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19 **UNITED STATES BANKRUPTCY COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**  
21 **LOS ANGELES DIVISION**

22 In re: ) Case No. 13-bk-27689-WB  
23 )  
24 COLOREP, INC., ) Chapter 11  
25 a California corporation, )  
26 ) (Motion for Joint Administration With  
27 Debtor. ) Case No. 13-bk-27698-WB Pending)  
28 )  
29 **EMERGENCY MOTION FOR**  
30 **AUTHORIZATION TO PAY**  
31 **PREPETITION PAYROLL AND OTHER**  
32 **OBLIGATIONS AND TO HONOR**  
33 **PREPETITION EMPLOYMENT AND**  
34 **COMPENSATION PROGRAMS**

35 Tax I.D. No. 94-3055023

36 In re:  
37 TRANSPRINT USA, INC.,  
38 a Virginia corporation,

39 Debtor.

40 Tax I.D. No. 94-3055026

41 **Hearing Date**  
42 Date: July 15, 2013  
43 Time: 2:00 p.m.  
44 Location: Courtroom 1375  
45 255 East Temple Street  
46 Los Angeles, CA 90012

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1 **TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE, THE OFFICE OF THE**  
2 **UNITED STATES TRUSTEE, THE DEBTORS' TWENTY LARGEST UNSECURED**  
3 **CREDITORS, THE DEBTORS' SECURED LENDER, OTHER CREDITORS ASSERTING**  
4 **A SECURITY INTEREST IN OR LIEN UPON THE DEBTORS' ASSETS, AND OTHER**  
5 **PARTIES IN INTEREST:**

6 Colorep, Inc. ("**Colorep**") and Transprint USA, Inc. ("**Transprint**"), the debtors and  
7 debtors in possession in the above-captioned cases (collectively, the "**Debtors**"), hereby move (the  
8 "**Motion**") the Court, for entry of an order, in the form annexed hereto as Exhibit "1," granting the  
9 relief requested below.

10 **SUMMARY OF RELIEF REQUESTED**

11 Pursuant to this Motion, the Debtors request that the Court authorize but not require  
12 the Debtors, in their sole and absolute discretion, to honor, up to a maximum of \$12,475 per-  
13 employee, as established under Bankruptcy Code section 507(a)(4)(the "**Cap**"): (a) all unpaid  
14 prepetition obligations owed to their non-insider employees for prepetition services; and (b) all  
15 existing employment and compensation programs, including, if necessary, to pay any prepetition  
16 arrearages with respect to such benefits and programs. By this Motion, the Debtors are only seeking  
17 the authority to, in their sole and absolute discretion, make such payments over time as and when  
18 funding becomes available and is contained in a budget approved by their post-petition lenders. No  
19 individual employee will receive more than the maximum amount to which such employee is  
20 entitled under Bankruptcy Code section 507(a)(4).

21 The Debtors do not intend by this Motion to assume any executory obligations or  
22 agreements, and this Motion should not be deemed an assumption or adoption of any agreements,  
23 policies or liabilities relating to the Debtors' employees. Rather, the Debtors only seek authority, in  
24 their sole and absolute discretion, to pay prepetition payroll amounts to non-insider employees and  
25 to take all actions permissible and necessary, if deemed appropriate by the Debtors, to maintain and  
26 honor their existing employment programs in the ordinary course of business.

27 The Debtors request, pursuant to Rules 2081-1(a) and 9075-1(a) of the Local  
28 Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California (the  
"**Local Rules**"), that the Court schedule a hearing on this Motion on less than two (2) court days

1 notice, upon timely notice to the Office of the United States Trustee (the "UST"), the Debtors'  
2 twenty largest unsecured creditors, the Debtors' secured lender, other creditors asserting a security  
3 interest in or lien upon the Debtors' assets, and other interested parties, if any (collectively, the  
4 "**Interested Parties**"). A copy of this Motion was served, concurrent with the filing hereof with the  
5 Court, on the Interested Parties by courier or overnight delivery.

6 This Motion is based on the accompanying Memorandum of Points and Authorities  
7 the evidence contained in the "Declaration Of Mark A. Fox In Support Of First Day Motions" filed  
8 concurrently herewith, the record in these cases, and the arguments, evidence and representations  
9 that may be presented in support of this Motion.

10 **PLEASE TAKE NOTICE that, pursuant to Local Rule 9075-1(a)(7), any**  
11 **response, written or oral, to the Motion may be presented at the time of the hearing on the**  
12 **Motion.**

13 **WHEREFORE**, the Debtors respectfully request that this Court enter an order: (a)  
14 authorizing (but not requiring) the Debtors in their sole discretion: (i) to honor and pay unpaid  
15 prepetition obligations owed to their employees for prepetition services over time as and when  
16 funding becomes available in accordance with an approved debtor in possession budget; and (ii) to  
17 honor, in the ordinary course of business, existing employee Benefit programs as such policies were  
18 in effect on the Petition Date, even if such involve payment or honoring of prepetition claims; and  
19 (b) granting such other and further relief as is just and proper.

20  
21 Dated: July 11, 2013

*/s/ Margreta M. Morgulas*

GARY E. KLAUSNER  
MARGRETA M. MORGULAS AND  
KIZZY L. JARASHOW, Members of  
STUTMAN, TREISTER & GLATT  
PROFESSIONAL CORPORATION  
[Proposed] Reorganization Counsel  
for Debtor and Debtor in Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 **A. Petition Date and Jurisdiction**

5 On July 10, 2013 (the "**Petition Date**"), the debtors and debtors in possession in the  
6 above-captioned chapter 11 cases (the "**Debtors**") commenced these cases by filing voluntary  
7 petitions under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). Pursuant  
8 to Bankruptcy Code sections 1107(a) and 1108, the Debtors are continuing to operate their  
9 businesses and manage their financial affairs as debtors in possession. No official committee of  
10 unsecured creditors has yet been appointed in these cases.

11 This Court has jurisdiction over the Debtors, these chapter 11 cases and this Motion  
12 pursuant to 28 U.S.C. §§ 1334 and 157(b), and venue is proper in this District pursuant to 28 U.S.C.  
13 §§ 1408 and 1409.

14 **B. The Debtors' Business**

15 Originally founded as a technology development company in 1989, the company that  
16 later became known as Colorep shifted its focus in 2003 to industrial printing applications. By 2005  
17 Colorep had advanced its textile technology and had invented a patented process for dyeing and  
18 decorating fabric known as AirDye®, which is widely regarded as revolutionary because it does not  
19 result in water pollution and significantly reduces energy use, costs and time from design to market.

20 In 2007 Colorep began licensing AirDye® technology to manufacturers and resellers  
21 in the home interior, hospitality and apparel industries, which licensing continues to be very  
22 profitable for Colorep.

23 Due to the success of the AirDye® technology, in September 2009, Colorep began  
24 doing business as "AirDye Solutions."

25 At the end of 2007, Colorep acquired Transprint, a privately held, employee-owned  
26 company, with headquarters and manufacturing facilities in Harrisonburg, Virginia.. Transprint, a  
27 leading supplier of transfer-printing paper was a strategic and potentially lucrative acquisition for  
28

1 Colorep as it gave Colorep access to manufacturing capabilities, a global customer base, and a  
2 design library exceeding 15,000 unique designs.

3 Transprint is the wholly-owned subsidiary of Colorep. Colorep is owned by over 300  
4 shareholders, with interests in 1 or more of the 5 series of preferred stock (Series A-E) and/or in  
5 Colorep's common stock.

6 **C. Events Leading to Chapter 11 Filing**

7 In 2011, the Debtors began experiencing significant cash flow constraints, which  
8 rendered the Debtors unable to pay ordinary course operating expenses, pay overhead, acquire  
9 necessary raw materials to meet customer demands and purchase parts and supplies required for the  
10 maintenance of their equipment and manufacturing and production facility in Virginia. As a result,  
11 the quality and availability of the Debtors' product began to decline and their key vendor and  
12 customer relationships eroded.

13 In or around June 2011, the Debtors entered into that certain Second Amended and  
14 Restated Loan and Security Agreement (as amended, supplemented and modified, the "**Meserole**  
15 **Prepetition Loan Agreement**") with Meserole, LLC ("**Meserole**"). Pursuant to the Meserole  
16 Prepetition Loan Agreement, the Debtors had the ability to access up to \$25 million on the terms and  
17 conditions set forth in the Meserole Prepetition Loan Agreement. In exchange, the Debtors granted  
18 Meserole a first priority secured lien on virtually all of their tangible and intangible assets.

19 Unfortunately, the Meserole loan did not result in the stabilization of the Debtors'  
20 operations as had been hoped. Accordingly, throughout 2012, the Debtors continued to experience  
21 cash shortages and, therefore, were unable to purchase necessary raw materials and timely produce  
22 ordered product. Further, the Debtors were unable to sustain the quality of the product they did  
23 produce as they lacked the capital necessary to improve or even perform necessary service and  
24 repairs to the equipment utilized in their production process. The Debtors' inability to timely meet  
25 demand and resolve the increasing quality control issues resulted in material cancellations and an  
26 ever-shrinking customer base.

27 The Debtors' working capital constraints also resulted in their inability to meet their  
28 obligations to their employees in a timely and consistent manner. This resulted in significant morale

1 issues and ultimately in the loss of many key employees in 2012, which further diminished their  
2 capacity to fulfill customer orders and meet obligations to vendors.

3 By the end of 2012, the situation had worsened and the Debtors went through a  
4 number of "dark" periods during which time production halted completely and employees went  
5 unpaid.

6 In March 2013, the Debtors, with the consent of their primary secured lenders, hired  
7 Mark A. Fox of The Fox Group as the Chief Restructuring Officer and interim Chief Executive  
8 Officer. Since that time, the Debtors have worked to improve customer relationships and employee  
9 morale, and, most importantly, to try and resolve the operational issues faced by the Debtors.

10 From March through June 2013, the Debtors adjusted staffing to appropriate levels,  
11 minimized overall expenditures and eliminated expenditures that did not directly support the  
12 Debtors' production and research and development operations. Further, the Debtors have focused on  
13 rebuilding the most valuable customer and vendor relationships and on minimizing the Debtors'  
14 exposure with respect to those relationships that had historically not been profitable. Moreover, the  
15 Debtors focused on improving inventory analysis and control with an aim to improving the Debtors'  
16 ability to timely meet customer orders. Although significant cash shortages did not permit extensive  
17 business development efforts, to the extent feasible, the Debtors have worked to expand the Debtors'  
18 licensing activities to new, active markets around the globe.

19 Despite the significant improvements made since March 2013, it became clear in June  
20 2013, that the Debtors could not continue to operate absent either a de-leveraging of their balance  
21 sheet or significant, additional capital infusions. When it became clear that new capital would not be  
22 available on reasonable terms, the Debtors determined that a chapter 11 process whereby the value  
23 of the Debtors' assets could be maximized through an efficient sale process was the only feasible  
24 alternative.

25 **D. Facts Related to the Requested Relief**

26 As of the Petition Date, the Debtors directly employed approximately 101 full and  
27 part time employees. These employees, none of whom are "insiders" of the Debtors as such term is  
28 defined in Bankruptcy Code section 101(31)(B), work in the Debtors' manufacturing and production



1 plant in Harrisonburg, Virginia (the "**Virginia Plant**"), the Debtors' design office in Charlotte, North  
2 Carolina (the "**Carolina Office**") or the Debtors' sales office in New York, New York (the "**New**  
3 **York Office**"). The Debtors' significant cash-flow shortages, coupled with the commencement of  
4 these cases, have disrupted the Debtors' normal operations and payment policies and unless the  
5 Debtors can promptly assure their employees that they will timely meet their employee-related  
6 obligations, the going-concern value of their businesses and their ability to maximize proceeds from  
7 the contemplated sale of their assets will be irreparably harmed and significantly diminished. The  
8 Debtors' employees are the key to their continued ability to operate successfully and any failure to  
9 timely pay employees would likely lead to further employee losses, decreased productivity and  
10 quality of their products, and further harm to employee morale. If such employees were to leave *en*  
11 *masse* as a result of the Debtors' chapter 11 filings, it would devastate the Debtors' operations and  
12 would result in the devaluation of the Debtors' assets to be sold on an expedited basis in these cases.

13 In short, if the Debtors do not receive authority to honor their obligations to  
14 employees, they may be unable to retain the personnel necessary to operate and maintain operations  
15 until a sale can occur. It is crucial, therefore, that the Debtors promptly receive authority to honor  
16 payroll and benefits for services provided to the Debtors in the prepetition period. Accordingly, by  
17 this Motion, the Debtors seek authority, in their sole discretion, to pay prepetition compensation to  
18 their employees over time as and when funding becomes available and is provided for in the budget  
19 approved by the Debtors' postpetition lenders, and to continue to honor their existing employment  
20 and benefit programs, as described below, up to a maximum amount of \$1,259,975, which is on an  
21 aggregate basis, less than the statutory maximum of \$12,475 per-employee established under  
22 Bankruptcy Code section 507(a)(4) (the "**Cap**"). No individual employee will receive more than the  
23 maximum amount to which such employee is entitled under the Cap and no such payments will be  
24 made except pursuant to such budget as is approved by the Debtors' postpetition lender.

25 **1. Wages and Salaries.**

26 Approximately two-thirds of the Debtors' employees are paid wages on an hourly  
27 basis, and the remaining one-third are salaried. Prepetition, the Debtors maintained bank accounts at  
28 Union Bank, N.A. and Wells Fargo (collectively, the "**Operating Accounts**"), and funded the

1 payroll for their employees from their respective Operating Accounts.<sup>1</sup> During the ordinary course  
2 of business, hourly employees are paid on a weekly basis and salaried employees are paid on a bi-  
3 weekly basis on Fridays. The Debtors retain a third-party payroll service, Custom Payroll, to  
4 prepare paychecks for the Debtors' employees, which checks are paid directly from the Operating  
5 Accounts.

6 The Debtors' last regularly-scheduled payday was Friday, July 5, 2013, on which date  
7 employees were to be paid compensation for services provided through June 14, 2013.<sup>2</sup> No wages or  
8 salaries have been paid for services provided during the period beginning June 22, 2013 to the  
9 Petition Date. As of the Petition Date, the Debtors' estimate that they will need to pay approximately  
10 \$388,213.47 to satisfy their existing obligations to their employees for accrued but unpaid payroll  
11 during the 180 days prior to the Petition Date.

12 In addition to base pay, certain of the Debtors' employees are entitled to payment in  
13 the form of commissions. Five (5) of the Debtors' employees, specifically, sales workers and the  
14 Debtors' studio manager, are entitled to receive commissions in certain circumstances. As of the  
15 Petition Date, the Debtors' estimate that they will owe a total of approximately \$42,000 to these five  
16 (5) employees as a result of commissions earned but not yet paid. Certain of the Debtors' sales force  
17 and executive management are also entitled to reimbursement for business expenses, including  
18 travel, meals, and entertainment. As of the Petition Date, the Debtors estimate that they owe their  
19 employees approximately \$70,000 for reimbursable expenses, including expenses which have  
20 accrued but have not yet been submitted.

21 By this Motion, the Debtors request that the Court authorize the Debtors, in their sole  
22 discretion, to pay any unpaid prepetition wages, salaries, commissions, and expense reimbursements

23  
24 <sup>1</sup> In accordance with the applicable guidelines set forth by the United States Trustee, and as described in further detail  
25 in that certain "Emergency Motion for Order Pursuant to 11 U.S.C. §§ 105 and 363 Authorizing the Continued  
26 Maintenance of Certain Existing Bank Accounts; Memorandum of Points and Authorities in Support Thereof" (the  
"Cash Management Motion"), filed contemporaneously herewith, the Debtors will be opening new debtor in  
possession accounts at an approved depository. After the Petition Date, the Debtors will fund their payroll from  
these new debtor in possession accounts.

27 <sup>2</sup> On June 28, 2013, the Debtors made payroll, paying employees for services provided the week ending June 21,  
28 2013.

1 in connection with the Debtors' payroll, including any unpaid prepetition wages and salaries based  
2 on payroll checks issued to employees prior to the Petition Date that were not honored and paid as of  
3 the Petition Date. The Debtors estimate that they will owe no more than \$500,213.47<sup>3</sup> in prepetition  
4 wages, salaries, commissions, and reimbursable expenses.<sup>4</sup>

5 The failure to pay employees unpaid wages for prepetition services could threaten the  
6 Debtors' reorganization efforts by undermining employee morale and confidence and creating a  
7 serious risk that those employees would cease working for the Debtors. In 2012 alone, the Debtors  
8 lost numerous key employees due to their inability to timely meet demands. Moreover, as set forth  
9 below, the payment of such wages are within the limits established by Bankruptcy Code section  
10 507(a)(4) and have been included in the proposed budget prepared in connection with the Debtors'  
11 debtor in possession financing.

## 12 2. Employee Benefits.

13 The Debtors provide their employees with certain limited benefit programs in  
14 addition to wages and salaries. These benefit programs include medical benefits (including  
15 prescription drug benefits),<sup>5</sup> dental insurance,<sup>6</sup> life insurance (including accidental death and  
16 dismemberment insurance),<sup>7</sup> workers' compensation insurance,<sup>8</sup> disability insurance,<sup>9</sup> and 401(k)

17 <sup>3</sup> This number is comprised of the amounts owed by the Debtors for accrued, unpaid wages (\$388,213.47), accrued,  
18 unpaid commissions (\$42,000), and accrued, unpaid reimbursable expenses (\$70,000).

19 <sup>4</sup> This amount is exclusive of any prepetition salaries owed to two employees that are insiders of the Debtors, as that  
20 term is defined in Bankruptcy Code section 101(31)(B), as this Motion does not seek to obtain approval of  
21 prepetition wages and salaries due to insiders. The Debtors intend to comply with UST guidelines in seeking  
22 approval of insider compensation.

23 <sup>5</sup> The Debtors' medical benefits provider is Anthem Blue Cross Blue Shield ("**Anthem**"). The Debtors pay  
24 approximately 60% of the costs of the medical benefits, which is approximately \$60,000 per month, on average,  
25 over a twelve (12) month period. The remainder is paid by the employees. As of the Petition Date, the Debtors had  
26 remitted all monies withheld from employees for such purposes to Anthem.

27 <sup>6</sup> The Debtors' dental benefits provider is Anthem Dental ("**Anthem Dental**"). The Debtors pay approximately 4% of  
28 the costs of the dental benefits, which is approximately \$6,000 per month, on average, over a twelve (12) month  
period. As with health insurance, the remainder is paid by employees, and was, as of the Petition Date, turned over  
to Anthem Dental.

<sup>7</sup> Life insurance, though Sun Life Financial, is offered to the Debtors' employees in the amount of one times each  
employee's annual salary, up to a maximum of \$50,000. The cost to the Debtors for the life insurance benefits  
averages approximately \$600 per month over a twelve (12) month period.

<sup>8</sup> The Debtors' workers' compensation benefits, administered by The Hartford, are payroll based and paid weekly  
through automatic clearing house ("**ACH**"). Over a twelve (12) month period, the average monthly cost to the  
Debtors for these benefits is approximately \$2,900.

<sup>9</sup> The Debtors' offer disability insurance to their employees through Mutual of Omaha. While the Debtors are current  
on their obligations under the disability insurance policy, they estimate that the average monthly cost to the Debtors  
for these benefits on a go-forward basis will be approximately \$55.

1 benefits<sup>10</sup> (collectively, "**Benefits**"). The average monthly cost to the Debtors for paying these  
2 Benefits totals approximately \$69,555. As of the Petition Date, the Debtors estimate that they owe  
3 approximately \$466,752.62 in past-due Benefits-related payments. By this Motion, the Debtors seek  
4 authority, in their sole and absolute discretion, to continue to provide these benefits on a go-forward  
5 basis and to pay all Benefits-related obligations over time as and when funding becomes available  
6 and is provided for under an approved debtor in possession budget, even if doing so entails the  
7 satisfaction of a prepetition claim. The Debtors are not seeking authority to pay any premiums for  
8 Benefits to insiders.

9 The Debtors must maintain these programs to retain motivated and qualified  
10 employees, which are necessary to the going concern value of the Debtors' business pending a sale  
11 of their assets. The Debtors, therefore, believe that it is necessary and appropriate to continue to  
12 honor their obligations to existing employees under these Benefit plans in order to maintain  
13 employee confidence and morale and to avoid ill-will and further attrition of employees.

## 14 II.

### 15 ARGUMENT

#### 16 A. **The Employees Are Indispensable To The Debtors' Operations.**

17 The Debtors believe that their failure to honor employee-related obligations in the  
18 ordinary course of business would create great concern and discontent among their employees, and  
19 would undermine their ability to retain employees during this critical period. If the Debtors cannot  
20 promptly assure their employees of uninterrupted payments of wages as described above, as well as  
21 continuing Benefits, their operations will suffer immediate and irreparable harm due to resulting  
22 employee resentment and resignations and a loss of employee goodwill, or, at the very least, the  
23 disintegration of employee morale. Given that the Debtors are attempting to sell their businesses on  
24 a going-concern basis, the retention of good employees is critical to the success of the sale process.

25 <sup>10</sup> The Debtors' 401(k) provider is Great West Retirement Services. The Debtors do not have any matching obligations  
26 under their 401(k) programs, and therefore there is no cost to the Debtors for this program. However, the Debtors  
27 currently owe approximately \$24,200 on account of 401(k) payments withheld from employees' paychecks but not  
28 yet turned over to Great West Retirement Services. By this Motion, the Debtors seek the authority to pay such funds  
to Great West Retirement Services.

1 The Debtors, therefore, seek authorization to pay wages and salaries and to honor and  
2 maintain their Benefits programs in the ordinary course of business, in their sole discretion and in  
3 the exercise of their business judgment. This relief is necessary to ensure that the Debtors can retain  
4 the valuable and experienced employees that are the backbone of their businesses until a sale can be  
5 consummated. The relief requested will also provide an incentive for employees to continue to  
6 provide quality services to the Debtors postpetition while they seek to maximize value for creditors  
7 through an expedited sale.

8 **B. It Is Necessary And Appropriate To Honor Employee Obligations.**

9 Courts routinely permit debtors to pay prepetition wage claims in the ordinary course  
10 of business in chapter 11 cases. See, e.g., In re Chrysler LLC, Case No. 09-50002 (AJG) (Bankr.  
11 S.D.N.Y. May 1, 2009) [Docket No. 208] (authorizing payment of prepetition wage and benefit  
12 claims where retention of the debtors' workforce was necessary to "preserve going-concern value for  
13 the benefit of stakeholders" pending consummation of a sale transaction); In re Ionosphere Clubs,  
14 Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (recognizing that sound business reason exists for  
15 paying employee prepetition claims where payment is necessary "to preserve and protect its business  
16 . . . , retain its currently working employees and maintain positive employee morale"); Mich. Bureau  
17 of Workers' Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279,  
18 281 (S.D.N.Y. 1987) (noting bankruptcy court's authorization of debtor's payment of more than  
19 \$250 million in wages and benefits claims on the petition date).

20 Moreover, it is generally recognized that the continuation of a stable employee base  
21 and harmonious employee relations is necessary to maintain the going-concern value of a debtor in  
22 possession. See, e.g., In re Orchard Supply Hardware Stores Corp., Case No. 13-11565 (Bankr. D.  
23 Del. June 17, 2013) [Docket No. 48] (authorizing, on an interim basis, payment of prepetition wages  
24 and benefits where relief sought was necessary to prevent "immediate impairment of the Debtors'  
25 relationship with their Employees, the . . . mass turnover of Employees and the irreparable harm to  
26 workforce morale" which would have had "an immediate harmful impact on the Debtors' operations  
27 and the going concern value of the estates" in the period leading to a sale transaction); In re Chrysler  
28 LLC, Case No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 1, 2009) [Docket No. 208] (ongoing

1 dedication, support, knowledge, loyalty and cooperation of workforce necessary to the success of  
2 chapter 11 sale transaction); LTV Corp. v. Aetna Cas. & Sur. Co. (In re Chateaugay Corp.), 116 B.R.  
3 887, 898 (Bankr. S.D.N.Y. 1990) (authorizing payment of prepetition compensation obligations and  
4 explaining that "employee good will and contentment is an asset which is vital to the continuation of  
5 a debtor's business operation and its ability to effectively reorganize during the Chapter 11 process");  
6 see also In re Gulf Air, Inc., 112 B.R. 152, 154 (Bankr. W.D. La. 1989) ("[R]etention of skills,  
7 organization, and reputation . . . must be considered valuable assets contributing to going concern  
8 value and aiding rehabilitation . . .").

9 Courts also acknowledge that a debtor must be permitted to exercise its business  
10 judgment in managing its relationship with its employees in the ordinary course of business. See  
11 e.g., In re All Seasons Indus., Inc., 121 B.R. 822, 826 (Bankr. N.D. Ind. 1990) (holding that "[t]he  
12 continued employment of existing management of a debtor-in-possession constitutes part of the  
13 operation of debtor's business and is within the ordinary course of business authorized by the  
14 Bankruptcy Code"). Consonant with the settled law that employee relations matters are within the  
15 debtor's business judgment, courts have frequently acknowledged that a debtor in possession should  
16 be permitted to honor benefits programs in the ordinary course. See, e.g., In re Salant Corp., 53 B.R.  
17 158, 160 (Bankr. S.D.N.Y. 1985) ("[T]he debtors have already undertaken to obtain court approval  
18 for payment of various pre-petition wages and benefits that accrued and intend to honor vacation  
19 benefits earned by employees in the ordinary course of business.").

20 **C. The Relief Requested Herein Is Supported By Bankruptcy Code Section 507(a)(4).**

21 In addition to being a business necessity, the relief sought herein finds ample support  
22 in the Bankruptcy Code. Section 507(a)(4) of the Bankruptcy Code grants a priority of up to  
23 \$12,475 for the claims of an individual for prepetition wages and commissions earned within one  
24 hundred eighty (180) days prior to the Petition Date. Such priority claims must be paid in full under  
25 any chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B). Hence, their payment at this point will not  
26 prejudice other creditors, but will only benefit them by preserving the morale of individuals whose  
27 services are necessary to sustain operations pending a sale. The Debtors are not seeking authority to  
28 pay any prepetition wage claim owing to any particular employee that will exceed the dollar limits

1 for priority claims provided under Bankruptcy Code section 507(a)(4). Further, no insiders will  
2 receive payments or benefit from any payments to be made hereunder.

3 **D. The Requirements of Bankruptcy Rule 6003 Have Been Satisfied.**

4 Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty one  
5 (21) days after the Petition Date "to the extent that relief is necessary to avoid immediate and  
6 irreparable harm." Fed. R. Bankr. P. 6003. The Debtors submit that the relief requested in this  
7 Motion is necessary to avoid immediate and irreparable harm. As stated above, the Debtors'  
8 employees are crucial to the Debtors' ongoing operations, and there is a very real chance that a  
9 significant number of these employees will terminate their employment with the Debtors if the  
10 regular payroll is not paid and the provision of employee benefits is interrupted. Without these  
11 employees, the Debtors' reorganization efforts would be doomed. Moreover, the Debtors' employees  
12 rely on their compensation to pay necessary living expenses; the Debtors' failure to pay their  
13 employees in the ordinary course of business could have financially disastrous effects for these  
14 individuals. Accordingly, the Debtors submit that they have satisfied the requirements of  
15 Bankruptcy Rule 6003 to support the immediate payment of obligations owed to employees for  
16 prepetition services and the maintenance of employment and compensation programs, as such  
17 policies were in effect on the Petition Date.

18 **E. Waiver of Bankruptcy Rules 6004(a) and 6004(h).**

19 To implement the foregoing relief successfully, the Debtors seek a waiver of the  
20 notice requirement under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the  
21 use, sale or lease of a property under Bankruptcy Rule 6004(h).

22 **III.**

23 **CONCLUSION**

24 **WHEREFORE**, the Debtors respectfully request that the Court enter an order,  
25 substantially in the form of the proposed order attached hereto as Exhibit "1", (a) authorizing (but  
26 not requiring) the Debtors in their sole discretion: (i) to honor and pay unpaid prepetition obligations  
27 owed to their employees for prepetition services over time as and when funding becomes available  
28 in accordance with an approved debtor in possession budget; and (ii) to honor, in the ordinary course

1 of business, existing employee Benefit programs as such policies were in effect on the Petition Date,  
2 even if such involve payment or honoring of prepetition claims; and (b) granting such other and  
3 further relief as is just and proper.<sup>11</sup>

4  
5 Dated: July 11, 2013

/s/ Margreta M. Morgulas

GARY E. KLAUSNER,  
MARGRETA M. MORGULAS AND  
KIZZY L. JARASHOW, Members of  
STUTMAN, TREISTER & GLATT  
PROFESSIONAL CORPORATION  
[Proposed] Reorganization Counsel  
for Debtor and Debtor in Possession

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<sup>11</sup> Nothing contained in this Motion, and no action taken pursuant to this Motion or the order thereon, shall be deemed to constitute the assumption of any executory contract or unexpired lease or any obligation under any contract, program, or policy described in this Motion, whether pursuant to section 365 of the Bankruptcy Code, or otherwise.



Exhibit "1"

1 GARY E. KLAUSNER (STATE BAR NO. 69077)  
2 MARGRETA M. MORGULAS (STATE BAR NO. 224950), and  
3 KIZZY L. JARASHOW (*Pro Hac Vice Application Pending*), Members Of  
4 STUTMAN, TREISTER & GLATT  
5 PROFESSIONAL CORPORATION  
6 1901 Avenue of the Stars, 12th Floor  
7 Los Angeles, CA 90067  
8 Telephone: (310) 228-5600  
9 Telecopy: (310) 228-5788  
10 E-Mail: [gklausner@stutman.com](mailto:gklausner@stutman.com)  
11 [mmorgulas@stutman.com](mailto:mmorgulas@stutman.com)  
12 [kjarashow@stutman.com](mailto:kjarashow@stutman.com)

13 [Proposed] Reorganization Counsel  
14 for Debtors and Debtors in Possession

15 Debtors' Mailing Address:  
16 Colorep, Inc. and Transprint USA, Inc.  
17 1000 Pleasant Valley Road  
18 Harrisonburg, VA 22801-9790

19 **UNITED STATES BANKRUPTCY COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**  
21 **LOS ANGELES DIVISION**

22 In re:	)	Case No. 13-bk-27689-WB
	)	
23 COLOREP, INC.,	)	Chapter 11
24 a California corporation,	)	
	)	(Motion for Joint Administration With
	)	Case No. 13-bk-27698-WB Pending)
25 Debtor.	)	
	)	<b>[PROPOSED] ORDER RE EMERGENCY</b>
	)	<b>MOTION FOR AUTHORIZATION TO PAY</b>
26 Tax I.D. No. 94-3055023	)	<b>PREPETITION PAYROLL AND OTHER</b>
	)	<b>OBLIGATIONS AND TO HONOR</b>
	)	<b>PREPETITION EMPLOYMENT AND</b>
	)	<b>COMPENSATION PROGRAMS</b>
27 In re:	)	
	)	
28 TRANSPRINT USA, INC.,	)	<u><b>Hearing Date</b></u>
29 a Virginia corporation,	)	Date: July 15, 2013
	)	Time: 2:00 p.m.
	)	Location: Courtroom 1375
30 Debtor.	)	255 East Temple Street
	)	Los Angeles, CA 90012
	)	
31 Tax I.D. No. 94-3055026	)	
	)	
	)	
	)	

1           Upon review and consideration of the "Emergency Motion For Authorization To Pay  
2 Prepetition Payroll And Other Obligations And To Honor Prepetition Employment Programs" (the  
3 "**Motion**"),<sup>1</sup> filed by the debtors and debtors in possession in the above-captioned cases  
4 (collectively, the "**Debtors**"), the accompanying "Declaration of Mark A. Fox In Support of First  
5 Day Motions," any opposition to the Motion, the record in these cases, and any admissible evidence  
6 presented to the Court at or prior to the hearing on the Motion, the Court hereby finds that notice was  
7 appropriate under the circumstances; and good cause exists for the relief requested in the Motion.

8           THEREFORE, IT IS HEREBY ORDERED THAT:

9           1.     The Motion is granted.

10          2.     The Debtors are authorized, but not obligated:

11           (a)    to continue to honor and pay all unpaid prepetition obligations owed to  
12 employees for prepetition services;

13           (b)    to honor, in the ordinary course of business, existing employee Benefit  
14 programs as such policies were in effect on the Petition Date, and to pay all related costs and  
15 expenses necessary to keep the employee Benefit programs in force, including the payment  
16 of premiums and administrative costs, to the extent that such benefits, policies, plans,  
17 programs, practices, and procedures were in effect as of the Petition Date, regardless of  
18 whether any of the foregoing entails the payment of prepetition claims; and

19           (c)    to cause any checks given to employees for prepetition services to be honored  
20 and to issue new checks to replace any dishonored checks.

21          3.     The relief granted in this Order shall not constitute or be deemed to be an  
22 express or implied assumption by the Debtors or their estates of any agreement, policy, plan,  
23 program, practice, procedure or liability, pursuant to section 365 of the Bankruptcy Code or  
24 otherwise.

25          4.     The Debtors are hereby authorized and empowered to take such actions as  
26 may be necessary and appropriate to implement the terms of this Order.

27 \_\_\_\_\_  
<sup>1</sup> Terms not otherwise defined herein should have the same meanings ascribed to them in the Motion.

1                   5.       This Court shall retain jurisdiction to hear and determine all matters arising  
2 from the implementation of this Order.

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PRESENTED BY:

6

7

/s/ Margreta M. Morgulas  
GARY E. KLAUSNER,  
MARGRETA M. MORGULAS AND  
KIZZY L. JARASHOW, Members of  
STUTMAN, TREISTER & GLATT  
PROFESSIONAL CORPORATION  
[Proposed] Reorganization Counsel  
for Debtor and Debtor in Possession

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Exhibit "2"

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re : Chapter 11  
Chrysler LLC, *et al.*, : Case No. 09-50002 (AJG)  
Debtors. : (Jointly Administered)  
-----X

**ORDER, PURSUANT TO SECTIONS 105(a), 363, 507(a)(4), 507(a)(5),  
AND 541(d) OF THE BANKRUPTCY CODE, AUTHORIZING  
THE DEBTORS TO PAY: (A) PREPETITION REGULAR EMPLOYEE  
WAGES, SALARIES AND RELATED ITEMS; (B) PREPETITION REGULAR  
EMPLOYEE BUSINESS EXPENSES; (C) PREPETITION CONTRIBUTIONS TO,  
AND BENEFITS UNDER, EMPLOYEE BENEFIT PLANS; (D) PREPETITION  
REGULAR EMPLOYEE PAYROLL DEDUCTIONS AND WITHHOLDINGS;  
(E) PREPETITION ADDITIONAL WORKFORCE COSTS; AND (F) ALL COSTS AND  
EXPENSES INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363, 507(a)(4), 507(a)(5) and 541(d) of the Bankruptcy Code, for an Order Authorizing Them to Pay: (A) Prepetition Regular Employee Wages, Salaries and Related Items; (B) Prepetition Regular Employee Business Expenses; (C) Prepetition Contributions to, and Benefits Under, Employee Benefit Plans; (D) Prepetition Regular Employee Payroll Deductions and Withholdings; (E) Prepetition Additional Workforce Costs; and (F) All Costs and Expenses Incident to the Foregoing Payments and Contributions (the "Motion"),<sup>1</sup> filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Motion and the Affidavit of Ronald E. Kolka filed in support of the Debtors' first day papers (the "Affidavit") and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

before the Court (the "Hearing"); and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) notice of the Motion and the Hearing was sufficient under the circumstances, (iv) the payment of the Prepetition Compensation, Prepetition Business Expenses, Additional Workforce Costs, Deductions, Withholdings, Benefits and Prepetition Processing Costs on the terms and conditions described in the Motion is necessary and appropriate to prevent serious, and potentially irreparable, disruptions to the Debtors' chapter 11 cases, will serve to protect and preserve the value of the Debtors' business assets for the benefit of all stakeholders, will facilitate the Debtors' chapter 11 cases and will maximize value available to stakeholders, (v) the requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order and (vi) there is good cause to waive the ten-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; and the Court having determined that the legal and factual bases set forth in the Motion and the Affidavit and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, in accordance with their stated policies (as such policies may be modified from time to time) and in the Debtors' sole discretion, to pay:  
(a) Prepetition Compensation; (b) Prepetition Business Expenses; (c) Deductions;  
(d) Withholdings; (e) Benefits that accrued but remained unpaid as of the Petition Date to or for the benefit of the Regular Employees; and (f) certain VTEP Benefits that accrued pursuant to the Debtors' CBAs but remained unpaid as of the Petition Date for the benefit of certain former unionized Regular Employees, and to the extent necessary, the Debtors are authorized to use any

cash collateral in the Debtors' payroll account for such purposes, pursuant to section 363 of the Bankruptcy Code.

3. The Debtors are authorized, in the Debtors' sole discretion, to pay the Prepetition Processing Costs.

4. The Debtors are authorized, in the Debtors' sole discretion, to pay the Additional Workforce Costs for the benefit of the Additional Workforce.

5. The Debtors' Banks and other financial institutions (collectively, the "Banks") are authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay all checks (including the VTEP Checks) presented for payment of, and to honor all fund transfer requests (including the VTEP Transfers) made by the Debtors related to Prepetition Compensation, Prepetition Business Expenses, Additional Workforce Costs, Deductions, Withholdings, Benefits and Prepetition Processing Costs, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and fund transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Order.

6. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the amount, validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is a claim for Prepetition Compensation, Prepetition Business Expenses, Additional Workforce Costs, Benefits or Prepetition Processing Costs; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.



7. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

Dated: New York, New York  
May 1, 2009

**s/Arthur J. Gonzalez**  
UNITED STATES BANKRUPTCY JUDGE



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

-----X  
: In re: : Chapter 11  
: :  
: Orchard Supply Hardware Stores Corporation, : Case No. 13-11565 (CSS)  
: *et al.*,<sup>1</sup> : :  
: : (Jointly Administered)  
: Debtors. : :  
: Re: Docket No. 8  
-----X

**INTERIM ORDER GRANTING MOTION OF DEBTORS AND DEBTORS  
IN POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)  
AUTHORIZING THEM TO PAY CERTAIN EMPLOYEE OBLIGATIONS AND  
MAINTAIN AND CONTINUE EMPLOYEE BENEFITS AND PROGRAMS AND (II)  
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND  
TRANSFERS RELATED TO SUCH OBLIGATIONS, AND  
SCHEDULING A FINAL HEARING ON THE MOTION**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession for Entry of Interim and Final Orders (I) Authorizing Them to Pay Certain Employee Obligations and Maintain and Continue Employee Benefits and Programs and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations, and Scheduling a Final Hearing on the Motion (the "Motion"),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and *Declaration of Chris D. Newman in Support of First Day Pleadings* and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the

<sup>1</sup> The Debtors are the following three entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Orchard Supply Hardware Stores Corporation (4109), Orchard Supply Hardware LLC (3395) and OSH Properties LLC (3391). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 6450 Via Del Oro, San Jose, California 95119.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

“Hearing”); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is (i) in the best interests of the Debtors, their estates and their creditors and (ii) necessary to prevent immediate and irreparable harm to the Debtors, their estates and their Employees; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, in the Debtors’ sole discretion, to pay the Prepetition Compensation, PTO Payments, Prepetition Business Expenses, Allowances, ~~Director Obligations~~, Severance Payments, Payroll Taxes, Benefits Deductions and Prepetition Processing Costs (collectively, the “Prepetition Employee Amounts”) that have accrued but remain unpaid (including those amounts that remain unpaid as a result of dishonoring of checks due to the filing of these chapter 11 cases) as of the Petition Date to or for the benefit of their Employees, subject to the limitations set forth in sections 507(a)(4) and 507(a)(5), of the Bankruptcy Code and provided that the Debtors shall not pay any of the following Prepetition Employee Amounts in excess of the following amounts: (a) \$280,000 in the aggregate for Prepetition Business Expenses and (b) \$60,000 in the aggregate for Prepetition Processing Costs.
3. Notwithstanding the foregoing, subject to entry of a final order, the Debtors shall not pay Prepetition Compensation for the three Employees holding the positions of CEO, CFO

and Executive VP (Merchandising), to the extent that such Prepetition Compensation exceeds \$12,475, and will seek such excess Prepetition Compensation payments in the amounts of \$11,563, \$3,294 and \$3,294, respectively, at the Final Hearing (as defined below).

4. Notwithstanding the foregoing, subject to entry of a final order, the Debtors shall not pay PTO Payments, to the extent that such PTO Payments when added to other Prepetition Compensation and Severance Payments, exceed \$12,475.

5. Notwithstanding the foregoing, the Debtors shall not pay Severance Payments to the extent that such Severance Payments exceed \$12,475 per employee.

6. The Banks are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors pursuant to this Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable amounts to make such payments.

7. The Banks are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order, without any further inquiry and without liability for following the Debtors' instructions.

8. Subject to the terms of this Order, the Debtors are authorized, but not directed, to continue to administer their Policies and Benefits, including the Store Bonus Plan, in the ordinary course of the Debtors' business, in the same manner and on the same basis as the Debtors implemented and maintained the same prior to the commencement of these chapter 11 cases.

9. The Debtors are authorized to pay, in their sole discretion, compensation owed to their Independent Contractors through the Agencies.

10. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity, priority or amount of any claim against the Debtors or their estates; (b) a waiver of the rights of the Debtors and their estates to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is a claim for Prepetition Compensation, Prepetition Business Expenses, Payroll Taxes, Benefits Deductions or Prepetition Processing Costs; (e) an approval or assumption of any contract or agreement pursuant to section 365 of the Bankruptcy Code; (f) the waiver of any cause of action of the Debtors and their estates; or (g) impairing, prejudicing, waiving or otherwise affecting any rights of the Debtors and their estates on account of any amounts owed or paid on account of Prepetition Compensation, Prepetition Business Expenses, Payroll Taxes, Benefits Deductions or Prepetition Processing Costs.

11. Nothing herein shall be deemed <sup>(i)</sup> to authorize the payments of any amounts in satisfaction of any bonus or severance obligations which are subject to section 503(c) of the Bankruptcy Code, or <sup>(ii)</sup> to authorize the Debtors to cash out unpaid vacation/PTO time upon termination of an Employee, unless applicable state law requires such payment.

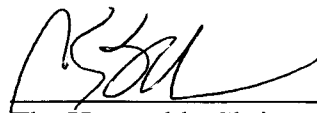
12. Notwithstanding any other provision of this Order, no payments to any individual Employee shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

13. The Motion is set for a final hearing (the "Final Hearing") to be held at 1:00 [a.m./p.m.] (Eastern Daylight Time) on July 15, 2013, with an objection deadline of 4:00 p.m. (Eastern Daylight Time) on July 8, 2013 (the "Objection Deadline"). Any objection to entry of the final order shall be filed with this Court, and served upon counsel to the Debtors, the Office of the United States Trustee for the District of Delaware

and counsel to any official committee appointed in these chapter 11 cases, on or before the  
Objection Deadline.

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.
15. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied by the  
contents of the Motion.
16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this order  
shall be immediately effective and enforceable upon its entry.
17. The Debtors are authorized to take all actions necessary to effectuate the relief  
granted pursuant to this Order.
18. This Court shall retain jurisdiction to hear and determine all matters arising from  
or relating to the implementation, interpretation and/or enforcement of this Order.

Dated: June 18, 2013  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge