

**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 ENTRY OF AN ADMINISTRATIVE
ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 331 ESTABLISHING
PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF CHAPTER 11 PROFESSIONALS**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby move this Court for entry of an administrative order, pursuant to sections 105(a) and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), establishing procedures for interim compensation and reimbursement of expenses of professionals for specific services rendered in these Chapter 11 Cases (this “**Motion**”). In support of this Motion, the Debtors respectfully state:²

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this District pursuant to 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 Application are further 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.

3. The statutory predicates for the relief requested herein are sections 105(a), 363, 364, 507, 1107 and 1108 of the Bankruptcy Code.

BACKGROUND

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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, 2008 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.

10. 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

11. Contemporaneously with the filing of this Motion, or soon thereafter, the Debtors expect to seek approval of the employment of: (a) Latham & Watkins LLP as restructuring and bankruptcy counsel; (b) Frost Brown Todd LLC as co-restructuring and bankruptcy counsel; and (c) Morris-Anderson & Associates Ltd. as financial advisors.³ The Debtors anticipate that they may retain other professionals and special counsel in these cases. In addition, any official committee appointed in these cases (the "**Committee**") likely will retain counsel and possibly other professionals to assist them.

12. By this Motion and pursuant to Rule 2016-1(a)(1)(F) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of Ohio (the "**Local Rules**"), the Debtors request the entry of an order authorizing and establishing procedures for

³ The Debtors are also seeking to retain Mesirow Financial, Inc. ("**Mesirow**") as investment bankers to the Debtors and The Garden City Group, Inc. ("**GCG**") as notice, balloting and claims agent for the Debtors. For the reasons set forth in their respective retention applications, the Debtors are requesting alternative compensation structures for Mesirow and GCG.

compensation and reimbursement of court-approved professionals for the Debtors and the Committee (collectively, the “**Professionals**”)⁴ on a monthly basis, on terms comparable to those procedures established in other large chapter 11 cases filed in this and other Districts. Such an order will streamline the professional compensation process and enable this Court and all other parties to monitor the professional fees incurred in these Chapter 11 Cases more effectively.

BASIS FOR RELIEF

13. The procedures requested in this Motion will permit each Professional subject to these procedures to present to the Debtors and their counsel, the United States Trustee, the Debtors’ post-petition lenders and the Committee (if appointed) with a detailed statement of services rendered and expenses incurred by the Professional for the prior month. If there is no timely objection, the Debtors propose to pay 85% of the amount of fees and 100% of the amount of expenses incurred for the month. These payments will be subject to this Court’s subsequent approval as part of the normal interim fee application process approximately every four months and in all cases subject to section 331 of the Bankruptcy Code.

PROCEDURES REQUESTED

14. Specifically, the Debtors propose that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows (the “**Compensation Procedures**”):

- a) On or before the 25th of every month following the month for which compensation is sought (the “**Monthly Statement Date**”), each Professional will submit a monthly billing statement describing the services provided and the fees and expenses incurred (the “**Monthly Statement**”) during the prior month (the “**Compensation**”).

⁴ For the reason set forth in Note 2 *supra*, Mesirow and GCG are not included within the definition of “Professionals” for purposes of this Motion.

Period”) to: (i) the Debtors; (ii) Debtors’ counsel; (iii) counsel to the Debtors’ post-petition lenders; (iv) counsel to the Committee, if appointed in these Chapter 11 Cases; and (v) the United States Trustee (collectively, the **“Notice Parties”**). Any Professional may submit a consolidated Monthly Statement covering two or more months. The time and expense detail in all Monthly Statements must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the **“Bankruptcy Rules”**), the Local Rules and applicable Sixth Circuit law.

b) Each Notice Party shall have 10 days (the **“Objection Deadline”**) after service of the Monthly Statement (or the next business day if such day is not a business day) to review it and, in the event that any Notice Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, to object to the requested fees and expenses in accordance with the procedures described in subparagraph (c) below. Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection (a **“CNO”**) with this Court with respect to the unopposed portion of the fees and expenses requested in such Professional’s Monthly Statement. After a CNO is filed, the Debtors are authorized to pay each Professional an amount (the **“Actual Monthly Payment”**) equal to the lesser of (i) 85 percent of the fees and 100 percent of the expenses requested in the applicable Monthly Statement (the **“Maximum Monthly Payment”**) or (ii) 85 percent of the fees and 100 percent of the expenses not subject to an objection pursuant to subparagraph (c) below. Such payments will augment any retainers held by such Professionals.

c) If any Notice Party wishes to object to a Professional’s Monthly Statement, such Notice Party must (i) file a written objection (an **“Objection”**) with this

Court on or before the Objection Deadline and (ii) serve the Objection on the affected Professional and each of the other Notice Parties so that it is received on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the objection on a consensual basis. If the parties are unable to reach a resolution of the Objection, the affected Professional may either: (i) file a request with the Court for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the “**Incremental Amount**”); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time this Court may consider and dispose of the objection if requested by the parties.

d) At four month intervals, each Professional may file with this Court and serve on the Notice Parties, an application for interim Court approval and allowance of compensation under Section 331 of the Bankruptcy Code (the “**Interim Fee Applications**”). The first Interim Fee Application shall be filed on or before September 30, 2009 and shall cover the period from the Petition Date through August 31, 2009.

e) Any objection to Interim Fee Applications must be filed with this Court and served upon the affected Professional and the Notice Parties no later than twenty (20) days after the date of service. If an objection is timely filed, served, and received and such objection is not otherwise resolved, or this Court otherwise determines that a hearing should be held regarding an Interim Fee Application, either this Court or the fee applicant may file a motion requesting a hearing on the objection to such Interim Fee Application (the “**Interim Compensation Hearing**”). Notice of the Interim Compensation Hearing shall be served upon the affected Professional and the Notice Parties.

f) The pendency of an Interim Fee Application and the pendency of any Objection to a Monthly Statement or other objection shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above. Neither the payment of, nor the failure to pay, in whole or in part, compensation or reimbursement as provided herein, shall bind any party in interest or this Court with respect to any Monthly Statement or the final allowance of compensation and reimbursement of Professionals in accordance with the foregoing procedures.

15. The Debtors further request that this Court limit the notice of Interim Fee Applications and final fee applications to the Notice Parties and all parties requesting notice (the “**2002 List**”) in accordance with the *Motion for Entry of an Order Establishing Certain Notice, Case Management and Administrative Procedures* filed contemporaneously with the Motion. The Debtors further request that: (a) the Notice Parties be entitled to receive the Monthly Statements, any Interim Fee Applications, any final fee application requests and any notices of hearing on interim or final fee application requests (the “**Hearing Notices**”); and (b) all other parties on the 2002 List entitled to notice shall be entitled to receive only the Hearing Notices. Providing notice of Interim Fee Applications and final fee applications in this manner will permit the parties most active in these Chapter 11 Cases to review and object to professional fees and will save the expenses of undue duplication and mailing.

APPLICABLE AUTHORITY

16. 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). Moreover, Local Rule 2016(a)(1)(F) provides that a professional may

file a motion with the Court for approval of procedures for the monthly compensation and reimbursement of expenses of professionals retained by order of this Court.

17. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

11 U.S.C. § 331. Absent an order of this Court, section 331 of the Bankruptcy Code limits Professionals rendering services in these Chapter 11 Cases to payment of fees and expenses only three times per year.

18. The requested Compensation Procedures are comparable to those procedures established in other large chapter 11 cases in this and other Districts. See, e.g., In re Milacron Inc., Case No. 09-11235 (Bankr. S.D. Ohio 2009); In re Wornick Company, Case No. 08-10654 (Bankr. S.D. Ohio 2008); In re EaglePicher Holdings, Inc., Case No. 05-12601 (Bankr. S.D. Ohio 2005); In re Huffly Corp., Case No. 04-39148 (Bankr. S.D. Ohio 2004); In re Ormet Corporation, Case No. 04-51255 (Bankr. S.D. Ohio 2004); In re LTV Steel Company, Inc., Case No. 00-43866 (Bankr. N.D. Ohio 2000).

19. The requested Compensation Procedures will (a) reduce substantially the burden imposed on the Court by avoiding the need for the immediate review of Monthly Statements, (b) enable parties in interest to monitor more closely the costs of administration, (c) diminish undue financial burdens on the Professionals and avoid having Professionals fund the costs of the Debtors' reorganization and (d) permit the Debtors to better predict and manage their monthly cash costs.

WAIVER OF MEMORANDUM OF LAW

20. 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

21. 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; (vii) any governmental unit listed in LBR 5003-1(d); and, (viii) all known Professionals. 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

22. No prior request for the relief sought in this Motion has been made to this Court or any other court in connection with these Chapter 11 Cases.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto as Exhibit A: (i) authorizing and establishing

procedures for the compensation and reimbursement of court-approved professionals on a monthly basis as set forth above and (ii) granting such other relief as is just and proper.

Dated: May 8, 2009
Cincinnati, OH

Respectfully submitted,

LATHAM & WATKINS LLP

Josef S. Athanas (pro hac vice motion pending)
Stephen R. Tetro II (pro hac vice motion pending)
Sears Tower, Suite 5800
233 South Wacker Drive
Chicago, Illinois 60606-6401
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

- and -

FROST BROWN TODD LLC

By: /s/ Ronald E. Gold
Ronald E. Gold, Esq. (0061351)
Beth A. Buchanan, Esq. (0068430)
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
Telephone: (513) 651-6800
Facsimile: (513) 651-6981
Email: rgold@fbtlaw.com
Email: bbuchanan@fbtlaw.com

**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**

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

**ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF CHAPTER 11 PROFESSIONALS**

Upon consideration of the motion (the “Motion”)¹ of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”),² for entry of an order under sections 105(a) and 331 of the Bankruptcy Code and Local Rule 2016-1(a)(1)(F), establishing procedures for interim compensation and reimbursement of expenses of Professionals specifically retained by order of this Court; and it appearing that the relief requested is in the best interests of the

¹ Capitalized terms not otherwise defined herein shall have the 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.

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 therefor, it is hereby:

1. ORDERED that, the Motion is GRANTED in its entirety; and it is further
2. ORDERED that, except as may otherwise be provided in an order of this Court authorizing the retention of specific professionals, all Professionals retained under sections 327 and, to the extent applicable, sections 328(a) and 1103 of the Bankruptcy Code in these Chapter 11 Cases, may seek interim compensation in accordance with the Compensation Procedures set forth below:

- a) On or before the 25th of every month following the month for which compensation is sought (the "**Monthly Statement Date**"), each Professional will submit a monthly billing statement describing the services provided and the fees and expenses incurred (the "**Monthly Statement**") during the prior month (the "**Compensation Period**") to: (i) the Debtors; (ii) Debtors' counsel; (iii) counsel to the Debtors' post-petition lenders; (iv) counsel to the Committee, if appointed in these Chapter 11 Cases; and (v) the United States Trustee (collectively, the "**Notice Parties**"). Any Professional may submit a consolidated Monthly Statement covering two or more months. The time and expense detail in all Monthly Statements must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Local Rules and applicable Sixth Circuit law.

b) Each Notice Party shall have 10 days (the “**Objection Deadline**”) after service of the Monthly Statement (or the next business day if such day is not a business day) to review it and, in the event that any Notice Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, to object to the requested fees and expenses in accordance with the procedures described in subparagraph (c) below. Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection (a “**CNO**”) with this Court with respect to the unopposed portion of the fees and expenses requested in such Professional’s Monthly Statement. After a CNO is filed, the Debtors are authorized to pay each Professional an amount (the “**Actual Monthly Payment**”) equal to the lesser of (i) 85 percent of the fees and 100 percent of the expenses requested in the applicable Monthly Statement (the “**Maximum Monthly Payment**”) or (ii) 85 percent of the fees and 100 percent of the expenses not subject to an objection pursuant to subparagraph (c) below. Such payments will augment any retainers held by such Professionals.

c) If any Notice Party wishes to object to a Professional’s Monthly Statement, such Notice Party must (i) file a written objection (an “**Objection**”) with this Court on or before the Objection Deadline and (ii) serve the Objection on the affected Professional and each of the other Notice Parties so that it is received on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the objection on a consensual basis. If the parties are unable to reach a resolution of the Objection, the affected Professional may either: (i) file a request with the Court for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the “**Incremental Amount**”); or (ii) forego payment of the Incremental Amount

until the next interim or final fee application hearing, at which time this Court may consider and dispose of the objection if requested by the parties.

d) At four month intervals, each Professional may file with this Court and serve on the Notice Parties, an application for interim Court approval and allowance of compensation under Section 331 of the Bankruptcy Code (the “**Interim Fee Applications**”). The first Interim Fee Application shall be filed on or before September 30, 2009 and shall cover the period from the Petition Date through August 31, 2009.

e) Any objection to Interim Fee Applications must be filed with this Court and served upon the affected Professional and the Notice Parties no later than twenty (20) days after the date of service. If an objection is timely filed, served, and received and such objection is not otherwise resolved, or this Court otherwise determines that a hearing should be held regarding an Interim Fee Application, either this Court or the fee applicant may file a motion requesting a hearing on the objection to such Interim Fee Application (the “**Interim Compensation Hearing**”). Notice of the Interim Compensation Hearing shall be served upon the affected Professional and the Notice Parties.

f) The pendency of an Interim Fee Application and the pendency of any Objection to a Monthly Statement or other objection shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above. Neither the payment of, nor the failure to pay, in whole or in part, compensation or reimbursement as provided herein, shall bind any party in interest or this Court with respect to any Monthly Statement or the final allowance of compensation and reimbursement of Professionals in accordance with the foregoing procedures; and it is further

3. ORDERED that, notice of the Interim Fee Applications and final fee applications shall be served on the Notice Parties and the 2002 List. The Notice Parties shall be entitled to receive the Monthly Statements, any Interim Fee Applications, any final fee application requests and any notices of hearing on interim or final fee application requests (the “Hearing Notices”) and all other parties on the 2002 List entitled to notice shall be entitled to receive only the Hearing Notices. Notice given in accordance with this paragraph is deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; and it is further

4. ORDERED that, the Debtors, their officers, employees and agents, are authorized to take or refrain from taking such acts as are necessary and appropriate to implement and effectuate the relief granted herein; and it is further

5. ORDERED that, notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be effective and enforceable upon entry; and it is further

6. ORDERED that this Court shall retain jurisdiction over all matters arising from or related to the interpretation, implementation and enforcement of this Order.

SO ORDERED.

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