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10 *Michael Cohen*

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UNITED STATES BANKRUPTCY COURT
Central District of California
Los Angeles Division

In re:
COLOREP, INC.
A California corporation, et al.,

Debtors,

Tax I.D. Nos. 94-3055026 (Colorep, Inc.) and
54-1200496 (Transprint USA, Inc.)

Case No. 2:13-bk-27689-WB
Chapter 11
(Jointly Administered)

**NOTICE OF MOTION AND MOTION OF
SYNERGY PARTNERS USA, LLC AND
MICHAEL COHEN FOR AN ORDER OF
CONTEMPT AGAINST MESOROLE, LLC
AND/OR FULLER SMITH CAPITAL
MANAGEMENT, LLC FOR VIOLATIONS OF
THE COURT'S ORDER; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Date: May 15, 2014
Time: 10:00 a.m.
Judge: Hon. Julia W. Brand
Crt. Rm.: 1375

PLEASE TAKE NOTICE THAT on May 15, 2014 at 10:00 a.m. in Courtroom 1375 of
the United States Bankruptcy Court, Central District of California, located at 255 East Temple
Street, Los Angeles, CA 90012, Unsecured and Post-Petition Creditors, Synergy Partners USA, LLC

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**NOTICE OF MOTION AND JOINT MOTION OF SYNERGY PARTNERS USA, LLC AND MICHAEL
COHEN FOR AN ORDER OF CONTEMPT AGAINST MESOROLE, LLC AND/OR FULLER SMITH
CAPITAL MANAGEMENT, LLC FOR VIOLATIONS OF THE COURT'S ORDER; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

1 (“Synergy”) and Michael Cohen (“Cohen”)(collectively “Synergy” and “Cohen” are referred to
2 herein as “Moving Parties”) will move this court for an Order granting Moving Parties’ Motion for
3 an Order of Contempt (“Motion”) Against Mesorole, LLC and/or Fuller Smith Capital Management,
4 LLC (collectively “Purchasers”) for Violations of the Court’s *Order: (A) Authorizing The Sale Of*
5 *Substantially All Of The Debtors’ Assets Free And Clear Of Liens, Claims, Encumbrances, And*
6 *Other Interests, Except As Provided In The Asset Purchase Agreement; (B) Authorizing And*
7 *Approving Asset Purchase Agreement;(C) Approving The Assumption And Assignment Of Certain*
8 *Of The Debtors’ Executory Contracts And Unexpired Leases Related Thereto; And (D) Granting*
9 *Related Relief* (“Sale Order”) [Docket No. 219] (“Sale Order”).
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11 Synergy and Cohen seek: (i) an order of contempt against Purchasers for their respective
12 failures to comply with the Sale Order and the attendant Asset Purchase Agreement (“APA”)
13 [Docket No. 214] entitling Synergy and Cohen to immediate payment of their outstanding invoices
14 as well as sanctions including, at a minimum, reimbursement of Moving Parties’ attorneys fees and
15 costs, totaling \$6,162.80, associated with pursuing the amounts owed from Purchasers as well as
16 penalties if Purchasers fail to make payment in accordance with the Court’s order; and (ii) an order
17 compelling the Purchasers to immediately pay the amounts of \$18,000 to Synergy and \$8,542.89 to
18 Michael Cohen, both of whom are unsecured, post-petition creditors whose unpaid invoice balances
19 are owed by Purchasers as the assignees of Colorep, Inc.’s (“Debtor”) post-petition liabilities
20 pursuant to the Sale Order.
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23 The Motion is based on this Notice, the grounds set forth in the Motion, the Memorandum of
24 Points and Authorities, the Declaration of Thomas Varian, Declaration of Michael Cohen and
25 Declaration of David H. Oken, the pleadings and records filed herein, and upon such other and
26 further evidence and arguments that may be presented to the Court at the hearing of this matter.
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2 **Your rights may be affected.** You should read these papers carefully and discuss them with
3 your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4 **Deadline for Opposition Papers:** This Motion is being head on regular notice pursuant to
5 LBR 9013-1. If you wish to object to Proposed Order to Show Cause, you must file your objections
6 as to why you should not be held in contempt within seven (7) days of service of this Motion or by
7 **May 8, 2014.** If you fail to file a written response to the Proposed Order to Show Cause, the court
8 may treat such failure as a waiver of your right to object to the Proposed Order to Show Cause and
9 may grant the requested relief.
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11 **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The
12 undersigned hereby verifies that the above hearing date and time were available for this type of
13 Motion according to the judge's self-calendaring procedures.
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15 Dated: April 24, 2014

BRINKMAN PORTILLO RONK, APC

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17 By: /s/ David H. Oken
18 David H. Oken
19 Counsel for *Synergy Partners USA, LLC*
20 and *Michael Cohen*
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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 The Purchasers have wilfully and intentionally violated the mandates of this Court by failing
5 to pay the post-petition invoices of Synergy Partners USA, LLC (“Synergy”) and Michael Cohen
6 (“Cohen.”) Synergy and Cohen are duly owed payment for their post-petition, ordinary course
7 efforts on behalf of the Debtor. Pursuant to the Sale Order approving the APA [Docket No. 219] and
8 the attendant Asset Purchase Agreement (“APA”) [Docket No. 214], Purchasers are required to pay
9 Synergy and Cohen for their outstanding post-Petition invoice balances in the amounts of \$18,000
10 (Synergy) and \$8,542.89 (Cohen.)
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12 Purchasers’ ongoing failure to comply with the Court’s orders, as well as the terms of the
13 ordered APA, amount to a contempt of the court. On the basis of the facts presented in support of
14 Synergy’s and Cohen’s prayer for relief, this Court can and should grant the relief requested and
15 require Purchasers to immediately pay Synergy and Cohen for their outstanding invoices, including
16 any legal costs incurred to obtain the amounts owed.
17

18 **II. RELEVANT FACTS**

19 **1. The Purchasers Assumed Debtors’ Post-Petition Accounts Payables**

20 On October 4, 2013, the Sale Order [Docket No. 219] was entered by this Court. The terms
21 of the Sale Order, including the adoption of the APA, transferred the Debtor’s obligations for post-
22 Petition accounts payable amounts owed to Synergy and Cohen to the Purchasers. The Sale closed
23 on October 7, 2013. [Docket No. 223]
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1 General Provision paragraph 6 of the Sale Order states:

2 “At the Closing, Purchaser shall assume the Assumed Liabilities. The
3 Purchaser **shall pay** the Assumed Liabilities as such liabilities
4 and obligations become due and payable unless otherwise expressly
5 provided with regards to terms and condition of payment in the Final
6 APA or any agreement between Purchaser and a holder of the any
7 Assumed Liability.” (emphasis added)

8 Paragraph 2.3 of the APA states:

9 “2.3 Assumption of Liabilities. Upon the terms and subject to the
10 conditions of this Agreement, Purchaser agrees, effective at the time of
11 the Closing, to assume, pay, perform and discharge the following
12 liabilities and obligations of the Sellers (the “Assumed Liabilities”):

13 (a) (i) all accruals, operating costs and expenses and accounts payable of a Debtor
14 incurred in the ordinary course of business arising after the Petition Date and
15 before Closing in accordance with the Budget (without giving effect to the Variance
16 (as defined in the Budget)) that remain unpaid as of the Closing Date, and...”

17 **2. The Sale Order Requires Purchasers To Pay Post-Petition Accounts Payables As
18 They Become Due**

19 It is uncontroverted that the Purchasers are obligated to pay Debtors’ post-petition accounts
20 payable. General Provision paragraph 6 of the Sale Order states:

21 “At the Closing, Purchaser shall assume the Assumed Liabilities. The
22 Purchaser shall pay the Assumed Liabilities as such liabilities
23 and obligations become due and payable unless otherwise expressly
24 provided with regards to terms and condition of payment in the Final
25 APA or any agreement between Purchaser and a holder of the any
26 Assumed Liability.”

27 **3. Obligations Owed to Synergy and Cohen Are Post-Petition Accounts Payable
28 That Are Past Due**

After the filing of Clororep, Inc.’s, Transprint USA’s and Beta Color, LLC’s (collectively
“Debtors”) Petition for Chapter 11 Bankruptcy on July 10, 2013, Transprint USA (“Transprint” or
“Debtor”) retained the services of both Synergy and Cohen in the ordinary course of Debtor’s

1 operations. (Declaration of Thomas Varian ¶3; Declaration of Michael Cohen ¶3) Synergy provided
2 temporary employees at the request of Transprint. (Declaration of Thomas Varian ¶¶3, 4). Cohen
3 provided website design and maintenance work for Transprint. (Declaration of Michael Cohen ¶3)
4 Pursuant to those services, Debtor owes Synergy \$18,000 and Cohen \$8,542.89. (Declaration of
5 Thomas Varian ¶3; Declaration of Michael Cohen ¶3)

6
7 **4. Purchasers Have Not Paid Synergy and Cohen and, Therefore, Purchasers Have
8 Violated the Sale Order**

9 Debtors' did not cure any of the post-petition, ordinary course billing amounts owed to either
10 Synergy or Cohen. (Declaration of David Oken ¶4)

11 Synergy and Cohen retained Brinkman Portillo Ronk, APC ("BPR") as counsel to assist in
12 procuring the post-petition amounts owed to them. (Declaration of David Oken ¶2) An informal
13 demand for payment was made by BPR to Purchasers on March 13, 2014 but no response or
14 payment was received. (Declaration of David Oken ¶4)

15 To this day, neither Synergy nor Cohen has received payment for their outstanding post-
16 petition invoices. (Declaration of Thomas Varian ¶4; Declaration of Michael Cohen ¶4; Declaration
17 of David Oken ¶5)

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20 **III. JURISDICTION**

21 Pursuant to Paragraph 33 (page 21) of the Sale Order [Docket No. 219], the United States
22 Bankruptcy Court Central District of California retains jurisdiction to "interpret, implement, and
23 enforce the terms and provisions" of the Sale Order and the attendant APA.
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3 **IV. ARGUMENT**

4 **A. Purchasers' Failure to Pay Synergy's and Cohen's Invoices Constitutes a Failure to**
5 **Comply with the Court's Sale Order**

6 Prior to March 13, 2014, Purchasers failed to pay Synergy's and Cohen's post-petition
7 invoices. (Declaration of Thomas Varian ¶4; Declaration of Michael Cohen ¶4; Declaration of
8 David Oken ¶5) On March 13, 2014, Synergy and Cohen, through their counsel, made a written
9 demand to Purchasers for payment of Synergy's and Cohen's outstanding invoice balances of
10 \$18,000 and \$8,542.89, respectively. (Declaration of David Oken ¶4) Synergy's and Cohen's work
11 for Debtor took place subsequent to the date of Petition in the Bankruptcy case and their respective
12 invoice amounts were incurred by Debtor in the ordinary course of Debtor's operations.

13 (Declaration of Thomas Varian ¶¶3, 4; Declaration of Michael Cohen ¶¶3, 4) Synergy and Cohen
14 have not received any payment for their post-petition efforts. Such efforts were agreed to by Debtor
15 and for the benefit of Debtor (Declaration of Thomas Varian ¶¶3, 4; Declaration of Michael Cohen
16 ¶¶3, 4)

17
18 Pursuant to the provisions of the Sale Order and the attendant APA set forth above, Synergy
19 and Cohen are entitled to immediate payment of their outstanding invoice balances.

20 The Sale Order and the APA require that Purchasers assume the liabilities of Debtors which
21 include the amounts owed by Debtors to Synergy and Cohen.

22 The Sale Order confirms that Debtors' liabilities owed to Synergy and Cohen are now the
23 obligations of the Purchasers.

24 By virtue of Purchasers' failures to pay Synergy's and Cohen's outstanding invoice
25 balances, (and failure to even respond to demands for payment) Purchasers refused to comply with,
26 the Court's Sale Order and APA provisions set forth above. Purchasers have not even provided a
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1 response to Moving Parties' written demand for payment. As such, Purchasers' have utterly failed
2 to comply with the Sale Order and, therefore, should be held in contempt of the Court's Sale Order.

3 As a result of the Purchasers' contempt of the Sale Order, Synergy and Cohen are entitled to
4 immediate payment of their post-petition invoices and sanctions including, but not limited to,
5 attorneys fees and costs.
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7 **B. This Court Should Sanction Purchasers for Their Deliberate Failure to Comply**
8 **with the Sale Order.**

9 **1. This Court Has Civil Contempt Authority to Sanction Purchasers.**

10 11 U.S.C. § 105(a) and Federal Bankruptcy Rule and Bankruptcy Procedure 9020 ("Rule
11 9020") confer civil contempt authority on this Court to impose sanctions that are compensatory or
12 designed to coerce compliance with orders of this Court. *See Knupfer v. Lindblade (In re Dyer)*, 322
13 F.3d 1178, 1192 (9th Cir. 2003). "Civil contempt authority allows a court to remedy a violation of a
14 specific order." *Id.* at 1196. "Because civil contempt serves a remedial purpose, 'it matters not with
15 what intent the defendant did the prohibited act.'" *In re Dyer*, 322 F.3d at 1191 n. 17, quoting
16 *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949).
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18 **2. Sanctions, including Attorneys Fees and Costs Should Be Awarded to Synergy**
19 **and Cohen Because of Purchasers' Failures to Comply with the Sale Order**

20 In the instant case, civil contempt sanctions are appropriate because, as described in this
21 Motion and the Declaration of David Oken ¶5; Declaration of Thomas Varian ¶¶3, 4; and
22 Declaration of Michael Cohen ¶¶3, 4. Purchasers have violated specific and definite orders (as set
23 forth above) of this Court. Purchasers' willful failure to comply with the Sale Order is sanctionable
24 conduct which requires not only the immediate payment of Synergy's and Cohen's outstanding
25 invoices but also the attorneys fees and expenses incurred by Synergy and Cohen in order to obtain
26 relief from the Court.
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1 Inasmuch as Purchasers have already shown their willingness to violate this Court's orders,
2 any court order requiring payment should include a penalty if Purchasers fail to pay within a certain
3 time frame. Moving Parties assert that a time period of five (5) business days for payment of
4 Moving Parties' outstanding invoices once an order is entered is more than reasonable. While
5 Moving Parties hope that Purchasers will comply with a payment order entered by this Court, based
6 on Purchaser's prior conduct, Moving Parties request that the Court impose a penalty on Purchasers
7 that would increase the amounts owed for every day that Purchasers fail to make payment pursuant
8 to an order of this Court.

9 Based on the Purchasers' conduct to date, Moving Parties also request sanctions necessary to
10 recover the legal fees and costs associated with seeking the relief in this Motion. Attorneys' fees are
11 an appropriate component of sanctions imposed in the instant proceeding, under both the Court's
12 civil contempt authority to sanction and its inherent sanction authority. *See In re Dyer*, 322 F.3d at
13 1195 (“[A]ttorneys’ fees are an appropriate component of a civil contempt award.”); see also
14 *Chambers*, 501 U.S. at 45-46, *quoting Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S.
15 240, 258-59 (1975), *quoting F.D. Rich Co. v. United States ex rel. Industrial Lumber Co.*, 417 U.S.
16 116, 129 (1974) (A court may assess attorneys fees under its inherent sanction authority “when a
17 party has ‘acted in bad faith, vexatiously, wantonly, or for oppressive reasons...’”

18 Purchasers have improperly withheld amounts owed to the Moving Parties for over six (6)
19 months. Thus, Moving Parties request a sanction order that includes the attorney fees and costs
20 recovery to the Moving Parties.

21 V. CONCLUSION

22
23 For the foregoing reasons, Synergy and Cohen respectfully request that the Court grant this
24 Motion and enter orders (1) compelling Purchasers to pay Synergy \$18,000 and Cohen \$8,542.89
25 pursuant to the Purchasers' breaches of the APA; (2) finding contempt on the part of Purchasers
26 requiring immediate payment of the amounts owed to Synergy and Cohen as well as attorneys fees
27 and costs in the amount of \$6,162.80 as sanctions (Declaration of David H. Oken ¶6) ; and (3)
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1 granting such other and further relief as this Court deems just and proper.

2 Submitted by,

3 Dated: April 24, 2014

BRINKMAN PORTILLO RONK, APC

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By: /s/ David H. Oken

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David H. Oken

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Counsel for *Synergy Partners USA, LLC*
and *Michael Cohen*

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

4333 Park Terrace Drive, Suite 205, Westlake Village, CA 91361

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION OF SYNERGY PARTNERS USA, LLC AND MICHAEL COHEN FOR AN ORDER OF CONTEMPT AGAINST MESOROLE, LLC AND/OR FULLER SMITH CAPITAL MANAGEMENT, LLC FOR VIOLATIONS OF THE COURT'S ORDER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) April 24, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) April 24, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 24, 2014
Date

Haley Pinkston
Printed Name

/s/ Haley Pinkston
Signature

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SERVICE LIST:

Served by US Mail:

Hon. Julia W. Brand
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1382 / Courtroom 1375
Los Angeles, CA 90012

Mesorole, LLC
Ari Hurt
152 West 57th Street, 54th Floor
New York, New York 10019

Fuller Smith Capital Management, LLC.
Attn: Daniel J. Fuller
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Princeton, New Jersey 08540

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