

At COMM Part 2 of the Supreme Court
of the State of New York, held in and for
the County of New York at the Courthouse, located
at 360 Adams Street, Brooklyn, New York,
on the 27th day of NOVEMBER, 2012

P R E S E N T: **Hon. David I. Schmidt, J.S.C.**

-----X
TRIBUL MERCHANT SERVICES, LLC, TRIBUL LLC,
TRIBUL CASH LLC, SECOND SOURCE FUNDING LLC,
DALMAO, INC. and SHMUEL CHANIN,

Plaintiffs,

Index No.502672/2012
(Schmidt, J.)

- against -

THE COMVEST GROUP aka COMVEST GROUP
HOLDINGS, LLC, COMVEST CYNERGY HOLDINGS,
INC., PIPELINE CYNERGY HOLDINGS, LLC,
CYNERGY EQUITY HOLDINGS, LLC, CYNERGY
EQUITY HOLDINGS, INC., CYNERGY DATA, INC.,
PIPELINE CYNERGY, INC., PIPELINE DATA, INC.,
KIM FITZSIMMONS, SHEILA CORVINO, MARCELO
PALADINI, et.al.,

**ORDER TO SHOW CAUSE
TO RESTORE TO
CALENDAR, ENTER A
DEFAULT AGAINST 12
DEFENDANTS, OR FOR A
TEMPORARY
RESTRAINING ORDER AND
A PRELIMINARY
INJUNCTION**



Defendants.

-----X

Upon reading the application brought by Order to Show Cause submitted on behalf of
Plaintiffs TRIBUL MERCHANT SERVICES, LLC, TRIBUL LLC, TRIBUL CASH LLC,
SECOND SOURCE FUNDING LLC, DALMAO, INC. and SHMUEL CHANIN, by their
attorneys herein, the SHAPIRO TAMIR LAW GROUP, PLLC, consisting of the affirmation of
Mitchell C. Shapiro, Esq. and the affirmation of Yeruchem Blesofsky, both dated November 26,
2012, and the Exhibits annexed thereto, and all the papers and proceedings heretofore had herein
(including without limitation the papers submitted in support of Plaintiffs' Motion for
Preliminary Injunction Against New Cynergy Defendants (Motion No. 2, consisting of the
Notice of Motion, the Affidavit of Shmuel ("Sam") Chanin, the exhibits attached thereto, and
the Memorandum of Law In Support thereof, all dated September 28, 2012), and Plaintiffs'

Motion for Entry of Default Judgment (Motion No. 3, consisting of the Notice of Motion , dated October 11, 2012, and the Affirmation of Mitchell C. Shapiro, Esq., dated October 11, 2012, and the exhibits attached thereto), and sufficient reason appearing therefore,

LET the "New Cynergy Defendants" (THE COMVEST GROUP aka COMVEST GROUP HOLDINGS, LLC, COMVEST CYNERGY HOLDINGS, INC., PIPELINE CYNERGY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, INC., CYNERGY DATA, INC., PIPELINE CYNERGY, INC., KIM FITZSIMMONS, SHEILA CORVINO), the "Advisor Defendants" who have been remanded to State Court (MARCELO PALADINI, GUSTAVO CEBALLOS, ANDRES ORDONEZ and STEPHEN ASCHETTINO), and the "Unified Defendants" (MERCHANT PROCESSING SYSTEMS CORP., OLEG FIRER, LEON GOLDSTEIN, VLADIMIR SADOVSKY, MERCHANT CAPITAL PORTFOLIO, LLC, NEW EDGE PAYMENTS, LLC, PROCESS PINK PAYMENTS LLC and UNIFIED PAYMENTS, LLC), including the 12 "Defaulting Defendants" (THE COMVEST GROUP aka COMVEST GROUP HOLDINGS, LLC, COMVEST CYNERGY HOLDINGS, INC., PIPELINE CYNERGY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, INC., CYNERGY DATA, INC., PIPELINE CYNERGY, INC., MERCHANT PROCESSING SYSTEMS CORP., MERCHANT CAPITAL PORTFOLIO, LLC, NEW EDGE PAYMENTS, LLC, PROCESS PINK PAYMENTS LLC and UNIFIED PAYMENTS, LLC) show cause at COMM Part 2 of this Court, to be held at the Courthouse thereof, located at 360 Adams Street, Brooklyn, New York, on the ³⁰~~23~~ day of Nov, 2012, at 9:30 o'clock A.M./~~P.M.~~ of that day, or as soon thereafter as counsel can be heard why the Court should not enter an Order:



- a. **Restoring the action to the Court's calendar after partial remand** of the action from the United States District Court for the Eastern District of New York (Block, J.), dated November 21, 2012, so as to permit Plaintiffs to proceed with their prosecution of all remanded claims against the aforementioned Defendants;
- b. **Staying this proceeding as to Defendant Pipeline Data, Inc. (and only as to Defendant Pipeline Data, Inc.)** because Defendant Pipeline Data, Inc. filed for Chapter 11 bankruptcy protection on November 19, 2012 (*In re: Pipeline Data, Inc.*, Index No. 12-13123-KJC (Bankr. Del.) and all actions adverse to the Debtor are subject to the Automatic Stay under 11 U.S.C.A. § 362;
- c. **Directing the Court Clerk to restore to the docket the Motion Seeking the Entry of Default Judgment** Against 15 Defendants that was served and filed with this Court via ECF on October 11, 2012 at 2:42 A.M. (Motion No. 3), before the case was removed and transferred to the Eastern District by Defendants;
- d. **Granting the Motion Seeking the Entry of Default Judgment** that was served and filed with this Court via NYECF on October 11, 2012 at 2:42 A.M. (Motion No. 3), before the case was removed and transferred to the Eastern District by Defendants (as against the 12 remaining "Defaulting Defendants") and directing the Clerk of the Court to enter judgment on default against the 12 "Defaulting Defendants" remaining in this action (THE COMVEST GROUP aka COMVEST GROUP HOLDINGS, LLC, COMVEST CYNERGY HOLDINGS, INC., PIPELINE CYNERGY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, INC., CYNERGY DATA, INC., PIPELINE CYNERGY, INC., MERCHANT PROCESSING SYSTEMS CORP., MERCHANT CAPITAL PORTFOLIO, LLC, NEW EDGE

PAYMENTS, LLC, PROCESS PINK PAYMENTS LLC and UNIFIED PAYMENTS, LLC), including all of the injunctive relief sought in the Complaint, restraining and enjoining “the New Cynergy Defendants” – THE COMVEST GROUP aka COMVEST GROUP HOLDINGS, LLC, COMVEST CYNERGY HOLDINGS, INC., PIPELINE CYNERGY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, INC., CYNERGY DATA, INC., PIPELINE CYNERGY, INC., KIM FITZSIMMONS AND SHEILA CORVINO (and their agents, representatives, employees; and any others acting for, with or on their behalf) – from:

1. *Contacting directly or indirectly any merchants procured or signed for by the Tribul Plaintiffs (the “Tribul Merchants”) for any purpose other than routine customer service calls initiated by the Tribul Merchants, including but not limited to contracting directly with same so as to deprive the Tribul Plaintiffs of the benefits of their contracts and or contractual relations with the Tribul Merchants;*
2. *Contacting, either directly or indirectly, any independent sales representative, independent sales organization, agent, employee or independent contractor of the Tribul Plaintiffs (hereinafter, “Agents” or “Downlines”) for any purpose, including but not limited to contracting directly with same so as to deprive the Tribul Plaintiffs of the benefits of their contracts and or contractual relations with the Agents or Downlines;*
3. *Contacting, either directly or indirectly, (i) any prospective purchaser that the New Cynergy Defendants know or have any reason to believe are considering purchasing the Tribul Merchants accounts or the residuals belonging to the Tribul Merchants’ accounts (“Prospective Purchasers”) or (ii) any prospective lender or other financing source that the New Cynergy Defendants know or have any reason to believe are considering providing the Tribul Plaintiffs with capital in order to finance their business operations in exchange for, inter alia, a security interest in the Tribul Merchants accounts or the residuals belonging to the Tribul Merchants’ accounts (“Prospective Lenders”);*

4. *Defaming, disparaging or demeaning Plaintiffs, their principals, parent companies, subsidiaries, affiliates, agents or employees or the value of the Tribul Plaintiffs' merchant portfolio, merchant accounts or the residual stream associated with the Tribul Merchants;*
5. *Interfering with the Tribul Plaintiffs' business including but not limited to interfering with the Tribul Plaintiffs' business relations with their Merchants, Downlines, Prospective Purchasers and Prospective Lenders;*
6. *Not promptly and properly paying to the Tribul Plaintiffs during the pendency of this action the total Net Residuals due to the Tribul Plaintiffs (e.g., all transaction fees resulting from credit or debit transactions processed for the Tribul Merchants, as calculated in accordance with the terms and conditions contained in the EP Agreement referenced in the Verified Complaint herein (without any deductions for minimums, assessments, loan or debt servicing or any fees other than the remaining standard processing fees set forth on Schedule A of the EP Agreement.*
7. *Not promptly issuing retractions of all defamatory, disparaging or demeaning statements previously made by or on behalf of any of the New Cynergy Defendants concerning, relating or pertaining to Plaintiffs, their principals, parent companies, subsidiaries, affiliates, agents or employees or the value of the Tribul Merchants accounts or the residuals belonging to the Tribul Merchants' accounts;*
8. *Not promptly and effectively establishing and activating a segregated bank identification number ("BIN/ICA") for all existing Tribul Merchants and those that the Tribul Plaintiffs and their Downlines/Agents continue to board with Defendant Cynergy each and every week;*
9. *Not promptly and effectively waiving any "right of first refusal" or otherwise not fully cooperating with the Tribul Plaintiffs' attempts to sell its merchant portfolio at fair market value to a third party in an arms-length transaction (the "Prospective Transaction"); and*
10. *Not promptly and effectively waiving any liens (and effectively withdrawing any UCC filing statements) against the Tribul Plaintiffs' merchant portfolio or other assets of Plaintiffs so as to enable the Tribul Plaintiffs to procure financing of their business operations with the Tribul Plaintiffs' merchant portfolio as collateral, and with the*

lender taking first position (e.g., having any liens or rights against the Tribul Plaintiffs' Merchant portfolio allegedly or potentially belonging to the New Cynergy Defendants subordinated to any Prospective Tribul lenders' interests).

As well as entering judgment on default as follows:

11. *On each and every cause of action judgment for compensatory damages in varying amounts between \$800,000.00, and \$40,000,000.00, with the precise amount to be determined at inquest;*
12. *On each and every cause of action above for which punitive damages are recoverable and warranted, judgment for punitive damages in an amount exceeding \$50,000,000.00, with the precise amount to be determined at inquest;*
13. *A declaratory judgment declaring that the Cynergy EP Agreement is null, void and unenforceable, and that the Tribul Plaintiffs are free to sell the Tribul Merchant Portfolio, without any minimum requirements, penalties or right of first refusal, and that Defendant Cynergy may not unilaterally offset fees or costs from the residuals otherwise due and owing the Tribul Parties (or their successor in interest) unless such fees or costs are commercially reasonable under industry standards;*
14. *A declaratory judgment declaring that the Dalmao Settlement Agreement and Releases are null, void and unenforceable, and that Plaintiff Dalmao is free to prosecute those claims against the Unified Defendants;*
15. *A declaratory judgment declaring that Defendants Cynergy, Fitzsimmons and Corvino are contempt of court for their willful and knowing violations of the 2012 TRO; and*
16. *Such other, further and different relief as may be just, proper and equitable, including interest, costs, disbursements and attorney's fees.*

e. **[Alternatively, in the event that the Court does not grant Plaintiffs the relief sought in the Verified Complaint on Default,] Granting Plaintiffs' Motion for Preliminary Injunction Against New Cynergy Defendants** (Motion No. 2) (which motion was scheduled to be heard by this Court on October 11, 2012, the same morning that the certain Defendants filed a Notice of Removal with the Clerk of this Court restraining and enjoining "the New Cynergy Defendants" (THE COMVEST GROUP aka COMVEST GROUP HOLDINGS, LLC, COMVEST CYNERGY HOLDINGS, INC., PIPELINE CYNERGY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, INC., CYNERGY DATA, INC., PIPELINE CYNERGY, INC., KIM FITZSIMMONS AND SHEILA CORVINO (and their agents, representatives, employees, and any others acting for, with or on their behalf)) -- from:

1. *Contacting directly or indirectly any merchants procured or signed for by the Tribul Plaintiffs (the "Tribul Merchants") for any purpose other than routine customer service calls initiated by the Tribul Merchants, including but not limited to contracting directly with same so as to deprive the Tribul Plaintiffs of the benefits of their contracts and or contractual relations with the Tribul Merchants;*
2. *Contacting, either directly or indirectly, any independent sales representative, independent sales organization, agent, employee or independent contractor of the Tribul Plaintiffs (hereinafter, "Agents" or "Downlines") for any purpose, including but not limited to contracting directly with same so as to deprive the Tribul Plaintiffs of the benefits of their contracts and or contractual relations with the Agents or Downlines;*
3. *Contacting, either directly or indirectly, (i) any prospective purchaser that the New Cynergy Defendants know or have any reason to believe are considering purchasing the Tribul Merchants accounts or the residuals belonging to the Tribul Merchants' accounts ("Prospective Purchasers") or (ii) any prospective lender or other financing source that the New Cynergy Defendants know or have any reason to believe are considering providing the Tribul Plaintiffs with capital in order to finance their business operations in exchange for, inter alia, a security interest in the Tribul Merchants accounts or the residuals belonging to the Tribul Merchants' accounts ("Prospective Lenders");*

4. *Defaming, disparaging or demeaning Plaintiffs, their principals, parent companies, subsidiaries, affiliates, agents or employees or the value of the Tribul Plaintiffs' merchant portfolio, merchant accounts or the residual stream associated with the Tribul Merchants;*
5. *Interfering with the Tribul Plaintiffs' business including but not limited to interfering with the Tribul Plaintiffs' business relations with their Merchants, Downlines, Prospective Purchasers and Prospective Lenders;*
6. *Not promptly and properly paying to the Tribul Plaintiffs during the pendency of this action the total Net Residuals due to the Tribul Plaintiffs (e.g., all transaction fees resulting from credit or debit transactions processed for the Tribul Merchants, as calculated in accordance with the terms and conditions contained in the EP Agreement referenced in the Verified Complaint herein (without any deductions for minimums, assessments, loan or debt servicing or any fees other than the remaining standard processing fees set forth on Schedule A of the EP Agreement.*

f. *Such other, further and different relief as may be just, proper and equitable.*

STAY

AND SUFFICIENT CAUSE HAVING BEEN SHOWN, the Tribul Plaintiffs are hereby granted a temporary restraining order during the pendency of the Preliminary Injunction Motion against the New Cynergy Defendants, and the New Cynergy Defendants (THE COMVEST GROUP aka COMVEST GROUP HOLDINGS, LLC, COMVEST CYNERGY HOLDINGS, INC., PIPELINE CYNERGY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, LLC, CYNERGY EQUITY HOLDINGS, INC., CYNERGY DATA, INC., PIPELINE CYNERGY, INC., KIM FITZSIMMONS AND SHEILA CORVINO (and their agents, representatives, employees, and any others acting for, with or on their behalf)) -- are hereby temporarily restrained and enjoined from:

1. *Contacting directly or indirectly any merchants procured or signed for by the Tribul Plaintiffs (the "Tribul Merchants") for any purpose other than routine customer service calls initiated by the Tribul Merchants, including but not limited to*

STAY

contracting directly with same so as to deprive the Tribul Plaintiffs of the benefits of their contracts and or contractual relations with the Tribul Merchants;

2. *Contacting, either directly or indirectly, any independent sales representative, independent sales organization, agent, employee or independent contractor of the Tribul Plaintiffs (hereinafter, "Agents" or "Downlines") for any purpose, including but not limited to contracting directly with same so as to deprive the Tribul Plaintiffs of the benefits of their contracts and or contractual relations with the Agents or Downlines;*
3. *Contacting, either directly or indirectly, (i) any prospective purchaser that the New Cynergy Defendants know or have any reason to believe are considering purchasing the Tribul Merchants accounts or the residuals belonging to the Tribul Merchants' accounts ("Prospective Purchasers") or (ii) any prospective lender or other financing source that the New Cynergy Defendants know or have any reason to believe are considering providing the Tribul Plaintiffs with capital in order to finance their business operations in exchange for, inter alia, a security interest in the Tribul Merchants accounts or the residuals belonging to the Tribul Merchants' accounts ("Prospective Lenders");*
4. *Defaming, disparaging or demeaning Plaintiffs, their principals, parent companies, subsidiaries, affiliates, agents or employees or the value of the Tribul Plaintiffs' merchant portfolio, merchant accounts or the residual stream associated with the Tribul Merchants;*
5. *Interfering with the Tribul Plaintiffs' business including but not limited to interfering with the Tribul Plaintiffs' business relations with their Merchants, Downlines, Prospective Purchasers and Prospective Lenders;*
6. *Not promptly and properly paying to the Tribul Plaintiffs during the pendency of this action the total Net Residuals due to the Tribul Plaintiffs (e.g., all transaction fees resulting from credit or debit transactions processed for the Tribul Merchants, as calculated in accordance with the terms and conditions contained in the EP Agreement referenced in the Verified Complaint herein (without any deductions for minimums, assessments, loan or debt servicing or any fees other than the remaining standard processing fees set forth on Schedule A of the EP Agreement.*

PERSONAL

Sufficient reason alleged therefore, LET service of a copy of this Order, together with a copy of the papers upon which same is granted, upon Akerman Senterfitt, LLP, Counsel for the New Cynergy Defendants and the Unified Defendants, *SYNIFY ACCEPTED SERVICE* ~~by email to scott.hessler@akerman.com and michael.marsh@akerman.com, and to Foley & Lardner, LLP, Counsel for Defendants Paladini and Aschettino, *AND ANY OTHER PARTY ENTITLED TO NOTICE* ~~by email to dean.foley@foley.com, on or before the 27 day of NOV~~ 2012, be deemed good and sufficient notice of this application and Order.~~

~~Opposition papers, if any, shall be served on Plaintiffs by email to their counsel of record herein, Shapiro Tamir Law Group, PLLC, at ConinvestCase@ShapiroTamirLaw.com, on or before the ___ day of ___, 2012 at 5:00 P.M.~~

ENTER,



J.S.C.