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10 *Michael Cohen*

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13 **UNITED STATES BANKRUPTCY COURT**
14 **Central District of California**
15 **Los Angeles Division**

16 In re:

17 COLOREP, INC.
18 A California corporation, et al.,

19 Debtors,

20 Tax I.D. Nos. 94-3055026 (Colorep, Inc.) and
21 54-1200496 (Transprint USA, Inc.)

Case No. 2:13-bk-27689-WB

Chapter 11

(Jointly Administered)

**UNSECURED CREDITORS, SYNERGY
PARTNERS USA, LLC'S AND MICHAEL
COHEN'S JOINT EVIDENTIARY
OBJECTIONS TO AMENDED
DECLARATION OF ROBERT KATZ**

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

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24 **TO THE HONORABLE JULIA W. BRAND, THE OPPOSING PARTIES AND THEIR**
25 **COUNSEL OF RECORD:**

26 1. Pursuant to Evidence Rule 104, Unsecured and Post-Petition Creditors, Synergy
27 Partners USA, LLC ("Synergy") and Michael Cohen ("Cohen")(collectively "Synergy" and "Cohen")
28 are referred to herein as "Moving Parties") hereby file these Joint Objections to the Amended

1 Declaration of Robert Katz submitted on behalf of Mesorole, LLC and/or Fuller Smith Capital
2 Management, LLC (collectively “Purchasers”) in the above referenced bankruptcy case.

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4 **I. EVIDENTIARY OBJECTIONS TO DECLARATION OF ROBERT KATZ**

5 **A. General Hearsay Objections to Declaration of Robert Katz**

6 2. Moving Parties’ object to Robert Katz’ declaration which is replete with hearsay
7 statements that violate Federal Rules of Evidence section 802. In fact, the support for the majority
8 of Katz’ statements are based on hearsay as evidenced by his statements in Paragraph 3 of his
9 declaration. For example, Katz admits in paragraph 3 that all statements in his declaration that are
10 attributed to the entity called Executive Sounding Board Associates, Inc. (“ESBA”) are based on
11 statements made by others at ESBA and not even statements that were made to Katz:
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13 “Facts attributed to ESBA that are not within my personal knowledge are known to
14 me as the result of my supervision of EXBA professionals...”

15 Furthermore, throughout Katz’ declaration, he uses hearsay statements (and purported
16 thoughts) of the DIP Lenders, the Debtor’s Board of Directors and even the ESBA to support the
17 facts in his declaration.
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19 **B. Specific Objections to Declaration of Robert Katz:**

20 3. Paragraph 3 (page 1, lines 15-27): No foundation as to personal knowledge. Fed. R.
21 Evid. 602. Not only does Katz admit that, in fact, he has no personal knowledge of facts attributed
22 to ESBA but Katz also admits that he only generally “oversaw and supervised professionals
23 employed by ESBA”, not that he had any direct contact whatsoever with any specific professional of
24 Colorep, Inc. (“Debtor”) or ESBA, such as Mark Fox, the interim CEO concerning Moving Parties.
25 Testimony based on hearsay. Fed. R. Evid. 802
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1 4. Paragraph 8 (page 2, line 25- page 3, line 15): No foundation as to personal
2 knowledge. Fed. R. Evid. 602. Katz makes statements to what the Debtor's Board of Directors
3 thought of Mark Fox or actions taken by such Board of Directors, but Katz does not offer any
4 evidence as to how he knows this information. Further, statements by the Debtor's Board of
5 Directors to Katz, if any actually took place, are excluded by the hearsay rule. Fed. R. Evid. 802.

6 5. Paragraph 9 (page 3, line 16 – page 4, line 28) No foundation as to personal
7 knowledge. Fed. R. Evid. 602. Katz' admits that he has no first-hand knowledge of Debtor's
8 activities as his primary contact was with the Debtor's counsel and Debtor's Board of Directors and
9 not Mr. Fox. (¶9, lines 25-26) Additionally, Katz does not submit any foundation to support that he
10 was present during all contacts between Mark Fox and the Board of Directors (or which Board of
11 Directors he is referring to – e.g. Debtor's or ESBA's Board?) Moreover, Katz goes on to admit that
12 either he or another unknown ESBSA professional were present for only involved "most" of the
13 "contacts" with Mark Fox and the DIP Lenders. Thus, the foundation for Katz' averments
14 concerning communications with Mark Fox is non-existent. Further, statements by the Debtor's
15 Board of Directors to Katz, if any, are excluded by the hearsay rule. Fed. R. Evid. 802.

16 6. Paragraph 10 (page 4, lines 1-15): No foundation as to personal knowledge. Fed. R.
17 Evid. 602. Katz' declaration admits that he has no first-hand knowledge concerning the amounts
18 that were placed in the budget inasmuch as he states that "other members of ESBA would provide
19 worksheets and information related to the budgets..." (page 4, lines 3-4) Further, Katz' statements
20 concerning the contents and/or the intended contents of the budget are derived from hearsay
21 evidence and intentionally omits the interim budgets that were approved by the DIP lenders. (page
22 4, lines 11-13). Thus, Katz' declaration concerning the contents of the budgets is limited to only two
23 of the multitude of budgets that were approved by the DIP lenders but not necessarily filed with the
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1 Court and, therefore, Katz' declaration in this regard lacks foundation. Fed. R. Evid. 602.

2 Testimony based on hearsay. Fed. R. Evid. 802. Speculative Fed. R. Evid. 701, 403.

3 7. Paragraph 11 (page 4, lines 16-21): No foundation as to personal knowledge. Fed. R.
4 Evid. 602. Katz' declaration purports to have knowledge of payments that the DIP lenders approved
5 or did not approve with respect to ongoing ordinary course post-petition payments by the Debtor.

6 Such statements are without foundation and are speculative. Lacks Foundation Fed. R. Evid. 602;
7 Speculative Fed. R. Evid. 701, 403. Further, in this paragraph Katz' does not, and cannot, state that
8 the Debtor's interim CEO did not have authority to retain Moving Parties or that said interim CEO
9 did not retain Moving Parties for post-petition ordinary course work on behalf of the Debtor.

10 Speculative Fed. R. Evid. 701, 403. Testimony based on hearsay. Fed. R. Evid. 802.

11 8. Paragraph 12 (page 4, lines 22-28, page 5, line 1): Katz' statements in Paragraph 12
12 violate the Best Evidence Rule. Fed. R. Evid. 1002 and are improper legal conclusions. Fed. R.
13 Evid. 701. Further, Katz' declaration sets forth no foundation as to Katz' personal knowledge of the
14 facts of what is and/or was approved by the DIP lenders or what may have been approved by the
15 Financing Orders. Fed. R. Evid. 602. As such, Katz' statements also violate the Best Evidence
16 Rule. Fed. R. Evid. 1002.

17 9. Paragraph 13 (page 5, lines 2-20): Katz' statements in Paragraph 13 violate the Best
18 Evidence Rule. Fed. R. Evid. 1002 and are improper legal conclusions (such as Katz' incorrect
19 statements that Moving Parties' efforts on behalf of Debtor were not ordinary course expenses.)
20 Fed. R. Evid. 701. Further, Katz' assertions that Debtor did not engage either of the Moving Parties
21 are without any foundation whatsoever (and Katz makes no attempt to submit support for such
22 statements.) Fed. Rul. Evid. 602. Testimony based on hearsay. Fed. R. Evid. 802

23 10. Paragraph 14 (page 5, lines 21-28, page 6, lines 1-4): Katz' statements in Paragraph
24 14 are hearsay including his statements that admit that Katz had no involvement in the actual
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1 discussions with the DIP Lenders and/or the Purchasers, only that he was “aware” that negotiations
2 took place. (Page 5, lines 21-27) Fed. R. Evid. 802. Further, Katz’ assertions as to what was
3 included in Assumed Liabilities under the Sale Order and APA are not only improper legal
4 conclusions (Fed. R. Evid. 701) and not only violate the Best Evidence Rule. (Fed. R. Evid. 1002)
5 but such statements also lack any foundation whatsoever. Fed. R. Evid. 602; .

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7 11. Paragraph 15 (page 6, lines 5-19): Katz’ statements in paragraph 15 that ESBA never
8 authorized the Debtor’s retention of Moving Parties are irrelevant given the interim CEO’s authority
9 to do so which is not disputed by Katz in his declaration. Further, Katz’ declaration as a whole, and
10 including paragraph 15, lack foundation given Katz’ admissions as to his lack of knowledge of the
11 specific amounts included in the various budgets, some of which were filed with the Court and
12 others were not. In addition, Katz’ statements as to the contents of the budget violate the Best
13 Evidence Rule. Fed. R. Evid. 1002 Katz’ statements in this paragraph are impermissible and
14 objectionable hearsay, such as what the Debtor’s Board of Directors and/or DIP Lenders purportedly
15 said to Katz relating to the Moving Parties. Fed. R. Evid. 802.
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18 Submitted by,

19 Dated: May 12, 2014

BRINKMAN PORTILLO RONK, APC

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22 By: /s/ Daren R. Brinkman
23 Daren R. Brinkman
24 Laura J. Portillo
25 Kevin Ronk
26 David H. Oken
27 Counsel for *Synergy Partners USA, LLC*
28 and *Michael Cohen*

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*): **UNSECURED CREDITORS, SYNERGY PARTNERS USA, LLC'S AND MICHAEL COHEN'S JOINT EVIDENTIARY OBJECTIONS TO AMENDED DECLARATION OF ROBERT KATZ** 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*) **May 12, 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*) **May 12, 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.

May 12, 2014
Date

Haley Pinkston
Printed Name

/s/ Haley Pinkston
Signature

SERVICE LIST

Served by Overnight Delivery:

Hon. Julia W. Brand
United States Bankruptcy Court
Central District of California
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255 E. Temple Street, Suite 1382 / Courtroom 1375
Los Angeles, CA 90012

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