

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

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

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO HONOR CERTAIN PREPETITION OBLIGATIONS
TO CUSTOMERS AND TO OTHERWISE CONTINUE IN THE ORDINARY COURSE
OF BUSINESS THEIR CUSTOMER PROGRAMS AND PRACTICES**

(“MOTION TO CONTINUE CUSTOMER PROGRAMS”)

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby move this Court (the “**Motion**”) for entry of an order (the “**Order**”), in substantially the form attached hereto as Exhibit A, authorizing Debtors to honor certain prepetition obligations to members and to otherwise continue in the ordinary course of business their member programs and practices. In support of this Motion, the Debtors respectfully state:²

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.

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.

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.

2. The statutory bases for the relief requested herein are Sections 105(a), 363, 1107(a) 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. 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. By this Motion, the Debtors seek entry of an order pursuant to Sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code, authorizing, but not directing, the Debtors, in their business judgment, to (a) perform their prepetition obligations related to the Customer Programs (as defined below), (b) continue, renew, replace, implement new, and/or terminate such of the Customer Programs as the Debtors deem appropriate, in the ordinary course of business, without further application to the Court, and (c) authorize and direct all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors' accounts on account of the Customer Programs, whether such checks were presented prior to or after the Petition Date. The Debtors believe that the majority of the amounts to be paid with regard to Customer Programs discussed herein will arise postpetition and, therefore, will be entitled to administrative expense priority under Section 503 of the Bankruptcy Code. Nevertheless, because certain of the Customer Programs may give rise to postpetition payment obligations from prepetition practices, the Debtors are also seeking authority to make such payments in the ordinary course of business.

SUMMARY OF CUSTOMER PROGRAMS

11. The Debtors primary customer segments consist of their consumer retail customers (the "Retail" segment), their co-op, distributors and dealer sale (the "Pro Trade" segment) and their industrial customers (the "Industrial" segment). The Debtors' primary Retail customers consist of major national retailers such as Home Depot, Lowes and Menards. The Debtors maintain the following programs for the benefit of their customers (collectively, the "Customer Programs"):

a. Warranties: The Debtors provide various warranties on their tools, compressors, accessories and certain fasteners against manufactured defects (but not against product liability) to all of their customer segments. The level of warranty protection varies with the level of the of Debtors' product. The Debtors' average annual warranty claims against all customer segments is approximately \$500,000.

b. Rebates: The Debtors offer numerous varied rebate programs to customers in each of the Debtors' customer segments, including volume-based rebates, often priced as a percentage of sales exceeding certain sales benchmarks. The Debtors' average annual rebates provided across all customer segments is approximately \$1,750,000.

c. Advertising / Promotion: The Debtors maintain certain programs where they provide their customers with credits for cooperative advertising costs and for certain promotional events. The average annual credits provided to customers in all customer segments is approximately \$1,600,000.

d. Tool Loan Programs: The Debtors maintain certain programs where they loan tools to Industrial customers for no charge on the condition that such Industrial customers purchase a minimum amount of fasteners from the Debtors for use in such tools.

BASIS FOR RELIEF

12. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor-in-possession to continue to operate its business. Further, Section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to Section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice

or a hearing. The Debtors submit that continuing, renewing, replacing, initiating, and/or terminating their Customer Programs in the ordinary course of business is permitted by Sections 363(c), 1107(a), and 1108 of the Bankruptcy Code without further application to the Court.

13. In addition, to the extent that the Debtors' obligations under the Customer Programs are considered prepetition obligations, the Debtors should be authorized to honor and continue the Customer Programs pursuant to Section 363(b)(1) of the Bankruptcy Code. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to Section 363(b) of the Bankruptcy Code). In order to do so, "the debtor must articulate some business justification, other than mere appeasement of major creditors. . . ." Ionosphere Clubs, 98 B.R. at 175.

14. Here, the continued loyalty of the Debtors' existing customers and the Debtors' ability to attract new customers is critical to their continued operations and the success of the Chapter 11 Cases. If the Debtors are prohibited from honoring and maintaining the Customer Programs consistently not only with their past business practices, but with the common business practice of the Debtors' competitors, then members' lost confidence in the Debtors will damage the Debtors' businesses to an extent that far exceeds the cost associated with honoring and continuing such practices. The Debtors believe that many current customers will become dissatisfied and may seek to terminate their relationship with the Debtors, and prospective customers will decline to purchase from the Debtors, if the Debtors do not honor their Customer Programs. At this critical time, the Debtors cannot afford to lose their loyal customer base or to be placed at a competitive disadvantage with respect to prospective customers. The requested

order will protect the Debtors' goodwill and going concern value during these Chapter 11 Cases and enhance the Debtors' ability to generate revenue, thereby directly benefiting all of the Debtors' creditors.

15. Additionally, Section 105(a) of the Bankruptcy Code authorizes a 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). The purpose of Section 105(a) of the Bankruptcy Code is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 Collier on Bankruptcy ¶ 105.01 (15th ed. rev. 2003). The Debtors submit that the relief requested in this Motion is critical to the Debtors and is justified under Section 105(a) of the Bankruptcy Code.

16. Where retaining loyalty and patronage of customers is critical to successful chapter 11 cases, courts in this District have granted relief similar to that requested here. See In re Milacron Inc., Case No. 09-11235 (JVA) (Bankr. S.D. Ohio March 12, 2009); In re Dana Corp., Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 7, 2006); In re Musicland Holding Corp., Case No. 06-10064 (SMB) (Bankr. S.D.N.Y. Jan. 27, 2006); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 14, 2005); In re Delta Airlines Inc., No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005); In re Northwest Airlines Corp., No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 15, 2005); In re Tower Auto., Inc., Case No. 05-10578 (ALG) (Bankr. S.D.N.Y. Feb 3, 2005).

17. Indeed, the Debtors' creditors also will benefit from the relief sought herein. If the Debtors are prohibited from honoring and maintaining the Customer Programs

consistent with their past business practices, then members' lost confidence will damage the Debtors' businesses to an extent that far exceeds the cost associated with honoring and continuing such practices. The relief requested herein will protect the Debtors' goodwill and help maintain the value of their estates during this critical time.

18. Accordingly, the Debtors request that they be authorized, but not directed, in their business judgment, to: (a) perform such of their prepetition obligations under the Customer Programs as they deem appropriate, and (b) continue, renew, replace, implement, and/or terminate such of their Customer Programs as they deem appropriate, in the ordinary course of business without further application to the Court.

19. The Debtors also 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 electronic payment requests made by the Debtors related to the prepetition obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that all such banks and financial institutions be authorized and directed to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

20. Pursuant 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 the Customer Programs and satisfying any prepetition obligations owed thereunder is essential to the continued, uninterrupted

operation of the Debtors' businesses. Without satisfaction of these obligations, the Debtors could lose existing customers or fail to attract new ones, and the Debtors business could be disrupted to the potential great detriment of the Debtors' estates. 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.

21. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under Section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

WAIVER OF MEMORANDUM OF LAW

22. 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

23. 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

24. 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 honor certain prepetition obligations to members and to otherwise continue in the ordinary course of business their customer programs and practices; and (b) granting such other and further relief as this Court deems appropriate.

Dated: May 8, 2009
Cincinnati, OH

Respectfully submitted,

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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 AUTHORIZING THE DEBTORS TO HONOR
CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND TO
OTHERWISE CONTINUE IN THE ORDINARY COURSE OF BUSINESS
THEIR CUSTOMER PROGRAMS AND PRACTICES**

Upon consideration of the motion (the “**Motion**”)¹ of the Debtors² for entry of an order authorizing the Debtors to honor certain prepetition obligations to customers and to otherwise

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.

continue in the ordinary course of business Customer Programs and practices 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, in their business judgment, are authorized, but not directed, to honor and perform their obligations in regard to their Customer Programs, without regard to whether the Debtors' obligations under any such Customer Programs arose before or after the Petition Date; and it is further
3. ORDERED that the Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify and/or terminate such of their Customer Programs as they deem appropriate, in the ordinary course of business, without further application to the Court; and it is further
4. ORDERED that all banks and other financial institutions on which checks were drawn or electronic payment requests made in payment of such prepetition obligations approved herein are authorized and directed to (i) receive, process, honor, and pay all such checks and electronic payment requests when presented for payment (assuming that sufficient funds are then available in the Debtors' bank accounts to cover such payments), and (ii) rely on

the Debtors' designation of any particular check or electronic payment request as approved by this Order; and it is further

5. ORDERED that the Debtors are authorized to reissue any check, electronic payment or other transfer that was drawn in payment of any Customer Program claims that is not cleared by a depository; and it is further

6. 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

7. 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

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

9. 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

10. 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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