

**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.,<sup>1</sup> ) (Joint Administration Requested)  
 )  
 ) Honorable J. Vincent Aug, Jr.  
Debtors. )  
 )

**MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING  
AND APPROVING THE DEBTORS' EMPLOYEE INCENTIVE PROGRAM**

**(“EMPLOYEE INCENTIVE PROGRAM 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**”), in substantially the form attached hereto as Exhibit A, authorizing and approving the Debtors’ employee incentive program (the “**Employee Incentive Program**”). In support of this Motion, the Debtors respectfully state:<sup>2</sup>

**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.

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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.

2. The statutory bases for the relief requested herein are Sections 363(b) and 503(c)(3) 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**”).

### **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 363(b) and 503(c)(3) of the Bankruptcy Code authorizing the Debtors to implement the

Employee Incentive Program and to treat all obligations arising thereunder, if any, as administrative expenses of the Debtors' estates.

## **BASIS FOR RELIEF**

### **A. PROPOSED EMPLOYEE INCENTIVE PROGRAM**

11. By this Motion, the Debtors seek approval and authorization of an employee incentive program (the "**Employee Incentive Sale Program**") under which each of the Debtors' 14 employees listed on Exhibit B hereto (the "**Eligible Participants**"), each of whom is deemed critical by the Debtors to their ongoing sale process and efforts to maximize the value of the Debtors' estates, would receive a bonus equal to 100% of such employee's annual salary as of the date of this Motion (an "**Award**"). The Awards would be payable upon the closing of a sale of all or substantially all of the assets of the Debtors that is consummated on or before October 1, 2009 and that results in the payment in full of all obligations owed as of the closing date of such sale to the Debtors' prepetition secured lenders under that certain Second Amended and Restated Credit Agreement dated as of March 30, 2008 among Senco Products, Inc., SENCORP, LaSalle Bank National Association, as global administrative agent, and the other financial institutions party thereto from time to time, and to the Debtors' debtor-in-possession secured lenders under the Debtors' DIP Facility (a "**Qualifying Sale**"). An Eligible Participant will forfeit his or her right to receive an Award if such Eligible Participant voluntarily terminates his or her employment with the Debtors prior to the closing of a Qualifying Sale, or if such Eligible Participant's employment with the Debtors is terminated for "Cause" prior to the closing of a Qualifying Sale. For purposes of the Employee Incentive Sale Program, "Cause"

shall mean termination of employment due to: (1) willful misconduct or dereliction in the performance of one's duties, (2) breach of any material employment policies, (3) dishonesty or misrepresentation, (4) unauthorized use of confidential information or trade secrets, (5) violation of any covenants regarding non-competition and/or non-solicitation, or (6) conviction of or plea of guilty or *nolo contendere* to felony criminal misconduct. The maximum pool available for award under the Employee Incentive Sale Program is \$2.64 million, and the mean Award available under the Employee Incentive Sale Program is approximately \$188,571.

12. Prior to the Petition Date, the Debtors implemented an employee incentive sale program for these same Eligible Participants, contemplating the same Awards, under similar circumstances. Since that time, the Eligible Employees have worked extraordinary hours and made extraordinary efforts to operate the Debtors' businesses, preserve the value of the Debtors' assets and pursue possible sales or other transactions that might maintain the Debtors' businesses or otherwise maximize the value thereof.

13. As a result of those efforts, the Debtors were able to execute the APA with Wynnchurch, procure the DIP Facility and commence these Chapter 11 Cases, all while maintaining the Debtors' operations to the greatest extent possible in extremely difficult economic conditions. While the Debtors now have the Wynnchurch APA in hand as a stalking horse bid, the Debtors' sale process, as described in the Debtors' [INSERT FULL NAME OF SALE MOTION] (the "**Sale Process**"), has just begun.

14. The Sale Process depends in large part on the efforts of the Eligible Participants, who are each responsible for portions of the Sale Process and/or maintaining the

Debtors' businesses during such Sale Process. The Debtors have selected the individuals designated as Eligible Participants for the indispensable roles they must play to obtain a successful outcome through the Sale Process. Eligible Participants are those individuals (a) most responsible for stabilizing and preserving the Debtors' business operations, (b) most directly responsible for interfacing directly with Wynnchurch and other potential buyers or their advisors and/or (c) that have intimate knowledge of the Debtors' existing businesses and financial affairs.

15. The Debtors respectfully submit that their proposed Employee Incentive Program is appropriately calibrated to incentive the Eligible Participants to obtain the highest and best value for the Debtors' estates and is justified under the facts and circumstances of the Chapter 11 Cases. The milestone necessary to trigger awards under the Employee Incentive Program – the closing of a Qualifying Sale – is set appropriately in light of the challenges faced by the Eligible Participants in maintaining the Debtors' business operations and pursuing the Sale Process, and in light of the benefit the Debtors' estates would receive from the achievement of such milestone. As noted above, payments under the Employee Incentive Program will only become payable upon the successful closing of a Qualifying Sale.

16. A successful going concern sale process is not a foregone conclusion at the outset of these Chapter 11 Cases. The Eligible Participants have shown great loyalty to the Debtors during the last several months during a time when the future of the business, not to mention their future employment with the Debtors, was in question. Indeed, even today the Eligible Participants do not know who will ultimately emerge from the Sale Process as the buyer. The Eligible Participants do not have any assurances regarding their ongoing employment with

the Debtors at the conclusion of the Sale Process. Nonetheless, the Eligible Participants have worked tirelessly to preserve the Debtors' business operations and to increase the chances for a going concern transaction. The Debtors' ongoing ability to pursue a going-concern transaction during an extreme crisis in the credit markets and ongoing disruptions in the residential real estate market (a key driver of the Debtors' revenues) is directly attributable to the efforts and dedication of the Eligible Participants.

**B. CASE LAW AND STATUTORY SUPPORT FOR AUTHORIZATION OF EMPLOYEE INCENTIVE PROGRAM**

**A. The Employee Incentive Program Does Not Implicate Section 503(c)(1) or Section 503(c)(2) of the Bankruptcy Code**

17. Section 503(c)(1) and (c)(2) of the Bankruptcy Code impose significant restrictions on a debtor's ability to provide severance or retention payments to its executives. Neither provision applies to the proposed Employee Incentive Program. "Sections 503(c)(1) and (2) are plainly high hurdles to clear if payments are primarily designed for retention. The entire analysis changes if a bonus plan is not primarily motivated to retain personnel or is not in the nature of severance." In re Global Home Prods., 369 B.R. 778, 785 (Bankr. D. Del. 2007).

**1. Section 503(c)(1) Does Not Apply Because the Employee Incentive Program Is Primarily Intended to Motivate Eligible Participants to Maximize the Value of the Debtors' Estates**

18. Compensation plans intended to incentivize enhanced performance from debtor personnel are not subject to Section 503(c)(1). See In re Nellson Nutraceutical, Inc., 369 B.R. 787, 803 (Bankr. D. Del. 2007); Global Home Prods., 369 B.R. at 787 ("[T]he beneficiaries were performing in response to a financial incentive and not merely to remain with [the] Debtors."). Section 503(c)(1) of the Bankruptcy Code applies only to "pay to stay" plans that do

not motivate participants “to produce and increase the value of the estate.” In re Dana Corp., 358 B.R. 567, 584 (Bankr. S.D.N.Y. 2006). This distinction recognizes that every form of payment—be it a wage, salary or bonus—has at least some retentive effect. Thus, the incidental retentive effects of an incentive plan do not trigger Section 503(c)(1). “The fact. . . that all compensation has a retention element does not reduce the Court’s conviction that the Debtors’ primary goal [is] to create value by motivating performance.” Global Home Prods., 369 B.R. at 786; see Dana Corp., 358 B.R. at 571.

19. Any Award provided pursuant to the Employee Incentive Program is primarily intended to incentivize the Eligible Participants to maximize value for the Debtors’ creditors. The Eligible Participants will not receive Awards under the Employee Incentive Program unless the Debtors obtain Court approval for, and subsequently close, a sale of their businesses. Embedded in these overall goals are specific challenges that must be overcome by the Eligible Participants. There is no guarantee that these goals will be achieved. Rather, the goals set by the Employee Incentive Program contemplate that significant and additional efforts will be required by the Eligible Participants before any Award is available. These efforts will be in addition to the Eligible Participants’ regular duties – duties that have been significantly increased as the Debtors have simultaneously prepared for a chapter 11 filing and pursued a going concern sale on an extremely accelerated schedule.

20. This incentive-based structure is categorically different from a “pay to stay” retention plan subject to Section 503(c)(1), under which payments are driven only by a participant’s ongoing employment. Cf. In re Dana Corp., 351 B.R. 96, 102 (Bankr. S.D.N.Y.

2006) (“Without tying this portion of the bonus to anything other than staying with the company until the Effective Date, this Court cannot categorize a bonus of this size and form as an incentive bonus.”). Indeed, incentive programs predicated on the achievement of performance targets, such as the Employee Incentive Program, are consistently distinguished from “retention” plans otherwise subject to Section 503(c)(1). See, e.g., In re Leiner Health Prods. Inc., Case No. 08-10446 (Bankr. D. Del. Apr. 14, 2008) (authorizing asset sale incentive program under Section 503(c)(3) of the Bankruptcy Code); In re Dura Auto. Sys., Inc., Case No. 06-11202 (Bankr. D. Del. June 28, 2007) (same); In re Nobex Corp., No. 05-20050, 2006 WL 4063024, at \*3 (Bankr. D. Del. Jan. 19, 2006) (finding that “sale-related incentive pay . . . is not governed by sections 503(c)(1) or 503(c)(2)”).

**2. Section 503(c)(2) Does Not Apply to the Employee Incentive Program Because the Employee Incentive Program Is Not a Severance Plan**

21. Section 503(c)(2) sets specific limits on a debtor’s ability to make severance payments to company executives. See 11 U.S.C. § 503(c)(2). “Severance” is not defined by the Bankruptcy Code. Hence, courts may turn to judicially-created definitions of “severance” to determine whether Section 503(c)(2) governs a particular bonus program. See Dana Corp., 358 B.R. at 576. “Severance” typically refers to payments made to a terminated employee in lieu of notice or based on the length of the terminated employee’s service. See In re Hechinger Investment Co. of Del., 298 F.3d 219, 227 (3d Cir. 2002) (Alito, J.); In re Roth Am., Inc., 975 F.2d 949, 957 (3d Cir. 1992). Payments due under an employment contract in the event

of termination may also be construed as “severance.” See In re M Group, Inc., 268 B.R. 896, 901 (Bankr. D. Del. 2001).

22. Payments due under the Employee Incentive Program cannot reasonably be construed as “severance.” No payment under the Employee Incentive Program is triggered by the termination of employment. Furthermore, as noted above, sales-based incentive plans are consistently distinguished from “severance” plans subject to Section 503(c)(2). See, e.g., Nobex, 2006 WL 4063024, at \*3.

**B. The Employee Incentive Program Complies with the Requirements of Section 503(c)(3) of the Bankruptcy Code**

23. A sales-based incentive plan may be authorized where a debtor has determined, in the exercise of its business judgment, that such a plan will motivate certain employees to preserve or enhance the value of its estate. Section 503(c)(3) authorizes “transfers or obligations that are outside the ordinary course of business” that are “justified by the facts and circumstances of the case.” In determining whether a particular payment is “justified” under this standard, the Court has broad discretion to approve incentive-based bonus plans that “are not primarily motivated by retention or in the nature of severance.” Dana, 358 B.R. at 576 (citing Nobex, 2006 WL 4063024). Section 503(c)(3) is “quite frankly nothing more than a reiteration of the standard under 363 . . . under which courts had previously authorized transfers outside the ordinary course of business . . . that is, based on the business judgment of the debtor . . . .” In re Nobex Corp., Case No. 05-20050 (Bankr. D. Del.), Hr’g. Tr. Jan. 12, 2006, 86-87:23-25, 1-2; see also 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 503.17[3] (15th rev. ed.)

(“[T]he standard for approval to be employed under section 503(c)(3) is unlikely to be much different than the standard for approval that would otherwise be applied by the court.”).

24. Under the business judgment standard, a transaction outside the ordinary course of business may be approved where a debtor has established that “there is a broad business purpose for an action.” Global Home Prods., 369 B.R. at 783-84; see generally In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983). A determination to implement appropriate incentive programs for key personnel is typically considered a proper exercise of a debtor’s business judgment. See In re Montgomery Ward Holding Corp., 242 B.R. 147,153-55 (D. Del. 1999). For example, the Nobex court approved the incentive plan at issue in that case based on its finding that: “Critical to the Debtor’s successful implementation of the sale procedure presently proposed by the Debtor are the full experience, expertise, and enthusiastic involvement-of the debtor’s existing Senior Management.” 2006 WL 4063024, at \*1.

25. The proposed Employee Incentive Program is justified by a sound business purpose. In the upcoming days, the Eligible Participants will be asked to assume significantly increased responsibilities in connection with the Sale Process. Eligible Participants will be required to quickly respond to diligence inquiries, guide potential buyers through all aspect of the Debtors’ businesses and ensure that the Sale Process does not disrupt ongoing operations. Eligible Participants may also be required to assume additional responsibilities in order to preserve vital customer relationships. In short, the Debtor’s ability to obtain value for the benefit of all stakeholders in the Chapter 11 Cases will depend on the Eligible Participant’s ability to effectively present the businesses in the best possible light.

26. Consequently, the Debtors have determined to implement the Employee Incentive Program in order to properly incentivize the Eligible Participants since their performance is essential to the success of their Sale Process. Such a decision falls squarely within the Debtors' sound business judgment. See Montgomery Ward Holding Corp., 242 B.R. at 155; Global Home Prods., 369 B.R. at 784 ("The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment."). Moreover, the total amounts of potential incentive Awards are relatively modest compared with either the value that may be realized upon the successful completion of the Sale Process or the potential consequences of failure.

27. The proposed Employee Incentive Program is also generally consistent with incentive plans regularly approved by courts in this District and others to enhance the likelihood of success for a sale process such as the one proposed by the Debtors. See, e.g., In re Triad Resources, Inc., Case No. 08-62733 (Bankr. N.D. Ohio December 31, 2008); In re Boscov's Inc., Case No. 08-11637 (Bankr. D. Del. Sept. 5, 2008); In re Diamond Glass, Inc., Case No. 08-10601 (Bankr. D. Del. June 6, 2008); In re New Century TRS Holdings Inc., Case No. 07-10416 (Bankr. D. Del. May 25, 2007); In re Leiner Health Prods. Inc., Case No. 08-10446 (Bankr. D. Del. Apr. 14, 2008); In re Dura Auto. Sys., Inc., Case No. 06-11202 (Bankr. D. Del. June 28, 2007); In re PlusFunds Group, Inc., Case No. 06-10402 (Bankr. S.D.N.Y. Apr. 19, 2006); In re Riverstone Networks, Inc., Case No. 06-10110 (Bankr. D. Del. March 28, 2006). Similarly, courts have regularly approved management bonus plans under Section 503(c)(3) in order to provide incentives for increased performance from key personnel. See, e.g., In re Triad

Resources, Inc., Case No. 08-62733 (Bankr. N.D. Ohio December 31, 2008); In re Sharper Image Corp., Case No. 08-10322 (Bankr. D. Del. June 25, 2008); In re Kimball Hill, Inc., Case No. 08-10095 (Bankr. N.D. Ill. June 1, 2008); In re Movie Gallery, Inc., Case No. 07-33849 (Bankr. E.D. Va. Feb. 29, 2008); In re Dura Auto. Sys., Inc., Case No. 06-11202 (Bankr. D. Del. Feb. 26, 2008); In re Calpine Corp., Case No. 05-60200 (Bankr. S.D.N.Y. May 15, 2006).

### **WAIVER OF MEMORANDUM OF LAW**

28. 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**

29. 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.

**NO PRIOR REQUEST**

30. 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 and approving the Employee Incentive Program; and (b) 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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By: /s/ Ronald E. Gold

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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**

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

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**ORDER AUTHORIZING AND APPROVING  
THE DEBTORS' EMPLOYEE INCENTIVE PROGRAM**

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 Employee Incentive Program is authorized and approved, and the Debtors are authorized to make all payments contemplated thereunder; and it is further
3. ORDERED that each Eligible Participant shall be entitled to receive his or her applicable Award upon the closing of a Qualifying Sale, subject to the limitation set forth in the following paragraph; and it is further
4. ORDERED that an Eligible Participant will forfeit his or her right to receive an Award if such Eligible Participant voluntarily terminates his or her employment with the Debtors prior to the closing of a Qualifying Sale, or if such Eligible Participant's employment with the Debtors is terminated for "Cause" prior to the closing of a Qualifying Sale; and it is further
5. ORDERED that, for purposes of the Employee Incentive Sale Program, "Cause" shall mean termination of employment due to: (1) willful misconduct or dereliction in the performance of one's duties, (2) breach of any material employment policies, (3) dishonesty or misrepresentation, (4) unauthorized use of confidential information or trade secrets, (5) violation of any covenants regarding non-competition and/or non-solicitation, or (6) conviction of or plea of guilty or *nolo contendere* to felony criminal misconduct; and it is further

6. 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

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

**SO ORDERED.**

# # #

## **EXHIBIT B**

### **Eligible Participants**

Gil Blanchette  
Marie Boyle  
Peter Coldman  
Troy Davis  
Terry Dullaghan  
David Fyffe  
Emily Harris  
Andrew Martin  
Cliff Mentrup  
Tony Racca  
James Robertson  
Brian Thomas  
Peter van der Wel  
Kathleen Woods