

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re) Chapter 11
)
) Case No. 09-12869 (JVA)
SENCORP, et al.,¹) (Joint Administration Requested)
)
) Honorable J. Vincent Aug, Jr.
Debtors.)
)

MOTION OF THE DEBTORS FOR AN ORDER (A) AUTHORIZING THE DEBTORS TO (1) PAY AND HONOR CERTAIN PREPETITION CLAIMS FOR (I) WAGES, SALARIES, EMPLOYEE BENEFITS AND OTHER COMPENSATION, (II) WITHHOLDINGS AND DEDUCTIONS AND (III) REIMBURSABLE EXPENSES; (2) CONTINUE TO PROVIDE CERTAIN EMPLOYEE BENEFITS IN THE ORDINARY COURSE OF BUSINESS; (3) PAY ALL RELATED COSTS AND EXPENSES; AND (B) DIRECTING BANKS TO RECEIVE, PROCESS, HONOR AND PAY ALL CHECKS PRESENTED FOR PAYMENT AND ELECTRONIC PAYMENT REQUESTS RELATING TO THE FOREGOING

(“WAGES AND BENEFITS MOTION”)

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby move the Court (the “**Motion**”) for entry of an order (the “**Order**”), in substantially the form attached hereto as Exhibit A, (A) authorizing, but not directing, the Debtors to (1) pay and honor certain prepetition claims for (i) wages, salaries, employee benefits and other compensation, (ii) withholdings and deductions and (iii) reimbursable expenses; (2) continue to provide certain employee benefits in the ordinary course of business; (3) pay all related costs and expenses; and (B) directing banks to receive, process, honor and pay all checks

¹ The Debtors in these Chapter 11 cases are: SENCORP, Senco Products, Inc., Senco Export, Inc., SenSource Global Sourcing, LLC, TyRex, LLC, Global Fastening Solutions, LLC, Agrifast, LLC, Nexicor, LLC, Omnifast, LLC, S C FINANCIAL, INC., Senco International, Inc., Sentron Medical, Inc., and Gregg Laboratories, Inc.

presented for payment and electronic payment requests relating to the foregoing. In support, the Debtors respectfully state:²

JURISDICTION

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(3) and 507(a)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “**Bankruptcy Code**”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

3. The Debtors commenced these above-captioned cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on May 8, 2009 (the “**Petition Date**”). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are operating their businesses and managing their affairs as debtors-in-possession. As of the date hereof, no creditors’ committee, trustee or examiner has been appointed in any of these Chapter 11 Cases.

4. The Debtors are a group of privately-held companies that collectively constitute a leading designer, manufacturer and distributor of branded pneumatic and battery powered staplers, nailers and screw systems and collated staples, nails and screws. The Debtors’

² The facts and circumstances supporting this Motion are set forth in the Affidavit of David T. Fyffe, Vice President-Corporate Financial Operations and Treasurer of SENCORP, in Support of First Day Motions (the “**First Day Affidavit**”), filed contemporaneously herewith.

brand names are well-known in the industry for quality, reliability and service. The Debtors sell to a diversified customer base, including pro trades, industrial, consumer, international and commercial customer segments. Certain aspects of the Debtors' businesses, including the SENCO name, have existed for over 50 years. As further evidence of the Debtors' long-term success, most of the Debtors' top ten customers have purchase products from the Debtors for more than 20 years.

5. Despite the Debtors' historical strength, the Debtors have not been immune to the recent widespread economic downturn. Over the past several years, the Debtors' sales volume and profitability have been negatively impacted by several economic factors, including (a) the sharp rise in the price of steel rod (the Debtors' primary raw material) to historic levels in 2008, (b) a severe decline in residential and commercial construction (the Debtors' primary customer segments) and (c) the deteriorating economic conditions leading to the current recession.

6. In response to these economic challenges, the Debtors implemented several critical initiatives in 2008 and early 2009. Among other things, the Debtors have implemented significant workforce reductions, as well as significant pay reductions for all of the Debtors' remaining employees, including senior management. The Debtors have also consolidated domestic manufacturing operations from two facilities to one, and have closed three of their six distribution centers. The Debtors have also implemented several moves designed to increase efficiency in inventory, supply and international operations.

7. Despite these efforts, it has recently become clear that the Debtors do not have sufficient liquidity to survive the current economic downturn in their current state. As a result, the Debtors engaged Mesirow Financial, Inc. ("Mesirow") on March 9, 2009 to serve as

investment bankers for the Debtors to assist the Debtors in exploring possible sale transactions. Mesirow contacted over 100 financial and strategic parties, and after an intense, expedited marketing period the Debtors determined that the highest and best offer presently available to the Debtors was an offer from Wynnchurch Capital, Ltd. (“**Wynnchurch**”) to serve as a stalking horse bidder in a sale of substantially all of the Debtors’ assets under Section 363 of the Bankruptcy Code.

8. On April 10, 2009, the Debtors executed a Letter of Intent (the “**LOI**”) with Wynnchurch representing Wynnchurch’s stalking horse bid for substantially all of the Debtors’ assets. Thereafter, on May 7, 2009, the Debtors entered into a binding asset purchase agreement (the “**APA**”) with Wynnchurch and Wynnchurch’s affiliate Senco Holdings, Inc. for the purchase of substantially all of the Debtors’ assets for \$41 million in cash, plus the assumption of certain liabilities. The APA requires the Debtors, among other things, to commence these Chapter 11 Cases by May 11, 2009, obtain by May 28, 2009 an order from this Court approving bidding procedures for the sale of the Debtors’ assets, and to obtain an order from this Court by July 7, 2009 approving the sale of substantially all of the Debtors’ assets to Wynnchurch (or its affiliates) or such other successful bidder as may be selected at the auction in accordance with the bidding procedures. The Debtors are proceeding with a proposed sale process on those timelines

9. Subject to the approval of this Court, the Debtors have obtained a proposed debtor-in-possession financing facility (the “**DIP Facility**”) from the Debtors’ prepetition secured lenders, led by Bank of America, NA, as administrative agent (the “**DIP Agent**”) and as a lender, which the Debtors believe will provide the Debtors with sufficient liquidity through the above-described sale process.

RELIEF REQUESTED

10. The Debtors employ approximately 379 employees (the “**Employees**”), of whom approximately 122 are full-time salaried Employees, approximately 38 are full-time salaried non-exempt Employees, approximately 76 are full-time sales Employees, and approximately 123 are full-time hourly Employees. Approximately 4 are part-time salaried Employees and approximately 15 are part-time hourly Employees. The Employees can be divided into four categories: (1) Salaried Exempt Employees (“**Salaried**”) under the Fair Labor Standards Act (the “**FLSA**”); (2) Salaried Non-exempt Employees (“**SNE**”) under the FLSA; (3) Field Sales Employees (“**Field Sales**”); and (4) Factory Hourly Employees (“**Factory Hourly**”). The Debtors also contract with approximately 3 independent contractors (together the “**Independent Contractors**”).

11. The Employees perform a variety of critical functions, including operating the Debtors’ facilities, manufacturing, sales, product development, as well as performing many administrative, accounting, supervisory, management and other tasks. The Employees’ skills, knowledge and understanding of the Debtors’ infrastructure, operations and customer relations are essential to effect a successful reorganization or sale to maintain the value of the Debtors’ assets and businesses.

12. Therefore, to minimize the personal hardship that the Employees will suffer if prepetition employee-related obligations are not paid when due or as expected, and to maintain morale and an essential workforce during this critical time, the Debtors hereby seek authority, in their discretion, to pay and honor certain prepetition claims for, among other items, wages, salaries, commissions due to Field Sales Employees and certain SNE Employees and other compensation, Reimbursable Expenses (as defined herein), federal and state withholding taxes and other amounts withheld (e.g., garnishments, child support, Employees’ share of

insurance premiums, taxes and 401(k) contributions), Employee health benefits, flexible spending accounts, insurance benefits, workers' compensation benefits, vacation time, tuition reimbursement, short and long-term disability coverage and other Employee benefits that the Debtors have historically provided in the ordinary course of business (collectively, and as more fully described in this Motion, the "**Employee Wages and Benefits**"), and to pay all fees and costs incident to the foregoing, including amounts to third-party administrators and Independent Contractors. In addition, the Debtors seek authority to modify, change and discontinue any of the Employee Wages and Benefits, and to implement new Employee Wages and Benefits in the ordinary course of business during these Chapter 11 Cases, in their discretion, without the need for further Court approval.

13. Finally, the Debtors request that banks and other financial institutions be authorized and directed to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing. The Debtors also seek authority to issue new postpetition checks or fund transfer requests with respect to prepetition obligations that may have been dishonored by the banks in respect of the Employees' prepetition wages, benefits and deductions, if necessary.

I. Employee Obligations.

A. Unpaid Compensation.

14. The Debtors' average aggregate monthly compensation for Employees, including wages, salaries, and commissions due to Field Sales Employees and certain SNE Employees amounts to approximately \$1,800,000. The payroll is made primarily by direct deposit through electronic transfer of funds directly to Employees' banks accounts and, in rare circumstances, via checks made out directly to the Employees. The Salaried and Field Sales Employees are paid in arrears on a bi-monthly basis, with direct deposits or checks issued on the

15th and the 30th of each month, and the SNE and Factory Hourly Employees being paid in arrears on a weekly basis, with direct deposits or checks issued on each Friday of each week (each such payment day for any of the Employees described in this sentence and the preceding sentence, a “**Pay Day**”).³

15. As of the Petition Date, some of the Debtors’ Employees have not been paid all of their prepetition wages earned in arrears. Additionally, compensation may be due and owing as of the Petition Date because:

- (a) some discrepancies may exist between the amounts paid and amounts Employees or others believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees;
- (b) some payroll checks issued to Employees prior to the Petition Date may not have been presented for payment or cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date;
- (c) the Employee’s electronic funds transfers or checks may not have cleared the financial institution;
- (d) there are variations in the Debtors’ various above-described payroll schedules; and
- (e) there may be unpaid obligations arising out of the Debtors’ agreements with various independent contractors.

16. As the Debtors’ payroll runs at multiple periods, all in arrears, the Debtors believe that, as of the Petition Date, approximately \$381,148 in accrued wages, salaries, and overtime pay to Employees, commissions due to Field Sales Employees and certain SNE Employees and other compensation (excluding reimbursable expenses, vacation pay, severance

³ Where a Pay Day falls on a weekend or holiday, such Employees will receive their direct deposits or checks on the preceding business day.

pay, deferred compensation and incentive bonus pay) earned prior to the Petition Date (the “Unpaid Compensation”) remains unpaid to Employees.

17. The amount of Unpaid Compensation represents the amounts accrued but where no check has been delivered or cleared, or where no other payment has been made. The Debtors’ most recent semi-monthly payroll was completed on April 30, 2009 for the pay period ending April 30, 2009. The Debtors’ most recent weekly payroll, for the pay period ending May 3, 2009, was sent by wire transfer to the Debtors’ payroll processor, ADP, on Wednesday, May 6, 2009. The Debtors request authority to continue to honor, in the ordinary course of business, any outstanding payroll checks or electronic funds transfers for current Employees and seek authority, in their discretion, to pay such Unpaid Compensation to the Employees. The Debtors believe that there are no Employees who are owed Unpaid Compensation that exceeds the \$10,950 priority cap contained in section 507(a)(4) of the Bankruptcy Code.

18. The Independent Contractors provide a wide range of services including but not limited to, consulting, administrative and other related functions. The average monthly cost for the Independent Contractors is approximately \$9,234. The Debtors believe that all Independent Contractors have been paid in the ordinary course of business and therefore no individual Independent Contractor is owed more than \$10,950.

19. The sum of the prepetition Employee Wages and Benefits is relatively minimal in amount when compared to the size of the Debtors’ estates and the damage to these Chapter 11 cases that would ensue if the morale of Employees were undermined by the Debtors’ failure to meet their Employee Wages and Benefits obligations. For the reasons discussed below, the Debtors are requesting authority to pay such Unpaid Compensation claims.

B. Remitting and Paying Appropriate Deductions and Withheld Amounts.

20. During each applicable pay period, the Debtors routinely deduct certain amounts from their Employees' paychecks, including, without limitation, (a) credit union deposits and payments; (b) garnishments, child support and similar deductions; and (c) other pre-tax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein (such as an Employee's share of health care benefits, insurance premiums, 401(k) contributions, 401(k) loan payments, legally ordered deductions and other miscellaneous deductions) (collectively, the "**Deductions**") and forward those amounts (with the exception of amounts owing on account of self-insured programs) to various third-party recipients. Further, the Debtors are required by law to withhold amounts related to federal, state and local income taxes, social security, Medicare taxes and other amounts from their Employees' wages for remittance to the proper taxing authority (collectively, the "**Withheld Amounts**"). The Debtors must then make matching contributions from their own funds for social security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the "**Employee Payroll Taxes**," and collectively with the Withheld Amounts, the "**Payroll Taxes**").

21. On average, the Deductions equal approximately \$266,547 in the aggregate for each month. However, due to the commencement of the Chapter 11 Cases, some funds which were deducted from Employees' earnings may not have been forwarded to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtors seek authority, in their discretion, to continue to forward these prepetition Deductions (which the Debtors hold in trust and do not believe constitute property of the Debtors' estates) to the applicable third-party recipients on a postpetition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

22. On average, the Payroll Taxes equal approximately \$611,239 in the aggregate for each month, with approximately \$129,827 attributable to Employee Payroll Taxes and approximately \$481,412 attributable to Withheld Amounts. Before the Petition Date, the Debtors withheld amounts from Employees' earnings for the Employee Payroll Taxes, but such funds may not have been forwarded to the appropriate taxing authorities prior to the Petition Date. The Debtors seek authority, in their discretion, to continue to honor and process the prepetition obligations with respect to the Payroll Taxes on a postpetition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

C. Honoring Checks for and Payment of Reimbursable Expenses.

23. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors reimbursed Employees for certain reasonable expenses incurred on behalf of the Debtors in the scope of their employment (the "**Reimbursable Expenses**"). The Reimbursable Expenses are paid by the Debtors on a weekly basis to Employees and include, but are not limited to, expenses for business related meals and entertainment, parking, lodging, automobile mileage and other business-related expenses incurred by the Employees in the scope of their employment. On average, the Debtors spend approximately \$130,000 on Reimbursable Expenses per month in the aggregate. As of the Petition Date, the Debtors estimate that approximately \$30,261.27 of checks are issued and outstanding for reasonable expenses representing checks that have either not been deposited by the Employees or have not cleared.

24. As stated above, the Debtors reimburse the SENCORP Board of Directors (the "**Directors**") for their reasonable and customary business expenses in connection with attendance at, or participation in, board meetings; however, such costs and expenses (the "**Director Expenses**") are not included in the Reimbursable Expenses of the Debtors. As of the

Petition Date, the Debtors owe approximately \$17,465 in the aggregate for the Director Expenses.

25. Employees use their personal funds to pay for the Reimbursable Expenses, and submit expense vouchers for approval. The Employees are willing to use their own funds based on the expectation and belief they will be reimbursed for these expenses by the Debtors. Upon approval of the expenses, the Debtors reimburse the Employees out of corporate funds. The foregoing Reimbursable Expenses were all incurred on the Debtors' behalf, in the scope of the Employees' employment and with the understanding that they would be reimbursed. Accordingly, to avoid harming individuals who incurred the Reimbursable Expenses, the Debtors request authority, in their discretion, to (a) continue to honor, in the ordinary course of business, the outstanding Expense Reimbursement checks for current Employees, (b) continue reimbursing the Reimbursable Expenses in accordance with prepetition practices, (c) modify their prepetition policies relating thereto as they deem appropriate and (d) pay all Reimbursable Expenses that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period. Moreover, the Debtors request authority, in their discretion, to pay any outstanding claims for Director Expenses in cash in accordance with prepetition practices and to continue such programs on a postpetition basis.

II. Employee Benefits.

26. The Debtors have established various plans and policies to provide their Employees with health benefits, insurance coverage and other important benefits in the ordinary course of business.

A. Health Benefits.

27. The Debtors provide their full-time Employees, Qualified COBRA Beneficiaries (as defined below) and certain individuals who have (i) retired from the Debtors

and (ii) otherwise qualify under the terms of the Senco Products, Inc. Medical Plan (the “**Qualified Retirees**”) with various Health Benefits (as defined below), including medical coverage, dental coverage, stop loss coverage, and assistance programs.⁴ The Debtors’ approximate monthly cost for maintaining the Health Benefits is \$563,627 in the aggregate.⁵

The Debtors offer the following Health Benefit plans:

- (a) **Senco Products, Inc. Medical Benefits Plan.** The Debtors provide approximately all full-time Employees, Qualified COBRA Beneficiaries and Qualified Retirees with medical and prescription drug benefits through a self-insured plan (the “**Medical Plan**”). The range of options and benefits vary depending upon each individual’s status and elections. The Medical Plan costs the Debtors approximately \$530,320 per month in the aggregate, including approximately \$58,457 per month in administrative fees paid to the Debtors’ third-party administrator, United HealthCare Insurance Company (“**UHC**”). UHC, via various internal departments and divisions, administers all of the Debtors’ various Health Benefits under the Medical Plan. Participating Employees, Qualified COBRA Beneficiaries and Qualified Retirees pay fixed Medical Plan premiums, with the Debtors paying their share of those premiums and any additional costs of the claims under the Medical Plan. The total cost of the Medical Plan amounted to approximately \$6,363,850 in the fiscal year ending 2009.
- (b) **Senco Products, Inc. Dental Benefits Plan.** The Debtors provide approximately all full-time Employees and Qualified COBRA Beneficiaries with dental benefits through a self-insured plan (the “**Dental Plan**”). The range of options and benefits vary depending upon each Employee’s status and elections. The Dental Plan costs the Debtors approximately \$33,307 per month in the aggregate, including approximately \$2,593 per month in administrative fees paid to the Debtors’ third-party administrator, UHC. UHC, via various internal departments and divisions, administers all of the Debtors various Health Benefits under the Dental Plan. Both the Debtors and the participating Employees and Qualified COBRA Beneficiaries pay the Dental Plan premiums, with the Debtors paying their share of those premiums and any additional costs of the claims under the Dental Plan. The total cost of the Dental Plan

⁴ The Qualified Retirees are only eligible to receive benefits under the Medical Plan (as defined below).

⁵ The Debtors’ total costs for Health Benefits in fiscal year 2009 were approximately \$6,763,524.

amounted to approximately \$399,688 in the fiscal year ending 2009.

28. In addition, the Debtors purchase stop loss coverage (the “**Stop Loss Coverage**”, and, collectively with the Medical Plan and the Dental Plan, the “**Health Benefits**”) through UHC for the Medical Plan in order to cap the Debtors’ exposure for individuals at 125% of expected annual claims in the aggregate per plan year and \$160,000 per individual claim per plan year. The Stop Loss Coverage costs the Debtors approximately \$32,000 per month in the aggregate. The Debtors’ accrued and outstanding obligations for Health Benefits as of the Petition Date are approximately \$718,000 in the aggregate, comprised of amounts for the Medical Plan, the Dental Plan and the Stop Loss Coverage.

29. The Debtors utilize UHC as their benefits outsourcing provider to administer Health Benefits and COBRA coverage (as defined herein). The Debtors pay approximately \$60,000 per month in arrears to UHC.

30. Under the Consolidated Omnibus Budget Reconciliation Act (see 26 U.S.C. § 4980B), the Debtors offer employees and their families the opportunity for a temporary continuation of Health Benefits (the “**COBRA Coverage**”) in certain instances where coverage under the plan would otherwise end (the “**Qualified COBRA Beneficiaries**”). The Debtors utilize UHC to administer the COBRA Coverage claims pursuant to the Health Benefits.⁶ In order to manage the premium collection process and the various regulatory noticing requirements, the Debtors have contracted with Principal Life for accounting and administration of the COBRA coverage and the Medical Plan for Qualified Retirees. The Debtors pay approximately \$5,000 per month in arrears to Principal Life to administer the COBRA Coverage.

⁶ The COBRA coverage claims are included in the aggregate annual premium costs for Health Benefits under the Medical Plan and the Dental Plan.

31. In the ordinary course of business, the Debtors offer Employees the ability to contribute a portion of their pre-tax compensation into flexible spending accounts operated and administered by UHC⁷ for reimbursement of health and dependent care expenses (the “**Flexible Spending Program**”). Approximately 69 Employees are enrolled in the Flexible Spending Program, which costs the Debtors approximately \$306.36 in administrative fees per month.

32. By this Motion, the Debtors seek authority, in their discretion, to (a) continue the Health Benefits for their Employees, Qualified COBRA Beneficiaries and Qualified Retirees in the ordinary course of business on a postpetition basis, (b) modify their prepetition policies relating thereto as they deem appropriate, without further approval of this Court, (c) continue making the above-described contributions to such Health Benefits programs and the Flexible Spending Program, (d) continue to pay fees of third-party administrators, including, but not limited to, UHC and Principal Life, as necessary and (e) pay any amounts related thereto, including any premiums and claim amounts that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

B. Workers’ Compensation.

33. Pursuant to applicable state laws, the Debtors must maintain workers’ compensation liability coverage (the “**Workers’ Compensation Programs**”) in the ordinary course of business to ensure prompt and efficient payment and/or reimbursement to their Employees for workers’ compensation claims.

34. Outside of Ohio, except for the state of Washington, the Debtors’ worker compensation obligations are fully insured through Travelers Property Casualty Company of

⁷ The associated administration fees for the Employees who participate in the Flexible Spending Program are included in the aggregate administrative costs of Health Benefits under the Medical Plan.

America (“**Travelers**”). In its capacity as administrator of the workers’ compensation insurance plan, Travelers pays claims as they come due. Regardless of the amounts of the annual claims paid, the Debtors pay a fixed cost and an annual premium totaling \$103,638.

35. Ohio law requires that employers obtain workers’ compensation coverage through the state fund (the “**State Fund**”) administered by the Bureau of Workers’ Compensation (“**BWC**”) or have the BWC grant the employer the privilege of self-insurance for liabilities associated with work related accidents or occupational diseases. The Debtors have had self-insured status in Ohio since 1976. For Ohio Employees, the Debtors use a third-party administrator, Compensation Consultants, Inc., (“**CCI**”) to administer claims. The Debtors pay annual fees and claims, as they are incurred, on a quarterly basis to CCI. The Debtors’ annual costs associated with maintaining its self-insured status through CCI (both in annual fees and claims as they are incurred) amounts to an annual average of approximately \$535,000.

36. In the state of Washington, the Debtors pay into the state fund an annual premium for insurance, which is administered by the Washington Department of Labor and Industries Division of Occupational Safety and Health and paid on a quarterly basis amounting to an annual average of approximately \$2,800.

37. Certain benefits under the Workers’ Compensation Programs have been awarded prepetition, but have yet to be fully paid by the Debtors. Certain other claims were filed prepetition, but have yet to be resolved. In order for the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with state law requirements, claim assessment, determination and adjudication must continue. Although the costs associated with the Workers’ Compensation Programs may fluctuate according to the various claims submitted, the Debtors’ overall costs associated with the Workers’ Compensation Programs were

approximately \$641,438 in fiscal year 2009 (consisting of both claims, insurance premiums and annual administrative fees to manage the programs). The Debtors expect such costs to be similar in fiscal year 2010 and estimate that approximately \$50,000 is owed as of the Petition Date.

38. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to maintain their Workers' Compensation Programs in the ordinary course of business, including payment of third-party administrators' fees, state fund fees and insurance premiums (b) modify their prepetition policies relating thereto as they deem appropriate, without further approval of this Court, and (c) pay any amounts related thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

C. Vacation Time, Holiday Pay and Special Leave

39. **Vacation Time**. The Debtors provide vacation time to all Employees ("**Vacation Time**"), which varies based on the Employees' location, position and seniority. Vacation Time for Employees is accrued based on time worked and years of service, and when used, Employees are paid at their regular hourly or salaried rates. Employees earn between five (5) and twenty (25) days of Vacation Time per year. Except as required under various state laws, Employees are entitled to a cash pay out for their accrued and unused Vacation Time upon voluntary termination or resignation. Moreover, Vacation Time does not rollover from year to year. When used, Employees are generally paid for Vacation Time at their regular hourly or salaried rates. Additionally, Employees must generally take Vacation Time in the employment year of its accrual, and unused Vacation Time generally cannot be carried forward or paid out at the end of such year. Independent Contractors are not entitled to paid Vacation Time.

40. **Holiday Pay**. The Debtors provide regular full time Employees eleven (11) paid holidays ("**Holiday Pay**") per year. If a holiday falls on a weekend, Employees receive either the Friday before or the Monday following the holiday as an additional paid vacation day.

Holiday Pay is paid at straight time, including the applicable shift differential for Factory Hourly Employees. To be eligible for Holiday Pay, an Employee must not be out on leave the scheduled workday prior to or the first scheduled workday after the holiday.

41. **Special Leave.** The Debtors' provide regular full time Employees, who are called for jury duty, with pay for serving as a jury member ("**Jury Duty Leave**"). Jury Duty Leave is intended to make up the difference between any lesser amount a participating Employee receives as a jury member and the Employee's straight time earnings, including seniority pay and shift differential. The Debtors provide regular full time Employees, who are absent from work following the death of a eligible family member, with pay in an amount commensurate with their normally scheduled daily rate, including appropriate shift differential and seniority pay ("**Bereavement Leave**"). The Debtors provide regular full time Employees, who are members of a military reserve or National Guard unit, with compensation for required, annual, active duty periods or when activated as the results of civil disorder, disaster, or other emergency situations amounting to (a) regular compensation, less any amounts received from the government for such activity, for a maximum period of two weeks or (b) regular compensation, less any amounts received from the government for such activity, for a maximum period of one calendar month ("**Military Leave,**" together with Jury Duty Leave, Bereavement Leave, collectively the "**Special Leave**").

42. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to honor their Vacation Time, Holiday Pay and Special Leave policies in the ordinary course of business, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) honor and pay any obligations related thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period. The Debtors do not seek the

authority to pay, nor will the Debtors pay, any lump-sum payments of unused vacation time during the pendency of these cases.

D. Paid Leave

43. The Debtors also offer their Salaried and Field Sales Employees paid leave under certain special circumstances (the “**Paid Leave**”). The principal example of the Paid Leave includes, but is not necessarily limited to, certain Employees who are eligible to take up to six (6) months of paid leave with appropriate documentation from a physician or other health care provider (“**Short-Term Disability**”). Short-Term Disability for Salaried and Field Sales Employees functions as a salary continuation program that the Debtors provide to these Employees.⁸ Specifically, certain Salaried and Field Sales Employees are eligible to receive up to six (6) months of Paid Leave, with appropriate documentation from a physician or other health care provider, in the following manner: (a) for the first three (3) months, the Paid Leave is equivalent to 100% of base salary continuation and (b) for the subsequent three (3) months, the Paid Leave is equivalent to 60% of base salary continuation.

44. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to provide the Paid Leave, including Short-Term Disability, (b) modify their prepetition policies relating thereto as they deem appropriate, without approval from this Court, and (c) honor and pay any amounts and obligations relating thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

⁸ Paid Leave in the form of Short-Term Disability is not available to SNE and Factory Hourly Employees. SNE and Factory Hourly Employees are eligible to receive Short-Term Disability Benefits as defined and described below.

E. Employee Defined Contribution – 401(k) Savings Plan

45. Prior to the Petition Date, and in the ordinary course of business, the Debtors maintained the SENCORP Savings Plan, a defined contribution plan, (the “**401(k) Savings Plan**”), for the benefit of their Employees. The Debtors sponsor the 401(k) Savings Plan, which permits certain Employees to contribute a percentage of their gross pay to the 401(k) Savings Plan as a tax-deferred contribution. The 401(k) Savings Plan is administered and sponsored by Vanguard, which also serves as the 401(k) Savings Plan trustee. The 401(k) Savings Plan provides for automatic pre-tax salary deductions of eligible compensation up to the limits set by the Internal Revenue Code. The approximate aggregate monthly amount withheld from Employees’ paychecks pursuant to the 401(k) Savings Plan, inclusive of Employee contributions and loans, is approximately \$152,577. The Debtors suspended making matching contributions to the participating Employees’ accounts in the 401(k) Savings Plan in March of 2009. Currently, the Debtors estimate that there is approximately \$62,000 of withheld contributions and loan repayment amounts pertaining to the participating Employees’ contribution to the 401(k) Savings Plan. The Employees’ contributions to the 401(k) Savings Plan are not property of the Debtors’ estates, but constitute funds held in trust for the benefit of the Employees. The Debtors incur a de minimis cost each year for other ancillary administrative expenses associated with the 401(k) Savings Plan. On average, this annual cost to the Debtors amounts to approximately \$4,000. The Debtors request to continue the 401(k) Savings Plan for participating Employees, at their sole discretion and in the ordinary course of business, and to remit any prepetition amounts withheld thereunder.

F. Employee Insurance Benefits.

46. In addition to the Health Benefits, the Debtors provided their Employees with Basic Life Insurance, Supplemental Life Insurance, Short-Term Disability Benefits⁹ and Long-Term Disability Benefits (each as defined herein, and collectively, the “**Employee Insurance Benefits**”).

(a) **Basic Life Insurance and Supplemental Life Insurance.**

47. The Debtors provide basic group term life insurance coverage (“**Basic Life Insurance**”) to all full-time Employees through UNUM Life Insurance Company of America (“**UNUM**”). All costs of the Basic Life Insurance are borne exclusively by the Debtors. The amounts of coverage, however, differ between the Employee participants.¹⁰ The Debtors pay 100% of the Basic Life Insurance premiums, which amounted to approximately \$118,872 in fiscal year 2009.

48. Full-time Employees are also eligible to purchase supplemental life insurance (the “**Supplemental Life Insurance**”, and, collectively with the Basic Life Insurance the “**Life Insurance**”), for which the Employees pay all the premiums. Some full-time employees have selected to participate in the Supplemental Life Insurance program through UNUM, which amounts to either one times or two times the Employee’s annual salary up to \$200,000 for all Employees (except for certain executive Employees who have a limit of up to \$300,000). All costs of the Supplemental Life Insurance are borne exclusively by the Employee

⁹ Short-Term Disability Benefits is a form of insurance for which only the SNE Employees and the Factory Hourly Employees are eligible.

¹⁰ The Basic Life Insurance coverage amounts are allocated as follows: (i) certain executive Salaried Employees receive coverage in an amount of one and a half times their salary up to \$200,000, whereas the remaining Salaried Employees receive coverage in an amount of one and a half times their salary up to \$100,000; (ii) SNE Employees receive coverage of \$30,000; (iii) Field Sales Employees receive coverage of \$75,000; and (iv) Factory Hourly receive coverage of \$30,000.

participants; however, these payments are made through payroll deductions, with the Debtors remitting the amounts owed directly to UNUM. Consequently, there may be accrued and outstanding amounts withheld from the Employees that have not yet been paid to UNUM. The average aggregate annual cost to Employees amounts to approximately \$166,345.

(b) **Short-Term Disability.**

49. The Debtors provide all SNE and Factory Hourly Employees with short-term disability benefits (the “**Short-Term Disability Benefits**”). Short-Term Disability Benefits are administered and insured through UNUM Life Insurance Company of America. Certain SNE and Factory Hourly Employees are eligible to receive up to twenty-six (26) weeks of paid leave equivalent to 60% of each particular Employee’s gross hourly wage for approved disabilities with appropriate documentation from a physician or other health care provider. The Debtors pay 100% of the premiums for Short-Term Disability Benefits. In fiscal year 2009, the cost to the Debtors’ for Short-Term Disability Benefits amounted to approximately \$208,358. The average monthly cost to the Debtors’ for the Short-Term Disability Benefits amounts to approximately \$9,000.

(c) **Long-Term Disability.**

50. All full time Employees are also eligible to purchase long-term disability benefits (the “**Long-Term Disability Benefits**”). Long-Term Disability Benefits are administered and insured through UNUM Life Insurance Company of America and provide Employees with up to 60% of their income for approved disabilities. The participating Employees each pay 100% of the premiums for Long-Term Disability Benefits. In fiscal year 2009, the Debtors’ deducted approximately \$149,185 from the Employees’ wages for Long-Term Disability Benefits.

51. The Debtors believe that approximately \$34,300 is owing under the Employee Insurance Benefits as of the Petition Date in the aggregate, which is comprised of \$8,000 for the Basic Life Insurance and related costs, \$9,500 for the Supplemental Life Insurance and related costs, \$9,000 for the Short-Term Disability Benefits and related costs and \$7,800 for the Long-Term Disability Benefits and related costs. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to provide the Employee Insurance Benefits, including payment of third-party administrators' fees, (b) modify their prepetition policies relating thereto, as they deem appropriate, without approval of this Court, (c) to pay any amounts relating thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period and (d) to remit any prepetition amounts withheld thereunder.

G. Miscellaneous Employee Benefits.

52. The Debtors also offer various miscellaneous benefits and reimbursements to their Employees, including, but not limited to, tuition reimbursement (providing educational and training assistance to Employees attending classes and working toward approved degrees), automobile allowance (providing financial assistance to Employees who use vehicles in the scope of their employment) and the employee assistance program (providing full-time Employees with counseling services, the "**EAP**") (collectively, the "**Miscellaneous Programs**"). The Miscellaneous Programs provide key benefits to both the Debtors and their Employees, the interruption of which could result in a decline in morale and a diminished ability of the Debtors to conduct business in the ordinary course during these Chapter 11 Cases. The aggregate cost of the Miscellaneous Programs to the Debtors is de minimis and only totaled approximately \$42,260 in fiscal year 2009. The Debtors estimate that the accrued and outstanding claims as of the Petition Date are approximately \$7,500 in the aggregate with respect to the Miscellaneous Programs.

53. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to provide the Miscellaneous Employee Benefits, including payment of third-party administrators' fees, (b) modify their prepetition policies relating thereto as they deem appropriate, without approval of this Court, and (c) pay any amounts relating thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

III. D&O Coverage.

54. The Debtors maintain premium-based directors and officers' liability insurance policies and excess liability policies (collectively, the "**D&O Policies**"). The total amount of annual premiums for the D&O Policies is approximately \$132,000, which is paid in installments via a premium financing agreement.¹¹ The Debtors request authority, in their discretion, to (a) continue the D&O Policies on a postpetition basis, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) pay any amounts relating thereto, to the extent not addressed by the Insurance Motion, that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

Basis for Relief

A. Ample Cause Exists For the Court to Authorize the Debtors to Pay Employee Wages and Honor Employee Benefits Programs.

55. The Debtors seek to continue to honor their Employee Wages and Benefits obligations to ensure the continued operation of their business and to maintain morale of their Employees. The Employee Wages and Benefits are the integral part of each Employee's total compensation, many of whom would suffer extreme personal hardship and financial difficulty if they are not paid and their benefits not honored. Any indication that the Employees Wages and

¹¹ The Debtors have filed a separate motion concurrently herewith entitled the "Insurance Motion" seeking Court authority to continue to operate under their insurance premium financing agreements.

Benefits may not be paid, disappear or not be honored would be detrimental to the preservation of the Debtors' estates and continued operation of their businesses.

56. As a result of the commencement of these Chapter 11 cases, and in the absence of an order of this Court providing otherwise, the Debtors will be prohibited from paying or otherwise satisfying the Employee Wages and Benefits and the checks, wire transfers and direct deposits issued with respect to the same will be dishonored. To maintain Employee morale at this crucial time for the Debtors, ensure the continued operations of the Debtors' business and minimize the potential personal hardship the Employees would suffer if the Employee Wages and Benefits were not paid or honored when due, The Debtors seek approval to honor, in their sole discretion and in the ordinary course of business, such obligations.

57. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, severance, sick leave and employee benefit contributions be accorded priority in payment in an amount not to exceed \$10,950 for each employee. Furthermore, section 363(b)(1) of the Bankruptcy Code provides: "the trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

58. The Debtors believe that none of the Employees are owed amounts that exceed the \$10,950 threshold set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. As such, payment of the Employee Wages and Benefits in the ordinary course of business neither prejudice general unsecured creditors nor materially affect the Debtors' estates since, pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, these priority claims are already entitled to full payment and have priority over unsecured claims.

B. The Court Should Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers Relating to Employee Wages and Benefits.

59. As discussed in the Debtors' Cash Management Motion¹² filed simultaneously herewith, the Debtors request that all applicable banks and other financial institutions be authorized and directed to receive, process, honor and pay all checks presented for payment, and to honor all fund transfer requests made by the Debtors related to the Employee Wages and Benefits policies and programs, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date. The Debtors represent that these checks are drawn on identifiable payroll and disbursement accounts. Accordingly, checks other than those for the Employee Wages and Benefits and the Reimbursable Expenses will not be honored inadvertently. Moreover, the Debtors represent that they have sufficient liquidity to promptly pay all claims arising from the Employee Wages and Benefits policies and programs on an ongoing basis and in the ordinary course of their businesses.

60. The relief requested in this Motion is absolutely critical and should be authorized pursuant to sections 105(a), 363(b)(1), 507(a)(4) and 507(a)(5) of the Bankruptcy Code and Rule 6003 of the Bankruptcy Rules. The Employees are vital to the continued operation and the preservation of the going concern value of the Debtor's businesses.

APPLICABLE AUTHORITY

61. Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code, the Debtors seek authority to continue their Employee Wages and Benefits policies and programs on a postpetition basis, and to pay all of their obligations owed thereunder in the ordinary course of

¹² The full title of the Debtors' Cash Management Motion is: Motion of the Debtors for Entry of an Order (I) Approving Continued Use of Existing Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Waiving Certain Requirements of the United States Trustee, and (IV) Waiving the Requirements of 11 U.S.C. §345(B).

business as of the Petition Date, without regard to whether such obligations accrued before or after the Petition Date.

62. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). This section allows bankruptcy courts broad authority and discretion to enforce the provision of the Bankruptcy Code either under specific statutory or equitable common law principals, which essentially codifies the bankruptcy courts’ inherent equitable powers. See Management Tech. Corp. v. Pardo, 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (court’s equitable powers derived from section 105). Bankruptcy courts, in turn, frequently apply section 105(a) to authorize relief in chapter 11 cases, similar to that sought herein, where the debtor has a large workforce that is important to the preservation of its business. See In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991); In re Chateaugay Corp., 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to pay pre-bankruptcy wages, salaries, employee benefits, reimbursements and workers’ compensation claims and premiums); see also In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate” under section 105(a)); In re Gulf Air, Inc., 112 B.R. 152, 154 (Bankr. W.D. La. 1989) (authorizing the debtor to pay current employees’ pre-bankruptcy wages, salaries, medical benefits and business expense claims); In re Ionosphere Clubs, Inc., 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (same).

63. In so holding, courts typically rely on the “necessity of payment” doctrine to authorize payment of prepetition obligations where, as here, such payment is an essential

element of the preservation of the debtor-in-possession's potential for rehabilitation.¹³ See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)(reasoning that because the debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate” under section 105(a)); In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D.Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); see also In re Just for Feet, Inc., 242 B.R. 821, 824 (D. Del. 1999) (noting that courts have used their equitable power under section 105(a) to authorize the payment of prepetition claims when such payment is deemed critical to the survival of a debtor); In re Chateaugay Corp., 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to pay pre-bankruptcy wages, salaries, employee benefits and reimbursement, and workers’ compensation claims and premiums).

64. The “doctrine of necessity” is frequently invoked during the initial stages of reorganization cases when preservation of the estate is most critical and often extremely difficult. In In re Structurlite Plastics Corp., 86 B.R. 922 (Bankr. S.D. Ohio 1988), the court embraced “the principal that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor... .’” Id. at 931 (citing In re Chateaugay Corp., 80 B.R. 279, 287 (S.D.N.Y. 1987)). The court explained that a “per se rule proscribing the

¹³ The “doctrine of necessity,” also known as the “necessity of payment” doctrine, was first articulated in Miltenberger v. Logansport, C.&S.W. Ry. Co., 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to completion of reorganization permitted to prevent “stoppage of... [crucial] business relations... .” The “necessity of payment doctrine” was first applied to railroad reorganizations, but it is equally applicable in chapter 11 cases. The Fourth Circuit has recognized the validity and application of this doctrine for more than a century. See Finance Co. of Pa. v. Charleston, C. & C.R.R., 62 F. 205, 208 (4th Cir. 1894). The doctrine recognizes the existence of judicial power to authorize a debtor-in-possession to pay prepetition claims if they are essential to the continued operation of the debtor. The Fourth Circuit has recognized the validity and application of this doctrine for more than a century.

payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Structurlite, 86 B.R. at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

65. This Court’s exercise of its authority under the “doctrine of necessity” is appropriate to carry out specific statutory provisions of the Bankruptcy Code, specifically, Sections 1107(a), 1108 and 363(b)(1), which authorize a debtor-in-possession to maintain and operate its business and use property of the estate in the ordinary course of business. Further, a debtor-in-possession operating a business under section 1108 of the Bankruptcy Code has a fiduciary duty to protect and preserve the estate, including the going concern value of an operating business. See In re CoServ, L.L.C., 273 B.R. at 497 (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim”). This Court’s exercise of its authority under section 105(a) is also necessary to carry out two central tenets underlying the Bankruptcy Code: (i) to permit the successful rehabilitation of the debtor, (NLRB v. Bildisco & Bildisco, 465 U.S. 513, 527 (1984)); and (ii) to preserve going concern value and maximize property available to satisfy all creditors (Bank of Am. Nat’l Trust & Save. Ass’n. v. 203 N. LaSalle St. P’ship, 526 U.S. 434, 453 (1999)).

66. This Court may also grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In order to do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors,” In re Ionosphere Clubs, Inc., 98 B.R. at 175. This Court and other courts have authorized debtors to pay certain prepetition claims pursuant to section 363 of the Bankruptcy Code. See In re Milacron, Inc., Case No. 09-111235 (Bankr. S.D.

Ohio, March 11, 2009) (Judge Aug); In re Dana Corp., Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 21, 2005); In re Delphi Corp., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005); see also In re Enesco Group, Inc., Case No. 07-565 (Bankr. N.D. Ill. Jan 12, 2007).

67. The Debtors' request to pay prepetition amounts related to Employee Wages and Benefits policies and programs easily meets the preceding standards. The failure to grant such relief, even for a brief amount of time, could have a material adverse impact on both the reorganization and sale efforts and day-to-day operations of the Debtors' businesses, and would run afoul of the rehabilitative nature of the Bankruptcy Code.

68. The Debtors believe that if they are unable to honor Employee Wages and Benefits for even a short time, Employee morale and loyalty will be jeopardized at a time when Employee support is most critical. Many of the Debtors' Employees live from paycheck to paycheck and rely exclusively on their full compensation or reimbursement of their expenses in order to continue to pay their daily living expenses. Regardless of the length of these Chapter 11 Cases, the Employees will be exposed to significant financial and health-related hardships if the Debtors are not permitted to pay the unpaid Employee Wages and Benefits in the ordinary course of business.

69. For example, if the Debtors are not authorized to pay the Employee Wages and Benefits, then many of the Employees may not be reimbursed for, nor have their medical benefits claims paid. In addition, certain Employees may become primarily obligated for the payment of such claims where health care providers have not been reimbursed, and may face termination of their health services. The Debtors believe such uncertainty will cause significant

anxiety at precisely the time the Debtors need the Employees to perform their jobs at peak efficiency.

70. The Debtors also believe that the vast majority of the amounts related to Employee Wages and Benefits that they seek to pay pursuant to this Motion are entitled to priority status under Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and do not exceed \$10,950 for any individual Employee. The Debtors are therefore required to pay these claims in full to confirm a plan of reorganization. See 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed priority claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan).

71. Granting the relief requested in this Motion will enhance the probability of maximizing the value of the assets of the estates and, ultimately, the return of value owed to creditors. This Court may permit payment of prepetition claims where the payment of the prepetition debt creates “the greatest likelihood of... payment of creditors in full or at least proportionately.” See In re Structurlite Plastics Corp., 86 B.R. 922, 932 (Bankr. S.D. Ohio 1998)(quoting In re Chateaugay Corp., 80 B.R. 279, 287 (S.D.N.Y. 1987).

72. For over a century, “[w]age priority has been a feature of the bankruptcy law since 1898.” In re Garden Ridge Corporation, Case No. 04-10324 (KJC)(Bankr. D. Del. March 2, 2006, 2006 LEXIS 278 (quoting 4 COLLIER ON BANKRUPTCY § 507.05[1] (15th Ed. 2005)). The purpose of such wage priority is to “alleviate hardship on workers... who may have no other source of income and ‘to encourage employees to stand by an employer in financial difficulty.” Id. This priority extends to certain other “benefits that are considered akin to compensation, such as vacation, severance and sick leave pay.” Id.

73. The Debtors' petitions for relief in these Chapter 11 Cases will very likely result in Employees questioning their future with the Debtors. While these Employees have demonstrated loyalty to the Debtors despite the uncertainty during the months prior to the commencement of these cases, their search for a sense of stability with regard to compensation and benefits may lead to an outbreak of Employee departures.

74. The underlying key to the success of the Debtors lies with its Employees. Without the Employees, the Debtors have no chance at survival and rehabilitation. The cost of replacing and subsequent training of new personnel substantially outweighs the cost associated with honoring the prepetition Wages and Benefits. Thus, any significant number of Employee departures or deterioration in morale at this time will adversely affect the Debtors' businesses and lead to immediate and irreparable harm to the Debtors and their estates. Furthermore, in order to aid in a smooth transition into the postpetition period, the continuation of the Debtors' ordinary course personnel policies, programs and procedures in effect prepetition is crucial.

75. In addition, the Debtors should be authorized to pay prepetition amounts owed to administrators and other third-parties for, among other things, administering the Debtors' programs and performing services for Employees related to the Employee Wages and Benefits. The failure to pay any such amounts to administrators and other third-parties would most likely disrupt the services the various third-parties provide to the Debtors' Employees. See In re Cardinal Indus., Inc., 164 B.R. 76, 78 (Bankr. S.D. Ohio 1993) (“[U]nder a self-insured plan which is administered by a third party, giving priority solely to the direct contributions from the employer accomplishes only half the desired result. Unless the employees' claims are properly administered, processed and paid, affording priority to the contributions is meaningless.”); accord Allegheny Int'l, Inc. v. Metro Life Ins. Co., 145 B.R. 820, 822-23 (W.D.

Pa. 1992) (holding that the prepetition claims of a medical benefits plan administrator for fees charged for performing administrative, actuarial and claims services in connection with the medical benefit plans of a debtor were entitled to priority under former section 507(a)(4) of the Bankruptcy Code, and stating “[i]t would be useless to prioritize expenses for contributions to an employee benefit plan and not prioritize the expenses necessary to administer those plans”).

76. The Debtors’ request for authorization to continue to honor and remit Deductions, Payroll Taxes and other Withheld Amounts should also be approved. Such amounts principally represent Employee earnings that governments (in the case of taxes), Employees (in the case of voluntarily withheld amounts) and judicial authorities (in the case of involuntarily withheld amounts) have designated for deduction from Employees’ paychecks. The failure to pay these benefits could result in hardship to certain Employees as well as administrative problems for the Debtors. Indeed, the Debtors would expect numerous and frequent inquiries from garnishors regarding the Debtors’ failure to submit, among other things, child support and alimony payments that are not the Debtors’ property, but, rather, have been withheld from Employees’ paychecks on such other parties’ behalf. Moreover, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors’ inability to submit such payments.

77. Additionally, the failure to remit Payroll Taxes and other Withheld Amounts may subject the Debtors and their Directors and officers to federal or state liability. See DuCharmes & Co. v. Michigan (In re DuCharmes), 852 F.2d 194, 195 (6th Cir. 1988) (noting the special liabilities for failure to pay trust fund taxes); City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.), 41 F.3d 92, 94-96 (3rd Cir. 1994) (state law requiring debtor to withhold city income tax from its employees’ wages created trust relationship between debtor and city for

payment of withheld taxes). Furthermore, because such funds do not constitute property of the Debtors' estates, the funds are not subject to the normal bankruptcy prohibitions against payment. See Begier v. IRS, 496 U.S. 53, 67 (1990) (debtor's payment of employee withholding for federal income and FICA taxes not a preferential transfer because withholding held in trust for taxing authority and not a part of debtor's estate); McCafferty v. McCafferty, 96 F.3d 192, 196 (6th Cir. 1996) (citing Begier with approval and stating that "[s]ection 541(d) [of the Bankruptcy Code] has often been invoked as the basis for excluding from a bankruptcy estate assets held in constructive trust by a debtor in favor of another"); City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 98-103 (3rd Cir. 1994) (holding that funds withheld from employees' paychecks may be subject to a trust, and thus are not property of a debtor's estate, even where such funds are commingled with the debtor's other property).

78. The Debtors therefore request authority to pay and transmit any and all Deductions, Payroll Taxes, Withheld Amounts and all other such amounts held in trust for the benefit of the Employees to the proper parties and authorities in the ordinary course of business.

79. The Debtors believe that payment of the amounts requested in this Motion and the continuation of the vast majority of the Employee Wages and Benefits on a postpetition basis is in the best interests of all parties. The Debtors are working to either reorganize or effect a going concern sale, and the Employees are essential to those efforts, orderly and successful reorganization of the Debtors. They have an intimate knowledge of the operation of the Debtors' businesses, and any deterioration in Employee morale and welfare at this critical time undoubtedly would adversely impact the Debtors, the value of their assets and businesses, and ultimately their ability to reorganize or consummate a sale process in short order or even at all. Continuing to operate their businesses in an economic, efficient manner without disruption is in

the best interests of the Debtors, the Debtors' creditors and all parties in interest. A significant deterioration in morale among Employees at this critical time will undoubtedly have a devastating impact on the Debtors and the value of their assets and businesses. Accordingly, the relief sought by this Motion will allow the Debtors to stabilize and continue to operate their business with minimal disruption and emerge quickly from bankruptcy. Further, the Debtors submit that there is ample justification for their belief that even the slightest delay in providing the requested relief to their Employees will hamper the Debtors' operations and damage the value of their estates and, as such, the Debtors are anxious to reassure their Employees.

80. Relief similar to the relief requested herein has been granted by courts in this District. See e.g., In re Milacron, Inc., Case No. 09-111235 (Bankr. S.D. Ohio, March 11, 2009) (Judge Aug); In re Wornick Company, Case No. 08-16054 (Bankr. S.D. Ohio); In re EaglePicher Holdings, Inc. et al., Case No. 05-12601 (Bankr. S.D. Ohio April 11, 2005); In re Steelox Systems, LLC, Case No. 04-19786 (Bankr. S.D. Ohio December 15, 2004); In re Huff Corporation, Case No. 04-39148 (Bankr. S.D. Ohio October 21, 2004) In re Techneglas, Inc., Case No. 04-63788 (Bankr. S.D. Ohio September 7, 2004).

81. Pursuant to the recent revisions to Bankruptcy Rule 6003, the Court may authorize payment of a prepetition claim within 20 days after the Petition Date if such relief is necessary to avoid immediate and irreparable harm. As explained above, continuing to honor the Employees Wages and Benefits obligations is essential to the continued, uninterrupted operation of the Debtors' businesses. Without satisfaction of these obligations, the Debtors believe that the Employees will suffer significant personal hardship and will risk the effective and continued operations of the Debtors' business, thereby hampering the Debtors' ability to successfully operate post-petition.

82. For the foregoing reasons, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 and accordingly, the Court should grant the relief requested herein.

83. Finally, the Debtors do not seek to assume any executory contracts or obligations at this time, and therefore, nothing contained in this Motion should be deemed to be an assumption or adoption of any policy, procedure or executory contract that may be described or referenced herein. Nothing in this Motion should be construed as a request for authority to (i) assume any executory contract under Section 365(a) of the Bankruptcy Code or (ii) change the classification of any claim or alter the rights of any Employee of other person.¹⁴ Also, the Debtors will retain the discretion to not make the payments contemplated by this Motion for particular Employees, and nothing in this Motion will, in and of itself, constitute a promise or guarantee of any payment to any Employee or confer upon any Employee or other parties an entitlement to administrative priority or other preferences in distribution from the bankruptcy estates.

84. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of all parties in interest.

RESERVATION OF RIGHTS

85. Notwithstanding anything in this Motion or the Order to the contrary, the payment of any claims pursuant to the Order (if entered by the Court) and other honoring of the Employee Wages and Benefit claims shall neither (i) make such obligations administrative expenses of the estates entitled to priority status under Sections 503 and 507 of the Bankruptcy

¹⁴ In particular, nothing in this motion should be construed as a request to grant any person administrative expense priority under Sections 503 and 507 of the Bankruptcy Code. The Debtors are currently reviewing these matters and reserve all of their rights under the Bankruptcy Code with respect thereto.

Code nor (ii) constitute approval by this Court of any employee plan or program, including the 401(k) Savings Plan, under any section of the Bankruptcy Code, including Section 503(c). Also, to the extent the Debtors seek to assume any employee programs, including the 401(k) Savings Plan, prior to the confirmation of any plan of reorganization, the Debtors will seek such assumption by separate motion.

Notice

86. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. The Debtors have provided notice of this Motion to: (i) the Office of the United States Trustee for the Southern District of Ohio; (ii) counsel to the administrative agent for the Debtors' prepetition lenders; (iii) counsel to the administrative agent for the Debtors' proposed debtor-in-possession lenders; (iv) counsel to Wynnchurch; (v) the creditors listed on the Debtors' consolidated list of thirty largest unsecured creditors, as filed with the chapter 11 petitions; (vi) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; and (vii) any governmental unit listed in LBR 5003-1(d). In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances. **Please take notice that the Debtors have filed a Motion for an Expedited Hearing to consider First Day Motions and Applications, including the foregoing. The Debtors shall serve notice of the objection deadline and expedited hearing date pursuant to further order(s) of this Court.**

NO PRIOR REQUEST

87. No prior motion for the relief requested herein has been made to this Court or any other Court.

WAIVER OF MEMORANDUM OF LAW

88. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirements that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Local Bankruptcy Rule 9013-1(a).

WHEREFORE, the Debtors respectfully request that this Court enter the Order, substantially in the form attached hereto as Exhibit A, (A) authorizing, but not directing, the Debtors to (1) pay and honor certain prepetition claims for (i) wages, salaries, employee benefits and other compensation, (ii) withholdings and deductions and (iii) reimbursable expenses; (2) continue to provide employee benefits in the ordinary course of business; (3) pay all related costs and expenses; (B) directing banks to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing; and (C) granting such other and further relief as the Court deems appropriate.

Dated: May 8, 2009
Cincinnati, OH

Respectfully submitted,

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- and -

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**PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS-IN-POSSESSION**

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:)	Chapter 11
)	
SENCORP , <u>et al.</u>)	Case No. 09-12869 (JVA)
)	
Debtors.)	Jointly Administered
)	

**ORDER (A) AUTHORIZING THE
DEBTORS TO (1) PAY AND HONOR CERTAIN PREPETITION CLAIMS
FOR (I) WAGES, SALARIES, EMPLOYEE BENEFITS AND OTHER
COMPENSATION, (II) WITHHOLDINGS AND DEDUCTIONS AND (III)
REIMBURSABLE EXPENSES; (2) CONTINUE TO PROVIDE CERTAIN EMPLOYEE
BENEFITS IN THE ORDINARY COURSE OF BUSINESS; (3) PAY ALL RELATED
COSTS AND EXPENSES; AND (B) DIRECTING BANKS TO RECEIVE, PROCESS,
HONOR AND PAY ALL CHECKS PRESENTED FOR PAYMENT AND ELECTRONIC
PAYMENT REQUESTS RELATING TO THE FOREGOING**

(“WAGES AND BENEFITS ORDER”)

Upon consideration of the motion (the “Motion”)¹ of the Debtors² for entry of an order (A) authorizing, but not directing, the Debtors to (1) pay and honor certain prepetition claims for (i) wages, salaries, employee benefits and other compensation, (ii) withholdings and deductions and (iii) reimbursable expenses; (2) continue to provide certain employee benefits in the ordinary course of business; (3) pay all related costs and expenses; and (B) directing banks to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given, with no objections or requests for hearing having been filed, or all objections having been overruled, as the case may be; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefore, it is hereby:

1. ORDERED that the Motion is granted; and it is further

2. ORDERED that the Debtors are authorized, but not directed, to (a) honor, pay and modify the Employee Wages and Benefits in accordance with the Debtors’ stated policies and prepetition practices, and in the ordinary course of the Debtors’ businesses, including, but not limited to, the Unpaid Compensation, the Deductions, the Withheld Amounts, the Payroll Taxes, the Reimbursable Expenses (including the Director Expenses), the Director Expenses, the Severance Payments, the Health Benefits, the Medical Plan, the Dental Plan, the Workers’ Compensation Programs, Vacation Time, Holiday Pay, Paid Leave, the 401(k) Savings Plan, the

¹ Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

² The Debtors in these Chapter 11 cases are: SENCORP, Senco Products, Inc., Senco Export, Inc., SenSource Global Sourcing, LLC, TyRex, LLC, Global Fastening Solutions, LLC, Agrifast, LLC, Nexicor, LLC, Omnifast, LLC, S C FINANCIAL, INC., Senco International, Inc., Sentron Medical, Inc., and Gregg Laboratories, Inc.

Employee Insurance Benefits, the Miscellaneous Programs, the D&O Policies and any other policy or program described in the Motion, and (b) pay any claims arising thereunder without regard to whether such claims arose before or after the Petition Date, in each case without further notice to or order of the Court; and it is further

3. ORDERED that the Debtors are authorized, but not directed, to continue the Employee Wages and Benefits programs and policies on a postpetition basis and to alter, modify or discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court; and it is further

4. ORDERED that the Debtors are authorized, but not directed, to continue to allocate and distribute all funds held in trust for the benefit of the Employees, including the Deductions, the Payroll Taxes and other amounts withheld, which include any and all amounts withheld from the Employee wages, including but not limited to, Social Security, FICA, federal state and local income taxes, garnishments, child support, health care payments, insurance, and other types of withholding, in accordance with the Debtors' stated policies and prepetition practices or as required by applicable federal, state and local law, without regard to whether such amounts arose before or after the Petition Date; and it is further

5. ORDERED that the Debtors are authorized, but not directed, to pay all processing fees, costs and expenses associated with the payment and administration of the Employee Wages and Benefits, including payment to third-party administrators in connection with maintaining and providing record keeping and/or processing services relating to the various Employee Wages and Benefits relating thereto, without regard to whether such amounts arose before or after the Petition Date; and it is further

6. ORDERED that the Debtors are authorized, but not directed, to honor and make payments to Independent Contractors in accordance with their prepetition practices, without regard to whether such amounts arose before or after the Petition Date; and it is further

7. ORDERED that to the extent that checks are issued to Employees or other entities in connection with the Employee Wages and Benefits programs and policies, the banks upon which any checks are drawn in payment thereof, either before, on or after the date on which the Debtors filed these Chapter 11 Cases be, and hereby are, authorized to honor such checks upon presentation; and it is further

8. ORDERED the Debtors are authorized, but not obligated or directed, to issue postpetition checks, or to effectuate postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of Employee Wages and Benefits, Deductions and Payroll Taxes dishonored as a consequence of the commencement of these Chapter 11 Cases; and it is further

9. ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks evidencing amounts paid by Debtors under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized and directed to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order; and it is further

10. ORDERED that the Debtors are authorized to reissue any check, electronic payment or other transfer that was drawn in payment of any claims arising from or related to the Employee Wages and Benefits programs and policies that is not cleared by a depository; and it is further

11. ORDERED that any payment or transfer made or service rendered by the Debtors pursuant to this Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation, a waiver of any rights the Debtors may have to dispute such obligation or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code; and it is further

12. ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

13. ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

14. ORDERED that the requirement set forth in Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of Ohio that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived; and it is further

15. ORDERED that, notwithstanding anything in this Order to the contrary, the payment of any claims pursuant to this Order and other honoring of the Employee Wages and Benefit claims shall neither (a) make such obligations administrative expenses of the estates entitled to priority status under sections 503 and 507 of the Bankruptcy Code nor (b) constitute approval by this Court of any employee plan or program under any section of the Bankruptcy Code, including section 503(c); and it is further

16. ORDERED that to the extent the Debtors seek to assume any employee programs prior to the confirmation of any plan of reorganization, such assumption shall be made by separate motion; and it is further

17. ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SO ORDERED.

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