

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

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

**MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING PAYMENT OF  
CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS**

**(“CRITICAL VENDOR MOTION”)**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby move this Court (the “**Motion**”) for entry of an order (the “**Order**”) pursuant to sections 105(a), 363, 364, 1107 and 1108 of the Bankruptcy Code (as hereafter defined) and Bankruptcy Rule 6003 (as hereafter defined), in substantially the form attached hereto as Exhibit A, authorizing the Debtors to pay, in their discretion, certain prepetition claims of critical vendors. In support of this Motion, the Debtors respectfully state:<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

## **JURISDICTION**

1. This 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, 364, 1107 and 1108 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’ 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. Mesrirow 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. By this Motion, the Debtors seek entry of an order pursuant to Sections 105(a), 363, 364, 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003 authorizing the Debtors, on an emergency basis, in their discretion, except as otherwise described herein, to pay the prepetition claims of critical vendors that delivered goods or provided services to the Debtors before the Petition Date.

11. The Motion further seeks authorization for all applicable banks and other financial institutions asked to process, honor and pay any and all checks and transfer requests with respect to Critical Vendor Claims (each defined below) to rely on the representations of the Debtors as to which checks are issued or authorized to be paid in accordance with this Motion without any further duty of inquiry and without liability for following the Debtors’ instructions.

### **BASIS FOR RELIEF**

#### **A. CRITICAL VENDOR PAYMENTS**

12. Certain of the Debtors’ vendors (the “Critical Vendors”) have claims for providing (i) essential goods to the Debtors that were received by the Debtors prior to the Petition Date, and/or (ii) essential services that were rendered to, or on behalf of, the Debtors before the Petition Date (collectively, the “Critical Vendor Claims”). By this Motion, the Debtors seek entry of an order authorizing the Debtors, in their discretion, to pay certain

prepetition claims of such Critical Vendors in an aggregate amount not to exceed \$2.045 million (the “**Critical Vendor Cap**”).

13. The Debtors believe that payment of the Critical Vendor Claims is vital to the operations of the Debtors’ businesses because each of the Critical Vendors is (a) a “sole source provider,” and as such is the only source from which the Debtors can procure certain goods and services, (b) supplies goods that are specifically engineered and produced pursuant to the needs of the Debtors, and thus would be difficult to replace in any reasonable timeframe, (c) supplies goods for which a change in supplier would detrimentally affect the timeframe and price at which the Debtors could provide their customers with goods and services and/or (d) a foreign vendor that may not have the same understanding or customs with respect to the bankruptcy process. A failure to pay the Critical Vendor Claims is likely to result in the Critical Vendors being unable or unwilling to provide goods and services to the Debtors postpetition, may force the Debtors to obtain such goods and services, if available, elsewhere at a higher price, or may preclude the Debtors from obtaining the quantity or quality required by the Debtors.

14. The Debtors have examined whether the payment of Critical Vendor Claims is necessary and will promote access to adequate amounts of trade credit for the Debtors on a postpetition basis. Specifically, the Debtors have reviewed their accounts payable and undertaken a process to identify those vendors who are absolutely essential to the Debtors’ operations. The Debtors have further developed procedures (for which they seek this Court’s approval) that, when implemented, will help the Debtors receive trade credit necessary to the

Debtors' operations on a postpetition basis from certain of the vendors receiving payment of Critical Vendor Claims.

15. The Debtors consulted with appropriate members of their management team and with their professionals to identify those vendors that are most likely essential to the Debtors' operations using the following criteria: (a) whether the vendor in question is a "sole source provider," (b) whether certain customizations or other unique factors prevent the Debtors from obtaining a vendor's goods or services from alternative sources within a reasonable timeframe, (c) whether a customer directs the use of a certain vendor as a condition of their purchasing, (d) whether the vendor is a foreign entity and the customs of the vendor, with respect to bankruptcy, are likely to disrupt the Debtors' supply chain and business operations, (e) if a vendor is not a sole source or customer directed provider, whether the Debtors have sufficient goods in inventory to continue operations while a replacement vendor is secured, and (f) whether a vendor meeting the standards of (a), (b), (c) or (d) is likely to refuse to continue providing goods or services to the Debtors postpetition if its prepetition balances are not paid.

16. After carefully assessing the universe of vendors against the foregoing criteria, the Debtors identified certain parties as critical vendors and estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors in calculating the Critical Vendor Cap.

17. The Critical Vendors provide the Debtors with, among other things, specialized raw materials or inventory necessary to their ongoing manufacturing operations. Failure to continue to obtain the products and in some instances, related services, will have a

severe effect on the Debtors' ability to operate postpetition. In many instances, these products are custom designed and the expense and time associated with identifying alternative suppliers and getting new supplies up to speed would prove highly disruptive and have substantial negative effects on the Debtors. Other Critical Vendors are the only supplier of the specific products or services they provide, and finding an alternative supplier would prove impossible.

18. The Debtors propose to condition, in the Debtors' discretion, the payment of certain of the Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and services to the Debtors and the Buyer under the APA on terms, and based on practices and programs in effect between the Critical Vendor and the Debtors in the six months prior to the Petition Date (the "**Customary Trade Terms**"), or such other trade terms as are agreed to by the Debtors and the Critical Vendor. The Debtors reserve the right to negotiate new trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim.

19. For those Critical Vendors who have agreed to provide goods or services to the Debtors on terms different from their Customary Trade Terms, the Debtors reserve the right to seek written acknowledgment of such terms on a case-by-case basis. Nothing in this Motion or any order of this Court approving this Motion should be construed as a waiver by any of the Debtors of their rights to contest any invoice of a Critical Vendor under applicable non-bankruptcy law.

20. If a Critical Vendor refuses to supply goods or services to the Debtors or the Buyer under the APA on Customary Trade Terms following payment of any portion of its

Critical Vendor Claim, the Debtors and Buyer (after the closing under the APA) hereby seek authority, in their discretion and without further order of the Court, to deem any payments made to such Critical Vendor on account of its Critical Vendor Claim to have been in payment of then-outstanding postpetition claims of such Critical Vendor (the “**Terminated Critical Vendor**”) without further order of the Court. If, however, the Debtors or Buyer (after the closing under the APA) choose not to terminate the Critical Vendor status of a given Critical Vendor immediately upon a refusal by the participating Critical Vendor party to provide goods and/or services in accordance with Customary Trade Terms, the Debtors or Buyer (after the closing under the APA) shall not be deemed to have waived the ability to terminate such Critical Vendor.

21. In the event the Debtors or Buyer exercise the rights set forth in the preceding paragraph, the Debtors request that the Terminated Critical Vendor be required to immediately return any payments made on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owed to such Terminated Critical Vendor, without giving effect to any rights of setoff or reclamation. In the event that a Terminated Critical Vendor refuses to acknowledge such recharacterization and to issue the repayment, the Debtors propose that they be authorized to compel such recharacterization and repayment by a motion (on such notice as is required by this Court or by the Local Rules).

**B. CASE LAW AND STATUTORY SUPPORT FOR AUTHORIZATION TO PAY CRITICAL VENDOR CLAIMS**

*(i) This Court May Authorize Payment of the Critical Vendor Claims Pursuant to Sections 363 and 364 of the Bankruptcy Code.*

22. The Court may grant the relief requested herein pursuant to Sections 363 and 364 of the Bankruptcy Code. See, e.g., In re UAL Corporation, et al., Case No. 02-48191 (ERW) (Bankr. N.D. Ill. December 11, 2002) (approving an essential trade motion pursuant to Section 363 of the Bankruptcy Code); In re James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to Section 363, a contractor to pay prepetition claims of some suppliers who were potential lien claimants, because the payments were necessary for the general contractors to release funds owed to the debtors).

23. The relief requested in this Motion contemplates the payment of Critical Vendor Claims of those Critical Vendors who agree to provide postpetition goods to the Debtors on Customary Trade Terms or other terms acceptable to the Debtors. As a result, the payment of such Critical Vendor Claims is consistent with and appropriate under Sections 363 and 364 of the Bankruptcy Code.

24. As detailed above, maintaining the goods and services provided by the Critical Vendors is vital to the Debtors' continuing business operations and the success of these chapter 11 cases. In addition, and as also detailed above, the Debtors have conducted an extensive analysis and review of the Debtors immediate trade needs and supplier base and have concluded that there is a significant risk that the Critical Vendors will cease doing business with the Debtors unless their Critical Vendor Claims are paid. Should any Critical Vendor stop supplying goods or services to the Debtors, or choose to significantly downgrade the Debtors'

trade terms, their businesses would be adversely affected as a result of, among other things, an adverse impact on the Debtors' ability to meet the demands of their customers which in turn, would result in customers seeking products elsewhere and significant lost revenue. The Debtors cannot risk such a disruption at this critical stage of these Chapter 11 Cases when the Debtors are attempting to sell substantially all of their assets. As such, the Debtors submit that the amount of the Critical Vendor Cap pales in comparison to the likely damage to the Debtors' businesses and estates should the relief requested herein not be granted. In light of the foregoing, the Debtors submit that payment of the Critical Vendor Claims is plainly in the best interests of their estates and creditors.

*(ii) The Court May Also Grant the Motion Pursuant to Its General Equitable Powers under Section 105(a) of the Bankruptcy Code and the Necessity of Payment Doctrine.*

25. This Court's general equitable powers are codified in Section 105(a) of the Bankruptcy Code. Section 105(a) empowers this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under Section 105(a), this Court "can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (quoting In re Financial News Network, Inc., 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)) ("to invoke the

necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is critical to the debtor's reorganization").

26. Numerous courts have used their Section 105(a) equitable powers under the necessity of payment doctrine<sup>3</sup> to authorize payment of a debtor's prepetition obligations where, as here, such payment is necessary to effectuate the "paramount purpose" of chapter 11 reorganization, which is to prevent the debtor from going into liquidation and to preserve the going concern value of the Debtors. See In re Lehigh & N.E.R. Co., 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to reorganization is essential to the continued operation of the. . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus"); In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor"); see also In re James A. Phillips, Inc., 29 B.R. 391, 393-95 (S.D.N.Y. 1983) (upholding the bankruptcy court's order authorizing the debtor to make postpetition payment of prepetition claims in the ordinary course without notice and a hearing). The "necessity of payment" doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor." Ionosphere Clubs, 98 B.R. at 176; In re Chateaugay Corp., 80 B.R. 279, 286-87 (S.D.N.Y. 1987) (same). This rule is consistent with the paramount goal of

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<sup>3</sup> This doctrine, first articulated by the United States Supreme Court in Miltenberger v. Logansport R. Co., 106 U.S. 286, 311-12 (1882), recognizes the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.

Chapter 11, i.e., “facilitating the continued operation and rehabilitation of the debtor . . .”  
Ionosphere Clubs, 98 B.R. at 176.

27. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay the prepetition claims of certain critical vendors. See In re Columbia Gas Sys. Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (quoting In re Lehigh, 657 F.2d at 581) (recognizing that “[i]f payment of a pre-petition claim ‘is essential to the continued operation of [the debtor], payment may be authorized.’”) Indeed, it is not uncommon for courts in this District and others to authorize the payment of critical trade claims where the payment of such claims is essential to the debtor’s continued operations. See, e.g., In re Milacron Inc., Case No. 09-111235 (Bankr. S.D. Ohio, March 11, 2009) (Judge Aug); In re The Antioch Company, Case No. 08-35741 (Bankr. S.D. Ohio Nov. 14, 2008) (GRH); In re Buffets Holding, Inc., Case No. 08-10141 (Bankr. D. Del. Jan. 24, 2008) (MFW) (entered by BLS); In re American Home Mortgage Holdings, Inc., Case No. 07-11047 (Bankr. D. Del. Aug. 7, 2007) (CSS); In re Tweeter Home Entertainment Group, Case No. 07-10787 (Bankr. D. Del. June 12, 2007) (PJW). The Debtors respectfully submit that similar relief is warranted in these chapter 11 cases.

*(iii)The Court May Also Authorize the Relief Requested as a Valid Exercise of the Debtors’ Fiduciary Duties.*

28. The Debtors, operating their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and operating the business for the benefit of. . . [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

Implicit in the duties of a chapter 11 debtor-in-possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” Id.

29. It has been noted that there are instances in which a debtor-in-possession can fulfill its fiduciary duty “only by the preplan satisfaction of a prepetition claim.” The CoServ court specifically noted that pre-plan of reorganization satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” and also when the payment was to “sole suppliers of a given product.” Id. at 497-98. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

30. Payment of the Critical Vendor Claims meets the test set forth in CoServ. As described above, the Debtors have narrowly tailored the Critical Vendor Cap to encompass only those Critical Vendors which are essential to the business and operation of each of the Debtors’ businesses. Any interruption of the Debtors’ operations could cost the Debtors’ estates thousands of dollars in lost revenues and furthermore, could cause the Debtors’ to lose significant customers, which could, in turn, threaten the Debtors’ proposed sale of substantially

all of their assets. Accordingly, the harm that would stem from the failure to pay of any of the Critical Vendors is disproportionate to the amount of the prepetition claims that the Debtors are seeking to pay hereunder. Moreover, with respect to each Critical Vendor, the Debtors have examined other options short of payment of such Critical Vendor Claims and have determined that to avoid significant disruption of the Debtors' business operations, there exists no practical or legal alternative to payment of the Critical Vendor Claims. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under Sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Critical Vendor Claims. Accordingly, the Court should grant the relief requested herein.

*(iv) The Court Should Authorize the Debtors to Satisfy the Critical Vendor Claims Within Twenty Days After the Commencement Date as Requested.*

31. 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, satisfying the Critical Vendor Claims is essential to the continued, uninterrupted operation of the Debtors' businesses. Without satisfaction of these claims, the Debtors believe that the Critical Vendors will significantly downgrade trade terms and may stop supplying them with critical goods and services necessary in their operations, thereby hampering the Debtors' ability to successfully operate post-petition.

32. 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.

### WAIVER OF MEMORANDUM OF LAW

33. 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 requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Local Bankruptcy Rule 9013-1(a).

### NOTICE

34. No trustee, examiner or creditors' committee has been appointed in these 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**

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

WHEREFORE, the Debtors respectfully request that this Court enter the Order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors to pay, in their discretion, certain prepetition claims of Critical Vendors; (b) authorizing all applicable banks and other financial institutions asked to process, honor and pay any and all checks and transfer requests with respect to Critical Vendor Claims to rely on the representations of the Debtors as to which checks are issued or authorized to be paid in accordance with this Motion without any further duty of inquiry and without liability for following the Debtors' instructions; and (c) granting such other and further relief as this Court deems appropriate.

Dated: May 8, 2009  
Cincinnati, OH

Respectfully submitted,

**LATHAM & WATKINS LLP**

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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
	)	

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**ORDER AUTHORIZING PAYMENT OF CERTAIN  
PREPETITION CLAIMS OF CRITICAL VENDORS**

Upon consideration of the motion (the “**Motion**”)<sup>1</sup> of the Debtors<sup>2</sup> for entry of an order authorizing the Debtors to pay, in their discretion, certain prepetition claims of critical vendors; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their

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

<sup>2</sup> 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.

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, in their discretion and in the reasonable exercise of their business judgment, to pay certain Critical Vendor Claims subject to the conditions set forth in this Order; provided that the Debtors' payments of Critical Vendor Claims do not exceed \$2,045,000 in the aggregate unless otherwise ordered by this Court after notice and hearing; and it is further
3. ORDERED that the Debtors may, in the Debtors' discretion, condition the payment of Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and services to the Debtors under Customary Trade Terms or such other trade terms as are agreed to by the Debtors and the Critical Vendor; and it is further
4. ORDERED that the Debtors or the Buyer (after the closing under the APA) are authorized, in their discretion and in the reasonable exercise of their business judgment, to deem any Critical Vendor that refuses to supply goods or services to the Debtors or the Buyer under the APA on Customary Trade Terms or such other trade terms as were agreed to by the Debtors and the Critical Vendor following payment of any portion of its Critical Vendor Claim to be a Terminated Critical Vendor; and it is further

5. ORDERED that if the Debtors or Buyer (after the closing under the APA) choose not to deem a Critical Vendor to be a Terminated Critical Vendor immediately upon a refusal by the participating Critical Vendor party to provide goods and/or services in accordance with Customary Trade Terms or such other trade terms as were agreed to by the Debtors and the Critical Vendor, the Debtors or Buyer shall not be deemed to have waived the ability to do so; and it is further

6. ORDERED that in the event the Debtors or Buyer (after the closing under the APA) exercise the right to deem a Critical Vendor to be a Terminated Critical Vendor as set forth herein, the Debtors may, in their discretion, deem provisional payments made to the Critical Vendor on account of its Critical Vendor Claim to have been in payment of then outstanding postpetition amounts owed to such Terminated Critical Vendor without further order of this Court or action by any person or entity, and such Terminated Critical Vendor shall be required to immediately return any payments made on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owed to such Terminated Critical Vendor, without giving effect to any rights of setoff or reclamation; and it is further

7. ORDERED that the payment of a Critical Vendor Claim shall not be deemed a waiver of any causes of action, including causes of action under Chapter 5 of the Bankruptcy Code, that may be held by the Debtors; and it is further

8. ORDERED that nothing herein shall prohibit the Debtors from seeking Court authority to increase the Critical Vendor Cap; 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 nothing herein shall be deemed to constitute the postpetition assumption of any executory contracts by the Debtors and all rights of the Debtors under Section 365 of the Bankruptcy Code are hereby preserved; and it is further

11. ORDERED that the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm; 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 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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