

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
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TRUE TEMPER SPORTS, INC., <u>et al.</u> ,	:	Case No. 09- _____ (___)
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Debtors. <sup>1</sup>	:	Joint Administration Requested
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**EMERGENCY MOTION OF DEBTORS FOR ORDER AUTHORIZING BANK OF AMERICA TO HONOR PREPETITION CHECKS FOR PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS AND PROHIBITING BANK OF AMERICA FROM PLACING HOLDS ON EMPLOYEE PAYROLL ACCOUNT**

The above-captioned debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) hereby move this Court on an emergency basis (the “Emergency Employee Motion”) pursuant to sections 105(a), 363(b), 507(a) and 1107 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order: (i) authorizing Bank of America to honor certain outstanding prepetition checks for employee wages and all taxes associated therewith in the total amount of \$83,574.73, and (ii) prohibiting Bank of America from placing any holds on a certain account for prepetition payroll amounts, pending the hearing on the Debtors’ “first day” pleadings in these cases. In support of the Emergency Employee Motion, the Debtors rely upon and incorporate by reference the Declaration of Jason A. Jenne in Support of Chapter 11 Petitions and First Day Pleadings (the “Jenne Declaration”). In further support of the Emergency Employee Motion, the Debtors respectfully state as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: True Temper Sports, Inc. (2620), True Temper Corporation (4519), and True Temper Sports-PRC Holdings, Inc. (6895). The Debtors’ corporate headquarters are located at, and the mailing address for each Debtor is, 8275 Tournament Drive, Suite 200, Memphis, Tennessee 38125.

## **JURISDICTION**

1. This Court has jurisdiction to consider this Application under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue of these cases and this motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), 507(a) and 1107. Such relief is also warranted under Bankruptcy Rule 6003(b).

## **BACKGROUND**

4. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Jenne Declaration, filed concurrently herewith and fully incorporated herein by reference.<sup>2</sup>

5. Prior to the Petition Date, the Debtors solicited votes on the Joint Prepackaged Plan of Reorganization of True Temper Sports, Inc., True Temper Corporation, and True Temper Sports-PRC Holdings, Inc., dated September 30, 2009 (the “Prepackaged Plan” or the “Plan”) through their Disclosure Statement with Respect to the Joint Prepackaged Plan of Reorganization of True Temper Sports, Inc., True Temper Corporation, and True Temper Sports-PRC Holdings, Inc, dated September 30, 2009 (the “Disclosure Statement”), both filed contemporaneously herewith. As described more fully in the Jenne Declaration, the Prepackaged Plan has been

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Jenne Declaration.

accepted by all classes entitled to vote in excess of the statutory thresholds specified in section 1126(c) of the Bankruptcy Code. The Prepackaged Plan provides, among other things, that (a) the acceptance of the Prepackaged Plan by a holder of an Allowed Second Lien Credit Facility Claim constitutes an agreement by such holder to contribute 100% of its Cash distribution of up to \$3,000,000 (but not less than \$500,000) on account of its Allowed Claim for deposit into the Trade Account for distribution to Allowed Trade Unsecured Claims in accordance with Article IV. of the Prepackaged Plan and (b) the holders of Senior Subordinated Notes will receive no distribution under the Plan which treatment was agreed to by the Plan Investor who holds an aggregate 45.5% of the face amount of the Senior Subordinated Notes. As a result of the fact that 27 out of 28 holders of Allowed Second Lien Credit Facility Claims (holding more than 93% of the aggregate amount of such claims) voted to accept the Plan, sufficient cash will be available to pay Trade Unsecured Claims in full. By separate motion, the Debtors are requesting a hearing to confirm the Prepackaged Plan within 40 to 45 days of the Petition Date.

6. On the Petition Date, the Debtors filed a motion seeking entry of an order authorizing the Debtors to pay certain obligations owed to their employees as a result of services provided prior to the Petition Date, including employee payroll and employee benefit programs in the ordinary course, and directing all banks and applicable financial institutions to honor prepetition checks for payment of prepetition employee obligations (the “Employee Motion”)<sup>3</sup> at

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<sup>3</sup> The full title of the Employee Motion is Motion For an Order (I) Authorizing: (A) Payment of Prepetition Employee Wages, Salaries and Other Compensation; (B) Payment of Prepetition Compensation Owed to Independent Contractors and Temporary Workers; (C) Reimbursement of Prepetition Employee Business Expenses; (D) Payments For Which Prepetition Payroll and Tax Deductions Were Made; (E) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (F) Payment of Workers’ Compensation Obligations; and (G) Payment to Third Parties of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (H) Authorizing and Directing Applicable Banks and Other Financial Institutions to Honor and Pay All Checks and Transfers Drawn on the Debtors’ Payroll Accounts to Make the Foregoing Payments.

the first day hearing to be scheduled in these cases. A detailed discussion of the Debtors' payroll and related employee benefits is set forth in the Employee Motion.

7. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

8. As of the Petition Date, the Debtors, in their U.S., European, and Japanese locations, employ approximately 307 employees (the "Employees"), of whom approximately 211 are hourly Employees (the "Hourly Employees") and 96 are salaried Employees (the "Salaried Employees"). Approximately 300 of those Employees are located in the United States, 2 in the United Kingdom (the "UK") and 5 in Japan.<sup>4</sup> Approximately 150 of the Hourly Employees at the Debtors' manufacturing plant in Amory, Mississippi are represented by the United Steel Workers of America.

9. All wages to U.S. Employees are paid from a payroll account at Bank of America (the "Payroll Account"), and are handled on a centralized basis with the assistance of a third party payroll processor, Automatic Data Processing, Inc. ("ADP"). Although the majority of payroll payments to the Employees are made via direct deposit through electronic transfer of funds, approximately 164 of the Hourly Employees and 21 of the Salaried Employees are paid by check from the Payroll Account. On Friday, September 25, 2009 and Wednesday, September 30, 2009, the Debtors issued checks to 163 Hourly Employees, and as of the date hereof, four (4) checks (the "September Checks") have not cleared the Payroll Account. On Friday, October 2, 2009, the Debtors issued checks to 164 of the Hourly Employees and 21 of the Salaried Employees, and as of the date hereof, 11 checks (the "October 2 Checks") have not cleared from

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<sup>4</sup> The Employees in the UK and Japan are paid by wire transfer or electronic funds transfer and thus do not require the relief set forth in this Emergency Employee Motion.

the Payroll Account. Furthermore, on Wednesday, October 7, 2009, the Debtors issued checks to 163 Hourly Employees, and as of the date hereof, 131 checks (the “October 7 Checks” and together with the October 2 Checks and the September Checks, the “Outstanding Checks”) have not cleared from the Payroll Account. The aggregate amount of the wages from the Outstanding Checks is approximately \$83,574.73 (the “Wage Payments”).<sup>5</sup> No payee will receive more than \$10,950 as a result of the payments authorized herein.

10. The Debtors believe that there are presently no Employees who are owed in excess of \$10,950 for prepetition wages, salaries or commissions.

### **EMERGENCY RELIEF REQUESTED**

11. Pursuant to Rule 9013-1(m) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), a day or more might pass before the Employee Motion can be heard. The Debtors have discussed these issues with Bank of America, and, without an order of this Court authorizing payment, Bank of America will not honor the Outstanding Checks.

12. Pursuant to this Emergency Employee Motion, therefore, the Debtors request entry of an order authorizing Bank of America to honor any Outstanding Checks (i) on account of accrued and unpaid wages of the Hourly Employees, (ii) for amounts that the Debtors are required by law to withhold from employee payroll checks in respect of federal, state and local income taxes, including unemployment contributions and taxes, and social security and medicare taxes, and (iii) for amounts that the Debtors are required to directly pay in respect of state unemployment taxes and contributions on behalf of employees.

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<sup>5</sup> The Wage Payments consist of vacation pay in the aggregate amount of \$10,574.45.

13. The Debtors recognize that this Emergency Employee Motion seeks extraordinary relief, but submit that the circumstances before the Court merit such relief. In light of the potential delay in obtaining a hearing date, the Debtors are faced with the possibility that Bank of America will not honor the Outstanding Checks for certain Hourly Employees. If Bank of America does not honor the Outstanding Checks, the morale and confidence of the Debtors' employees will be severely impacted, possibly resulting in employees leaving their jobs and a corresponding significant decrease in the value of the Debtors' estates. Thus, the Debtors believe that the circumstances merit approval of the order submitted herewith.

14. Upon entry of such order, and pending the Court's determination of the first-day motions, including the Employee Motion, Bank of America will be authorized to honor, upon presentation, any Outstanding Check for prepetition employee wage payments. The Order also provides that Bank of America is authorized to rely on the representations of the Debtors as to which Outstanding Checks to honor and is prohibited from placing any holds on, or attempting reverse, any automatic transfers to employee accounts for Wage Payments.

#### **BASIS FOR EMERGENCY RELIEF REQUESTED**

15. The Debtors believe that the payment of pre-petition employee payroll and benefit obligations requested in the Emergency Employee Motion is appropriate for the reasons set forth therein. Because the payment of such pre-petition obligations is permitted by the Bankruptcy Code and applicable case law, the Debtors should be permitted to make such payments and Bank of America should be permitted to honor the Outstanding Checks in payment of such obligations pending a first day hearing with respect to the Employee Motion.

A. **The Proposed Payments should be Authorized under Bankruptcy Code Section 507**

16. Bankruptcy Sections 507(a)(4) and (a)(5) give priority up to \$10,950 per individual for prepetition claims for wages, salaries, vacation, and claims for contributions to

employee benefit plans. 11 U.S.C. §§ 507(a)(4), (a) (5). The Debtors believe that all of the prepetition employee obligations, authorization for the payment of which is requested hereby, are entitled to priority under Bankruptcy Code sections 507(a)(4) and (a)(5). Accordingly, granting the relief requested herein will not adversely affect the Debtors' other unsecured creditors.

B. Payment of the Obligations should be Authorized under Bankruptcy Code Section 105 and The Doctrine Of Necessity

17. The relief requested herein should be authorized pursuant to Bankruptcy Code section 105 and under the “doctrine of necessity.” Bankruptcy Code section 105 empowers the Court to “issue any order, process, or judgment that is necessary 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 prepetition 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. at 175. Under section 105(a), the Court “can permit pre-plan payment of a prepetition 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, 825 (D. Del. 1999).

18. Finally, the “necessity of payment” doctrine further supports the relief requested in this Emergency Employee Motion. The “necessity of payment” doctrine “recognizes the existence of the 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.” Ionosphere Clubs, 98 B.R. at 176; In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). This rule is consistent with the paramount goal of chapter 11, i.e., “facilitating the continued operation and rehabilitation of the debtor . . .” Ionosphere Clubs, 98 B.R. at 176; see also In re Just for Feet, Inc., 242 B.R. at 826 (“To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s reorganization”).

19. Under the necessity of payment doctrine, a bankruptcy court may exercise its equitable power to authorize a debtor to pay the prepetition claims of creditors whose services are essential to the debtor's reorganization efforts. See In re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that "[i]f payment of a prepetition claim 'is essential to the continued operation of [the debtor], payment may be authorized'").

20. At this critical juncture in the Debtors' cases, it is essential that the employee workforce remain in place and properly motivated. If the Debtors fail to meet some of their payroll obligations, even if only due to the timing of the filing of these cases, the employees adversely affected may have little incentive to remain on the job. Even if the employees do not leave their jobs, the Debtors' failure to honor the Outstanding Checks may cause harm to the Debtors' employees and have a significant detrimental effect on employee morale and thus reduce these employees' willingness to aid in the restructuring of the Debtors. Thus, if the Debtors do not obtain authority to honor the outstanding payroll checks, the Debtors' estates will be immediately and irreparably harmed.

21. Courts in this District have authorized similar emergency relief. See, e.g., In re Gottschalks, Inc., Case No. 09-10157 (KJC) (Bankr. D. Del. January 14, 2009); In re Goody's Family Clothing Inc., Case No. 08-11133 (CSS) (Bankr. D. Del. June 9, 2008); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 11, 2007); and In re Radnor Holdings Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Aug. 21, 2006).

22. For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the going concern value of their businesses through, among other things, preservation of the Debtors' workforce and its morale, allowing Bank of America to honor prepetition

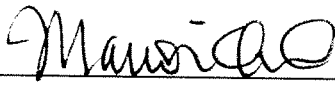


Outstanding Checks for the Wage Payments is proper in accordance with section 105 of the Bankruptcy Code and the doctrine of necessity.

23. Undersigned proposed counsel for the Debtors has discussed the relief requested herein with counsel to the agents for the Debtors' prepetition lenders, counsel to the agents for the Debtors' postpetition lenders, Bank of America, and the Office of the United States Trustee. None of these parties have any objection to the emergency relief requested herein.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto, granting the relief requested in the Emergency Employee Motion and such other and further relief as may be just and proper.

Dated: October 8, 2009  
Wilmington, Delaware

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