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15 Attorneys for AirDye Solutions, LLC, Meserole, LLC and
16 Fuller Smith Capital Management, in the capacities
17 described below

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

21 In re:
22
23 **COLOREP, INC., a California corporation, et**
24 **al.,**
25
26 Debtors and Debtors-in-
27 Possession.
28
29 Tax I.D. Nos. 94-3055026 (Colorep, Inc.) and
30 54-1200596 (Transprint USA, Inc.)

Case No. 13-27689

Chapter 11

(Jointly Administered)

**DECLARATION OF ROBERT KATZ IN
SUPPORT OF RESPONSE TO MOTION
OF SYNERGY PARTNERS USA, LLC
AND MICHAEL COHEN FOR AN
ORDER OF CONTEMPT AGAINST
MESEROLE, LLC AND/OR FULLER
SMITH CAPITAL MANAGEMENT**

Date: May 15, 2014

Time: 10:00 a.m.

Location: Courtroom 1375
255 E. Temple Street
Los Angeles, CA 90012

1 I, Robert D. Katz, hereby declare as follows:

2 1. I am over 18 years of age and, if called as a witness, I could and would testify
3 to the matters set forth herein based upon my personal knowledge.

4 2. I am a Managing Director of Executive Sounding Board Associates Inc.
5 ("EBSA"), a financial and management consulting firm having expertise in turnaround,
6 bankruptcy and financial advisory issues. ESBA maintains offices in New York, New York and
7 Philadelphia, Pennsylvania. ESBA was appointed, effective July 10, 2013, to serve as the Chief
8 Restructuring Officer of the Debtors in these cases, pursuant to motion filed on July 30, 2013
9 [Docket No. 80] and order entered on November 18, 2013 [Docket No. 245]. I submit this
10 declaration in support of the Response filed by AirDye Solutions, LLC ("AirDye"), Meserole,
11 LLC ("Meserole") and Fuller Smith Capital Management, LLC ("Fuller Smith") to the Motion
12 by Synergy Partners USA, LLC and Michael Cohen for an Order of Contempt Against
13 Meserole, LLC, and/or Fuller Smith Capital Management, LLC for Violations of the Court's
14 Order filed on April 24, 2014 [Docket No. 300].

15 3. As the CRO of the Debtors, I personally oversaw and supervised
16 professionals employed by ESBA in connection with both the financial aspects of the Debtors'
17 Chapter 11 bankruptcy cases as well as operations conducted at the Debtors' printing facility in
18 Harrisonburg, Virginia. As of the Petition Date initiating these cases, the Debtors employed
19 approximately 100 persons in Harrisonburg and related sales facilities. Either I or one of the
20 professionals employed by ESBA were at the Harrisonburg facility for a significant portion of
21 the operating period at the plant beginning prior to the Petition Dates of July 10, 2013 and
22 continuing until the closing of the sale by the Debtors of substantially all of their assets to
23 AirDye on October 7, 2013. ESBA also performed limited post-Closing work on behalf of
24 AirDye as a transition to AirDye management. The facts set forth in this Declaration are true of
25 my own personal knowledge unless otherwise indicated. Facts attributed to ESBA that are not
26 within my personal knowledge are known to me as the result of my supervision of ESBA
27 professionals with whom I have a longstanding and trusted relationship.

28 4. ESBA is a firm of seasoned professionals leading a coordinated effort for

1 business recovery and improvement. Over 35 years and more than a thousand cases, their
2 professionals have honed the skills needed to quickly diagnose problems, stabilize situations,
3 determine the best courses of action, and develop a long term plan. With an average of 30 years
4 business experience, their consultants have a diverse array of first-hand experience and hold a
5 wide range of credentials.

6 5. I am a Certified Public Accountant and a Certified Turnaround Professional.
7 I hold a Masters in Business Administration from Temple University and a BSE in accounting
8 and management from the Wharton School of Business at the University of Pennsylvania. I am
9 an adjunct professor at Temple University.

10 6. I was named by M&A Advisors as the 2012 Turnaround Consultant of the
11 Year and was recently named by the Turnaround Management Association (“TMA”) as an
12 Outstanding Individual Contributor. I am a past Executive Committee and Board Member of the
13 TMA. I am a member of the Pennsylvania Institute of Certified Public Accountants, America
14 Institute of Certified Public Accountants and American Bankruptcy Institute.

15 7. I have led companies through crises and turnarounds with the vision and
16 insight earned from more than 25 years on the front lines. In many instances, I have acted as
17 Interim President, Chief Financial Officer, Chief Operating Officer, Chief Restructuring Officer
18 or Treasurer, helping companies improve operating performance and generate additional cash
19 flow. As a turnaround consultant, I have participated in senior leadership positions in a number
20 of industries including manufacturing, printing, communications, transportation, distribution,
21 and healthcare. The work in these instances was strategic in evaluating viable options for a
22 debtor's future including steps to strengthen existing operations, as well as pursuing sale of the
23 company or parts thereof, or the potential for additional acquisitions to create a stronger
24 competitor in the marketplace as part of a plan of reorganization.

25 8. One of the reasons that ESBA was retained to serve as CRO in the Debtors’
26 cases was that the pre-bankruptcy management of the Debtors was essentially non-functional.
27 Although the Debtors had an acting interim CEO named Mark Fox, the Board of Directors of
28 the Debtors were not satisfied with Fox’s service. Fox was not responsive to the Board, was not

1 experienced in operating troubled companies, and was lacking in financial analysis skills
2 required by these situations. Further, he had not built credibility with the Debtors' pre-petition
3 lenders and had not conserved cash even when the Debtors' financing and cash flow was
4 constrained. When the Debtors were preparing the cases for filing, the Board of Directors
5 interviewed multiple candidates to serve as CRO during the cases, and to take over from Fox
6 the financial and operating responsibility for the companies. Prior to the Board of Directors
7 voting to have the Debtors retain ESBA, I and other ESBA professionals were also interviewed
8 by the Debtors' pre-petition lenders, who were prepared to provide debtor in possession
9 financing, but only if the Debtors engaged experienced and competent restructuring
10 professionals. After being selected by the Debtors and approved by the proposed "DIP
11 Lenders" ultimately approved to provide debtor in possession financing under an interim
12 financing order entered by the Court on July 18, 2013 [Docket No. 56] and a final financing
13 order entered August 16, 2013 [Docket No. 134] (collectively the "Financing Orders"), I began
14 the engagement and began my work with my ESBA colleagues even before the cases were filed.

15 9. Initially, Fox continued as interim CEO for a transition period alongside of
16 ESBA, although ESBA retained ultimate authority to act on behalf of the Debtors in Possession
17 and maintained exclusive contact with the Debtors' Board of Directors. Soon after the cases
18 were filed, Fox's employment was terminated. Shortly after Fox's employment was terminated,
19 Fox died as the result of an automobile accident. The failure of organized recordkeeping and
20 documentation for the interim period during which Fox served as the Debtors' interim CEO was
21 an obstacle during the entire course of ESBA's engagement. The terms of ESBA's engagement
22 are set out in the engagement agreement attached to the Debtors' application for employment
23 and signed by me, on behalf of ESBA, and by one of the members of the Debtors' Board of
24 Directors. [Docket No. 80]. My primary contact during the cases was with the Debtors'
25 Chapter 11 counsel, Gary Klausner of Stutman Treister & Glatt, and with the Board of
26 Directors. In any contact between Fox and the Board of Directors, or Fox and the DIP Lenders,
27 I or another ESBA professional was present.

28 10. In ESBA's role as CRO, I was personally responsible for the negotiation of

1 every debtor in possession financing budget approved by the Debtors' post-petition DIP
2 Lenders, Meserole, LLC and Fuller Smith Capital Management, LLC. Although other members
3 of ESBA would provide worksheets and information related to the budgets, I was the exclusive
4 point of contact for the final negotiations of DIP Budgets. As noted above, the Debtors' cases
5 were financed under an interim order approving debtor in possession financing and use of cash
6 collateral entered July 18, 2013 [Docket No. 56], and a final order approving debtor in
7 possession financing entered on August 16, 2013 [Docket No. 134] (collectively "Financing
8 Orders"). Because of delays in entry of the final Financing Order, not every Budget was filed
9 with the Court. However, the initial Budget was filed and is attached hereto as Exhibit A, and
10 the Budget attached to the final Financing Order was filed and is attached hereby as Exhibit B.
11 Between the initial and final Budgets, there were other interim Budgets proposed by the Debtors
12 and approved by the DIP Lenders under the Financing Orders. Approval by the DIP Lenders of
13 the proposed Budgets was crucial, because without DIP Lender approval under the Financing
14 Orders, the Debtors had no authority to borrow and no authority to pay expenses.

15 11. At no time during the negotiation of the initial Budget, any interim Budget,
16 or the Final Budget, did I ever propose that the pre or post-petition claims of Synergy or Cohen
17 be paid. At no time during the period that the DIP Loans were funded under the Financing
18 Orders, did the DIP Lenders approve payment of any claims to Synergy or Cohen as a part of
19 any approved Budget.

20 12. After the Financing Orders were in place, and the DIP Lenders were funding
21 the approved Budgets under those Financing Orders, I was responsible for the calculation of
22 weekly variances under the Budgets as compared to actual receipts and expenses from
23 operations of the Debtors' business. At no point during the calculation of the weekly variances
24 did I include any reference to any amount owing to Synergy or Cohen. The claims that Synergy
25 and Cohen asserted were not approved as expenses that the DIP Lenders were required to fund
26 under the Financing Orders, and were not approved for payment by the Debtors as expenses of
27 administration.

28 13. I am familiar with the claims asserted by Synergy and Cohen because each

1 made multiple demands to ESBA for payment of pre-petition services, as well as multiple
2 demands for payment of alleged post-petition services. Each made multiple demands as well to
3 the DIP Lenders under the Financing Orders. All requests for payment were refused for a
4 number of reasons including: the Debtors had not engaged either Synergy or Cohen to provide
5 services after the filing of the Chapter 11 cases; The Debtors operated under severe financing
6 constraints under the Financing Orders, and payment to Synergy for headhunting services and
7 Cohen for web design services were outside the ordinary and necessary expenses of operating
8 the Debtors' businesses and maintaining the going concern value of the Debtors' businesses
9 during the Chapter 11 cases and pending sale of substantially all of the Debtors' assets to a
10 purchaser under Section 363 of the Bankruptcy Code. The Debtors were struggling with
11 finance and cash flow issues to meet basic operating and employee expenses. I did not propose
12 engagement of Synergy or Cohen, I did not propose any budget on behalf of the Debtors that
13 included any payment to Synergy or Cohen, and I did not receive from the DIP Lenders under
14 the Financing Orders, any authority to borrow under the Financing Orders to pay Synergy or
15 Cohen or authority from the Debtors' Board of Directors to pay Synergy or Cohen.

16 14. ESBA was primarily responsible for preparation of the schedules and
17 worksheets that were used by the Debtors to negotiate the "Assumed Liabilities" that were a
18 component of the purchase price under the Sale Order and APA. I am personally aware that
19 there was extensive negotiation of the Assumed Liabilities, and that specific items were set out
20 in Schedule 2.3(f) and the schedule agreed to in connection with the Sale Order and APA based
21 on worksheets and schedules provided by ESBA. At no time did ESBA propose in a
22 spreadsheet or worksheet that was used for preparation of Schedule 2.3(f) and the schedule
23 agreed to in connection with the Sale Order and APA that any alleged claim owed to Synergy or
24 Cohen be included as an Assumed Liability. I have personal knowledge of the final negotiated
25 Schedule 2.3(f) and schedule agreed to by the parties under the APA and know that the
26 Assumed Liabilities do not include any amount due to, or alleged to be due to, Synergy or
27 Cohen.

28 15. I have reviewed my files and the files maintained by ESBA in connection

