

**IN THE 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, et al.,)	
)	Jointly Administered
Debtors.)	
)	
)	
)	
)	

APPELLANT’S DESIGNATION OF RECORD ON APPEAL

Marcelo Paladini, by and through his counsel, Elliott Greenleaf and Aschettino Struhs LLP, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, respectfully (i) designates the following items as the record on appeal from the Order Granting the Motion of Moneris Solutions, Inc. and BMO Harris Bank N.A. and (1) Enforcing (A) the Order Approving that Certain Settlement Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund, (B) the Order Confirming the Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC, and Cynergy Data Holdings, Inc. and (C) Compliance with the Joint Plan of Liquidation of Debtors and (2) Enjoining Marcelo Paladini (Dkt. #1549) entered in the bankruptcy case number 09-13038, filed in the Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on December 28, 2012; and (ii) presents the following Statement of Issues on Appeal:



I. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL¹

Item No.:	Docket/Document No.:	Docket Date:	Description
1.	1549	08/31/2012	Motion of Moneris Solutions, Inc. and BMO Harris Bank N.A. for an Order (1) Enforcing (A) the Order Approving That Certain Settlement Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund, (B) the Order Confirming the Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC and Cynergy Data Holdings, Inc. and (C) Compliance with the Joint Plan of Liquidation of Debtors and (2) Enjoining Marcelo Paladini
2.	1551	10/10/2012	Objection by Marcelo Paladini to Motion by Moneris Solutions and BMO Harris Bank NA to Enforce Settlement Agreement and for Related Relief
3.	1554	10/24/2012	Reply In Further Support of Motion of Moneris Solutions, Inc. and BMO Harris Bank N.A. for an Order (1) Enforcing (A) the Order Approving That Certain Settlement Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund, (B) the Order Confirming the Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC and Cynergy Data Holdings, Inc. and (C) Compliance with the Joint Plan of Liquidation of Debtors and (2) Enjoining Marcelo Paladini Solutions, Inc. and BMO
4.	1560	11/20/2012	Marcelo Paladini's Motion for Leave to File a Sur-Reply in Further Support of his Objection to Motion by Moneris Solutions and BMO Harris Bank NA to Enforce Settlement Agreement and for Related Relief filed by Marcelo Paladini
5.	1562	11/21/2012	Objection of Moneris Solutions, Inc. and BMO Harris Bank N.A. to Marcelo Paladini's Motion for Leave to File a Sur-Reply

¹ All items designated herein by the Appellant include all exhibits, declarations, transcripts, excerpts, attachments or other papers included within each docket entry for such item.

6.	1564	11/26/2012	Order Approving Marcelo Paladini's Motion for Leave to File a Sur-Reply in Further Support of Its Objection to Motion by Moneris Solutions and BMO Harris Bank NA to Enforce Settlement Agreement and for Related Relief
7.	1567	12/04/2012	Transcript Regarding Hearing Held 11/26/2012 Re: Omnibus Hearing
8.	1569	12/28/2012	MEMORANDUM OPINION
9.	1570	12/28/2012	ORDER
10.	1571	1/11/2013	Notice of Appeal (BAP-13-4) of Marcelo Paladini

II. STATEMENT OF ISSUES ON APPEAL

The Appellant, by and through his undersigned counsel, designates the issue on appeal to include the following:

1. Whether the Bankruptcy Court erred in granting the Motion of Moneris Solutions, Inc. and BMO Harris Bank N.A. for an Order (1) Enforcing (A) the Order Approving that Certain Settlement Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund, (B) the Order Confirming the Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC, and Cynergy Data Holdings, Inc. and (C) Compliance with the Joint Plan of Liquidation of Debtors and (2) Enjoining Marcelo Paladini?
2. Whether the Bankruptcy Court erred in determine that the release of claims under the Settlement Between and Among the Debtors, Harris N.A., Moneris Solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data LLC, Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund and for Certain Related Relief was unfettered and without limitations despite the clear carve out language in the Agreement?
3. Whether the Bankruptcy Court erred in failing to enforce the carve-out language contained in the Settlement Between and Among the Debtors, Harris N.A., Moneris Solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data LLC, Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund and for Certain Related Relief, the Final Order (I) Authorizing Use of Cash Collateral, (II) Authorizing PostPetition Financing, (III) Granting Senior Priming Liens and Superpriority Claims, and (IV) Granting Adequate Protection to the Prepetition Secured Parties, and the Order Confirming Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC, and Cynergy Data Holdings, Inc., expressly and/or implicitly excluding the release of third party claims?

4. Whether the Bankruptcy Court erred in failing to allow the United States District Court for the Southern District of New York to consider the merits of the action captioned *Paladini v. BMO Harris Bank, N.A. and Moneris Solutions, Inc.*, No. 12-cv-5178, and in ruling on the viability of third party claims by Appellant against Appellees?
5. Whether the Bankruptcy Court applied the incorrect standard in following *Tooley* with respect to the subject third party claims between Appellant and Appellees?
6. Whether the Bankruptcy Court erred in failing to consider the full litany of harms and injuries asserted by Appellant in the Amended Complaint in the action captioned *Paladini v. BMO Harris Bank, N.A. and Moneris Solutions, Inc.*, No. 12-cv-5178?
7. Whether the Bankruptcy Court erred by failing to address Paladini's argument that the Bankruptcy Court lacked jurisdiction over the proceeding because Paladini's claims against the Harris Defendants were specifically carved out from the Order Approving, Pursuant to Section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, the Settlement Between and Among the Debtors, Harris N.A., Moneris Solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data LLC, Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund and for Certain Related Relief?
8. Whether the Bankruptcy Court erred by failing to address Paladini's argument that the Bankruptcy Court lacked subject matter jurisdiction over the proceeding because this was a dispute between non-debtors?
9. Whether the Bankruptcy Court erred by failing to address Paladini's argument that the Bankruptcy Court lacked subject matter jurisdiction over the proceeding because this was a non-core proceeding unrelated to the Debtors' bankruptcy?
10. Whether the Bankruptcy Court erred by failing to address Paladini's argument that the Bankruptcy Court lacked jurisdiction over the proceeding because the Harris Defendants' Motion violated Bankruptcy Rule 7001?
11. Whether the Bankruptcy Court erred by failing to address Paladini's argument that the allegations in the Complaint are in no way similar to those brought in the Martillo Action?

12. Whether the Bankruptcy Court erred in concluding that Paladini's claims were derivative, and not personal?

Dated: January 25, 2013

ELLIOTT GREENLEAF

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CERTIFICATE OF SERVICE

I, Eric M. Suty, hereby certify that on the 25th day of January, 2013, I caused a copy of the **Appellant's Designation of Record on Appeal** to be served via CM/ECF on all parties who have entered notice of appearance in this matter pursuant to Fed. R. Bankr. P. 2002 and upon the following parties in the manner indicated:

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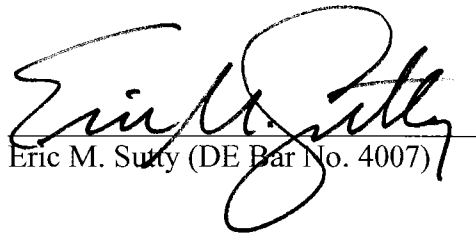
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