBIT A TO THE DECLARATION OF CHARLES M. MOORE IN SUPPORT
OF THE MOTION OF LIQUIDATION TRUSTEE CHARLES M. MOORE FOR
PARTIAL SUMMARY JUDGMENT ON TRIBUL, LLC AND
SECOND SOURCE FUNDING, LLC DISPUTES**

Charles M. Moore, in his capacity as Trustee (the “**Liquidation Trustee**”) of the CD Liquidation Trust (the “**Liquidation Trust**”) and successor-in-interest to the substantively consolidated bankruptcy estate of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC and Cynergy Data Holdings, Inc. (collectively, the “**Debtors**”) hereby files his Motion to File Under Seal (the “**Seal Motion**”) Exhibit A to the Declaration of Charles M. Moore (“**Exhibit A**”) in Support of the Motion of the Liquidation Trustee for Partial Summary Judgment on Tribul, LLC and Second Source, LLC Disputes (the “**Partial Motion to Summary Judgment**”). In support thereof, the Liquidation Trustee respectfully represents and states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

2. The relief requested herein is pursuant to Section 107(b) of the Bankruptcy Code, Rule 9018 of the Bankruptcy Rules, and Rule 9018-1 of the Local Rules.



RELEVANT BACKGROUND

3. On October 11, 2011, the Court entered an Order Approving Confidentiality Stipulation (the “**Confidentiality Order**”) (Dkt. 1421) which approved a Confidentiality Stipulation (the “**Stipulation**”) entered into on October 7, 2011 between Tribul, LLC; Tribul Merchant Services, LLC; Tribul Cash, LLC; Second Source Funding, LLC (collectively, the “**Tribul Parties**”) and the Liquidation Trustee. The Stipulation provides that “any Confidential Information designated as ‘Highly Confidential – Attorneys’ Eyes Only’ shall be submitted to the Clerk of Court in a sealed envelope in accordance with Rule 9018-1(c) of the Local Rules.” *Id.*

4. Contemporaneously with the filing of this Seal Motion, the Liquidation Trustee is filing his Reply Memorandum in Support of His Motion for Partial Summary Judgment on Tribul, LLC and Second Source Funding, LLC Disputes (the “**Reply Memorandum**”). In support of the Reply Memorandum and Partial Motion for Summary Judgment, the Liquidation Trustee submits, *inter alia*, Exhibit A to the Moore Declaration, which contains highly confidential proprietary business and/or technical information within the meaning of the Stipulation.

RELIEF REQUESTED

5. By this Seal Motion, the Liquidation Trustee seeks an Order authorizing it to file Exhibit A to the Moore Declaration under seal.

6. A court may grant the relief requested herein pursuant to Section 107(b) of the Bankruptcy Code, Rule 9018 of the Bankruptcy Rules, and Local Rule 9018-1. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm. Section 107(b), in relevant part, provides:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

7. Rule 9018 of the Bankruptcy Rules defines the procedure by which a party may move for relief under Bankruptcy Code Section 107(b), and provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information [or] (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code . . .” Fed. R. Bankr. P. 9018. Unlike Rule 26(c) of the Federal Rules of Civil Procedure, Section 107(b) does not require a demonstration of “good cause.” Rather, if material sought to be protected falls within one of the enumerated categories, “the court is *required* to protect a requesting party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2nd Cir. 1994) (emphasis in original).

8. Because of the confidential and proprietary nature of Exhibit A to the Moore Declaration, the Liquidation Trustee submits that it is appropriate and justified in this case for Exhibit A to be filed under seal.

9. The filing of the Exhibit A under seal does not vitiate the rights of any party. Furthermore, to the extent that the Stipulation obviates the necessity of filing this Seal Motion, the Liquidation Trustee submits that granting this Seal Motion nevertheless will not prejudice any party.

NOTICE

10. Notice of this Seal Motion has been provided to the Tribul Parties. The Liquidation Trustee submits that no further notice is required under the circumstances.

NO PREVIOUS REQUEST

11. No previous application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Liquidation Trustee respectfully requests that the Court enter an Order: (a) authorizing the Liquidation Trustee to file the Exhibit A to the Declaration of Charles M. Moore under seal, and (b) directing that such document shall remain under seal and confidential and should not be made available to any party other than the Court.

Dated: January 20, 2012
Wilmington, Delaware

Respectfully submitted,

/s/ Christopher A. Ward _____

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Attorneys for the Liquidation Trustee

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**NOTICE OF MOTION OF LIQUIDATION TRUSTEE CHARLES M. MOORE TO FILE
UNDER SEAL EXHIBIT A TO THE DECLARATION OF CHARLES M. MOORE IN
SUPPORT OF THE MOTION OF LIQUIDATION TRUSTEE CHARLES M. MOORE
FOR PARTIAL SUMMARY JUDGMENT ON TRIBUL, LLC AND
SECOND SOURCE FUNDING, LLC DISPUTES**

PLEASE TAKE NOTICE that on January 20, 2012, Charles M. Moore, in his capacity as Trustee (the “**Liquidation Trustee**”) of the CD Liquidation Trust and successor-in-interest to the substantively consolidated bankruptcy estate of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC and Cynergy Data Holdings, Inc., by and through its undersigned counsel, filed his Motion to File Under Seal Exhibit A to the Declaration of Charles M. Moore in Support of the Motion of the Liquidation Trustee for Partial Summary Judgment on Tribul, LLC and Second Source, LLC Disputes (the “**Seal Motion**”).

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order approving the Seal Motion must file a response or objection to the Seal Motion (“**Objection**”) with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **January 23, 2012 at 4:00 p.m. (ET) (proposed)** (the “**Objection Deadline**”). At the same time, you must serve such Objection upon the undersigned counsel so as to be received by the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that if any responses or objections to the Seal Motion are timely filed, served, and received, a hearing on the Seal Motion will be held on **January 25, 2012 at 2:30 p.m. (ET) (proposed)** before the Honorable Kevin Gross, 824 Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom 3. Only those objections made in writing and timely filed and received in accordance with the procedures set forth herein will be considered by the Bankruptcy Court at such hearing.

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

Dated: January 20, 2012
Wilmington, Delaware

Respectfully submitted,

/s/ Christopher A. Ward _____

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) **Re: Docket No. _____**

**ORDER GRANTING MOTION OF LIQUIDATION TRUSTEE CHARLES M. MOORE
TO FILE UNDER SEAL EXHIBIT A TO THE DECLARATION OF CHARLES M.
MOORE IN SUPPORT OF THE MOTION OF LIQUIDATION TRUSTEE CHARLES M.
MOORE FOR PARTIAL SUMMARY JUDGMENT ON TRIBUL, LLC AND
SECOND SOURCE FUNDING, LLC DISPUTES**

UPON CONSIDERATION of the Motion of Charles M. Moore, in his capacity as Trustee (the “**Liquidation Trustee**”) of the CD Liquidation Trust and successor-in-interest to the substantively consolidated bankruptcy estate of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC and Cynergy Data Holdings, Inc. to file Under Seal Exhibit A to the Declaration of Charles M. Moore in Support of the Motion of the Liquidation Trustee for Partial Summary Judgment on Tribul, LLC and Second Source, LLC Disputes (the “**Seal Motion**”); and the Court having determined that the relief requested in the Seal Motion is due and adequate under the circumstances; and after due deliberation thereon, and good and sufficient cause appearing therefore, it is hereby

ORDERED that the Seal Motion is GRANTED; and it is further

ORDERED that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2012
Wilmington, Delaware

The Honorable Kevin Gross
United States Bankruptcy Judge