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17 Management LLC, and Saviva FS 1 LP

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

21 In re:
22 Colorep, Inc., et al.,
23 Debtors and Debtors-in-
24 Possession.

Case No. 13-27689 JB

Chapter 11

**LIMITED OBJECTION TO PROPOSED
SALE OF ASSETS AND RESERVATION
OF RIGHTS**

HEARING

DATE: SEPTEMBER 26, 2013
TIME: 2:00 P.M.
LOCATION: COURTROOM 1475
255 E. TEMPLE STREET
LOS ANGELES, CA 90012

25 The Court has been advised since these cases were filed that the end game was a sale of
26 substantially all of the assets of the estates at auction, following notice, opportunity for
27 competitive bidding, and a hearing on approval of a winning bid made in accordance with
28

1 approved procedures. The potential auction is this Thursday, September 19, and the hearing on
2 approval of a sale is September 26, 2013. General objections to the sale are due on September 18,
3 2013, the same day bids are due. This limited objection and reservation of rights is filed to
4 preserve rights of the Debtors' pre- and post-petition secured lenders in the event that bids are
5 made that put in play the secured loans made to the Debtors both before and after bankruptcy.

6 Meserole, LLC ("Meserole") is the Debtors' pre-petition secured lender. Fuller Smith
7 Capital Management LLC ("FSCM") has taken, by assignment from Meserole, the rights and
8 obligations of "DIP Agent" and serves in that capacity. Saviva FS 1 LP ("Saviva") holds the
9 rights and obligations of "DIP Lender" by assignment from Meserole. The interests of Meserole,
10 FCSM and Saviva are aligned (collectively in their capacity as a potential purchaser at auction
11 "Buyer") and Buyer intends to participate in the proposed September 19 auction and sale hearing
12 on September 26.

13 This limited objection applies to the sale of substantially all assets of Colorep, Inc. and
14 Transprint USA under 11 U.S.C. § 363(f) (the "Sale"), and pursuant to the Court's August 12,
15 2013 Order (A) Approving Sale and Bid Procedures for the Sale of Substantially all Assets of the
16 Debtor, etc. (Docket No. 109) (the "Sale Procedures Order). In support of their objection,
17 Meserole, FSCM and Saviva respectfully represent as follows:

18 LIMITED BACKGROUND

19 1. On July 10, 2013, the Debtors each filed voluntary petitions for relief under
20 Chapter 11 of title 11 of the United States Code. The Debtors cases are being jointly
21 administered, and no trustee or examiner has been appointed.

22 2. On July 11, 2013, the Debtors filed the Emergency Motion Of Debtors And
23 Debtors In Possession For Interim And Final Orders (1)Authorizing Post-Petition Financing; (2)
24 Authorizing Use Of Cash Collateral; (3) Granting Priming Liens And Superpriority Claims; (4)
25 Providing Adequate Protection; And (5) Granting Related Relief; Memorandum Of Points And
26 Authorities In Support Thereof [Docket No. 12] (the "DIP Motion"), the DIP Motion was granted
27 on an interim basis by order of this Court, entered on July 18, 2013.

28 3. On July 24, 2013 the Debtors filed the Motion For Order: (A) Approving Sale And

1 Bid Procedures For The Sale Of Substantially All The Assets Of Debtors; (B) Scheduling An
2 Auction And Hearing To Consider The Sale And Approve The Form And Manner Of Notice
3 Related Thereto; (C) Establishing Procedures Relating To The Assumption And Assignment Of
4 Certain Contracts; And (D) Granting other Related Relief [Docket No. 69], authority to sell all or
5 substantially all of the Debtors' assets, free and clear of all liens and interests, including those
6 asserted by Meserole.

7 4. On August 12, 2013 the Court entered the Sale Procedures Order. Pursuant to the
8 Sale Procedures Order, if the Debtors receive more than one Qualified Bid, as defined therein, the
9 Debtors will hold an auction on September 19, 2013. The Sale Procedures Order expressly
10 acknowledges that Buyer is a Qualified Bidder, and any offer by Buyer is a Qualified Bid. If the
11 only Qualified Bid timely submitted were to be that of Meserole and DIP Agent, the Debtors need
12 not conduct the September 19, 2013 auction and instead are required to give notice to the Court
13 that no auction was held. The Court scheduled a hearing on September 26, 2013 to consider the
14 result of the August 19 auction, if any, the Sale, and any objections to the Sale (the "Sale
15 Hearing").

16 5. Also on August 12, 2013, the Debtors filed a further notice of continued hearing
17 on entry of the Final DIP Order, together with a Supplemental Memorandum of Points and
18 Authorities in Support of Entry of Final DIP Order and a Declaration of Robert D. Katz In
19 Support of Entry of Final DIP Order [Doc Nos. 111, 112, 113]. The purpose of the Debtor's
20 August 12 filings relating to the Final DIP Order were to provide the legal and factual basis for
21 entry of the Final DIP Order granting the DIP Agent a superpriority claim secured by a priming
22 lien on assets of the Debtors, subject only to the negotiated exclusions to the scope of DIP Agent
23 claims and liens provided for in the Final DIP Order, and to grant a superpriority claim and
24 priming lien to Meserole, to the extent that the use of cash collateral subject to its pre-petition
25 liens and security interests was not adequately protected under the terms of the Final DIP Order.

26 6. On August 16, 2013, this Court entered the Final DIP Order in the form submitted
27 by the Debtors on that date [Docket No. 134], approving the DIP Motion on a final basis,
28 including the superpriority claim and priming lien provisions of requested. The liens and security

1 interests securing the DIP Loan were automatically perfected when the Final DIP Order was
2 entered.

3 OBJECTION

4 7. This is a protective objection. Meserole objects to the Sale only if and to the
5 extent that the Debtors purport to transfer in the Sale, the Assets free and clear of Meserole's
6 perfected liens and the pre-petition claims secured by those perfected liens. The sole condition on
7 which a sale of the Assets free and clear of Meserole's perfected liens and claims could be
8 consummated under the Bankruptcy Code and the orders entered in these cases to date, other than
9 a sale to Buyer, would be a sale made with the express consent of Meserole on terms expressly
10 consented to by Meserole. Meserole has filed its claims in each of the Debtor's cases in the
11 amount of \$20,083,057.80, and has attached to those claims the documents evidencing and
12 securing its claims against the Debtors and its liens and security interests in the Assets. The
13 proofs of claim demonstrate the basis on which Meserole asserts a valid, enforceable,
14 unavoidable, perfected first priority liens in substantially all assets of the Debtors. The minimum
15 bid at the September 19, 2013 auction, if conducted, must be \$20,000,000. As of the date of this
16 filing, Meserole is informed and believes that no other proposed purchaser has become a
17 Qualified Bidder or has submitted a Qualified Bid. Any Sale other than to Meserole and the DIP
18 Agent is likely to require Meserole's consent.

19 8. Under the Bankruptcy Code and the Sale Procedure Order, the Debtors have no
20 right to sell the Assets free and clear of Meserole's perfected liens and security interests unless
21 the highest and best offer obtained at its proposed September 19 auction exceeds the aggregate of
22 Meserole's claim secured by those liens, otherwise, the Debtor must obtain Meserole's consent.
23 See 11 U.S.C. § 363(f)(2),(f)(3). Further, the Bankruptcy Code protects a perfected, secured, pre-
24 petition creditor like Meserole from a non-permitted sale by preserving the secured creditor's
25 right to credit bid the debt that has already been incurred. 11 U.S.C. § 363(k). The Sale
26 Procedure Order expressly recognizes Meserole's section 365(k) rights. Therefore, unless the
27 Debtors' potential August 19 auction generates a cash purchase at a sale price sufficient to fully
28 satisfy the obligations owed to Meserole, Meserole reserves its right to refuse to consent to the

1 extinguishment of its interests in the Assets, and objects to the proposed Sale.

2 9. This is a protective objection. FSCM, as DIP Agent, objects to the Sale only if
3 and to the extent that the Debtors purport to transfer in the Sale, the Assets free and clear of Dip
4 Agent's perfected liens and the post -petition claims secured by those perfected liens. The
5 anticipated balance of the DIP loan as of the Sale Hearing will be approximately \$2,000,000. The
6 liens and security interests in favor of DIP Agent in all Assets was and is automatically perfected
7 by entry of the Final DIP Order. The liens and security interests in favor of DIP Agent are
8 priming liens and those priming liens secure the superpriority claims held by DIP Agent in
9 respect of advances made under the DIP Loan.

10 10. Under the Bankruptcy Code, the Final DIP Order, and the Sale Procedure Order,
11 the Debtors have no right to sell the Assets free and clear of DIP Agent's perfected liens and
12 security interests unless the highest and best offer obtained at its proposed September 19 auction
13 exceeds the aggregate of DIP Agent's superpriority claim secured by its priming liens. The
14 Debtor cannot challenge DIP Agent's liens, security interests under Section 549 of the
15 Bankruptcy Code as the liens, claims and advances were all expressly approved by the Court.
16 Further, the Bankruptcy Code and Sale Procedure Order protects DIP Agent from a non-permitted
17 sale by preserving its right to credit bid the debt that has already been incurred. 11 U.S.C. §
18 363(k).

19 **RESERVATION OF RIGHTS**

20 11. Meserole. DIP Agent and Saviva, each further, expressly reserves, and does not
21 waive, their respective rights to amend, modify or supplement the Limited Objection and raise
22 additional arguments at the Sale Hearing.

23 WHEREFORE, Meserole respectfully requests that this Court (a) decline to approve the
24 Sale unless either (i) the Winning Bid exceeds the aggregate value of the Pre-Petition Liens or (ii)
25 Meserole consents to the Sale; and (b) grant such other and further relief as this Court finds to be
26 just and equitable.

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1 Dated: September 18, 2013

By /s/ _____

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DIP Agent and DIP Lender

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The undersigned has direct knowledge of the statements herein and verifies that these statements are true and correct to the best of his knowledge and belief.