

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

In re:

CD LIQUIDATION CO., LLC f/k/a
CYNERGY DATA, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 09-13038 (KG)

(Jointly Administered)

RE: D.I. 1483, 1484

Hrg. Date: January 27, 2012, at 8:00 a.m. (ET) (Proposed)

Obj. Deadline: January 27, 2012, at 8:00 a.m. (ET) (Proposed)

**MOTION OF TRIBUL LLC, TRIBUL MERCHANT SERVICES, LLC, TRIBUL CASH,
LLC, AND SECOND SOURCE FUNDING LLC FOR ENTRY OF AN ORDER
AUTHORIZING EXHIBITS B, D, E, AND F TO THE NOTICE OF FILING PROPOSED
FINAL PRETRIAL ORDER TO BE FILED UNDER SEAL**

Tribul LLC, Tribul Merchant Services, LLC Tribul Cash, LLC, and Second Source Funding, LLC (together, the “Tribul Parties”) hereby move (the “Motion”) for entry of an order pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) authorizing the Tribul Parties to file under seal Exhibits B, D, E, and F to their contemporaneously filed *Notice of Filing Proposed Final Pretrial Order* (the “Pretrial Order”).¹ In support of the Motion, the Tribul Parties respectfully represent as follows:

JURISDICTION

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

¹ Capitalized terms used but undefined herein shall have the meanings ascribed to them in the Pretrial Order.



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2. The statutory bases for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 9018 and Local Rule 9018-1.

BACKGROUND

3. On October 11, 2011, the Court entered the *Order Approving Confidentiality Stipulation* (the “Confidentiality Order”) (D.I. 1421) which approved a Confidentiality Stipulation (the “Stipulation”) entered into on October 7, 2011, by and between the Tribul Parties and Charles M. Moore, in his capacity as Trustee of the CD Liquidation Trust and successor-in-interest to the substantively consolidated bankruptcy estates of the Debtors (the “Parties”). Pursuant to the Stipulation, the Parties agreed to “retain in strict confidence all Confidential Information.”² *Id.* Moreover, 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.”³ *Id.*

4. Contemporaneously with the filing of this Motion, the Tribul Parties have filed the Pretrial Order. The Tribul Parties believe that the Exhibits B, D, E, and F to the Pretrial

² The Stipulation defines “Confidential Information” as “all documents or information produced by either Party and any information or data contained in, on or derived therefrom including, without limitation, any corporate records, contracts, information, data, financial statements, tax returns, records of financial condition, business information, customer information, results, plans, and/or projections, pricing information, operating information, employee or employment records, payment records, invoices, purchase orders, payroll, accounts or obligations, loans, debts and expenses.” *See* Stipulation at A.

³ Pursuant to the Stipulation, Confidential Information will be designated as “Highly Confidential – Attorneys’ Eyes Only” “if the designating party believes in good faith that such Confidential Information comprises confidential proprietary business or technical information that might be of value to a competitor, customer or potential customer that must be protected from disclosure.” *See* Stipulation at ¶ 2.

Although the Stipulation permits “Highly Confidential” information to be submitted under seal to the Clerk of the Court without the need to file a motion to seal, Stipulation at ¶ 5, the Tribul Parties are filing this Motion out of an abundance of caution as certain of the material contained in the exhibits, although confidential, may not qualify as “Highly Confidential” under the Stipulation.

Order (the “Confidential Exhibits”) contain confidential proprietary business or technical information of the Tribul Parties and the Debtors and therefore constitute Confidential Information and/or Highly Confidential Information pursuant to the Stipulation and Confidentiality Order.

5. Accordingly, the Tribul Parties seek the relief requested herein to maintain the confidentiality of the Confidential Exhibits.

RELIEF REQUESTED

6. By this Motion, the Tribul Parties seek an order pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1 authorizing the Tribul Parties to file the Confidential Exhibits under seal.

BASIS FOR RELIEF

7. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

8. Section 107(b)(1) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders to protect a party’s confidential, commercial, or proprietary information:

On request of a party in interest, the bankruptcy court shall . . .
protect an entity with respect to a trade secret or confidential
research, development, or commercial information

Id. § 107(b)(1).

9. Furthermore, Bankruptcy Rule 9018 defines the procedure by which a party may move for relief under section 107(b) of the Bankruptcy Code:

On motion or on its own initiative, with or without notice, the court
may make any order which justice requires . . . to protect the estate

or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018. Local Rule 9018-1 requires any party who seeks to file documents under seal to file a motion to that effect. Del. Bankr. L.R. 9018-1(b).

10. A movant is not required to demonstrate “good cause” to file under seal. If the material sought to be filed under seal falls within one of the categories identified in section 107(b) of the Bankruptcy Code, “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, 27-28 (2d Cir. 1994).

11. The Tribul Parties respectfully submit that it is appropriate to allow the Confidential Exhibits to be filed under seal. The Confidential Exhibits contain confidential proprietary business or technical information of both the Tribul Parties and the Debtors. Disclosure of this confidential information would be damaging to the Tribul Parties and/or the Debtors.

12. Therefore, the Tribul Parties respectfully submit that the Court should authorize and direct the Confidential Exhibits to be filed under seal.

NOTICE

13. Notice of this Motion will be served upon the Trustee and the Office of the United States Trustee for the District of Delaware. The Tribul Parties respectfully submit that no other or further notice is necessary under the circumstances.

NO PRIOR REQUEST

14. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Tribul Parties respectfully request that the Court (i) grant this Motion and the relief requested herein; (ii) enter the proposed order attached hereto; and (iii) grant such other and further relief as it deems just and proper.

Date: January 26, 2012
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Curtis S. Miller

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

CD LIQUIDATION CO., LLC f/k/a
CYNERGY DATA, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 09-13038 (KG)

(Jointly Administered)

RE: D.I. 1484

Hrg. Date: Jan. 27, 2012 at 8:00 a.m. (ET) (Proposed)

Obj. Deadline: Jan. 27, 2012 at 8:00 a.m. (ET) (Proposed)

**NOTICE OF MOTION OF TRIBUL LLC, TRIBUL MERCHANT SERVICES, LLC,
TRIBUL CASH, LLC, AND SECOND SOURCE FUNDING LLC FOR ENTRY OF AN
ORDER AUTHORIZING EXHIBITS B, D, E, AND F TO THE NOTICE OF FILING
PROPOSED FINAL PRETRIAL ORDER TO BE FILED UNDER SEAL**

PLEASE TAKE NOTICE that Tribul Merchant Services, LLC, Tribul LLC, and Second Source Funding LLC (together, the "Tribul Parties"), have today filed and served the attached Motion of Tribul LLC, Tribul Merchant Services, LLC, Tribul Cash, LLC, and Second Funding LLC for Entry of an Order Authorizing Exhibits B, D, E, and F to the Notice of Filing Proposed Final Pretrial Order to be Filed Under Seal (the "Motion").

PLEASE TAKE FURTHER NOTICE that the Tribul Parties have requested that the Court require that any party wishing to oppose the entry of an order approving the Motion file a response or an objection to the 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 27, 2012 at 8:00 a.m.** (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 THE TRIBUL PARTIES HAVE REQUESTED THAT A HEARING ON THE MOTION BE HELD ON JANUARY 27, 2012 AT 8:00 A.M. BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM #3, WILMINGTON, DELAWARE 19801. ONLY PARTIES WHO HAVE FILED A TIMELY OBJECTION WILL BE HEARD AT THE HEARING.

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.

Date: January 26, 2012
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Curtis S. Miller

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LLC, and Second Source Funding LLC*

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EXHIBIT A
[Proposed Order]

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|------------------------------------|---|------------------------|
| In re: |) | Chapter 11 |
| |) | |
| CD LIQUIDATION CO., LLC f/k/a |) | Case No. 09-13038 (KG) |
| CYNERGY DATA, LLC, <i>et al.</i> , |) | |
| |) | Jointly Administered |
| Debtors. |) | |
| |) | Re: D.I. 228 |
| |) | |

**ORDER AUTHORIZING THE TRIBUL PARTIES TO FILE
EXHIBITS B, D, E, AND F TO THE NOTICE OF FILING PROPOSED FINAL
PRETRIAL ORDER UNDER SEAL**

Upon consideration of the motion (the “Motion”)¹ of Tribul LLC, Tribul Merchant Services, LLC Tribul Cash, LLC, and Second Source Funding, LLC (together, the “Tribul Parties”), for entry of an order pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) authorizing the Tribul Parties to file under seal Exhibits B, D, E, and F to the *Notice of Filing Proposed Final Pretrial Order*; and the Court having determined that the relief requested in the Motion is in the best interests of the Tribul Parties and the estates; and notice of the Motion having been given that is due and adequate under the circumstances; and after due deliberation thereon, and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

¹ Capitalized terms used but undefined herein shall have the meanings ascribed to them in the Motion.

2. The Confidential Exhibits shall be kept segregated and under seal by the Clerk of Court and shall not be made publicly available pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).

3. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2012
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
CHIEF UNITED STATES BANKRUPTCY JUDGE