

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

In re:

MPC Computers, LLC, et al.,¹

Debtors.

Chapter 11

Case No. 08-12667
(Joint Administration Pending)

**DECLARATION OF CURTIS AKEY IN SUPPORT
OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, CURTIS AKEY, do hereby declare, under penalty of perjury, that:

1. Since January 1, 2007, I have held the position of Chief Financial Officer, Vice President, Secretary and Treasurer of MPC Corporation, which wholly owns GTG PC Holdings, LLC and MPC-Pro, LLC. GTG PC Holdings, LLC wholly owns MPC Computers, LLC, which wholly owns both MPC-G, LLC and MPC Solutions Sales, LLC.

2. Since January 1, 2007, I have held the position of Chief Financial Officer of Gateway Companies, Inc., which is wholly owned by MPC-Pro, LLC. Gateway Companies, Inc. wholly owns Gateway Pro Partners, LLC and Gateway Professional, LLC.

3. In my capacity as such, I have detailed knowledge of and experience with the business and financial affairs of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"). I am authorized to make this declaration in support of the Debtors' Chapter 11 petitions and first day motions.

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers are MPC Computers, LLC (6916); MPC Corporation (7562); GTG PC Holdings, LLC (6899); MPC-G, LLC (8015); MPC Solutions Sales, LLC (0213); MPC-Pro, LLC (3132); Gateway Companies, Inc. (1398); Gateway Pro Partners, LLC (9747); and Gateway Professional, LLC (8881). The principal executive offices for the Debtors are located at 906 E. Karcher Road, Nampa, Idaho 83687.

4. As the CFO, Vice President, Secretary and Treasurer of MPC Corporation and Gateway Companies, Inc., I am one of the officers of the Debtors responsible for devising and implementing the Debtors' business plans and strategies, and overseeing the Debtors' financial, operational, and legal affairs. In addition, I am responsible for supervising the maintenance of the Debtors' books and records. Moreover, in my capacities as CFO, Vice President, Secretary and Treasurer of MPC Corporation and Gateway Companies, Inc., I have been involved in the Debtors' restructuring process (the "Restructuring"), including, inter alia, (a) participating in the development, negotiations and implementation of various strategic alternatives for restructuring, reducing or modifying the Debtors' indebtedness; (b) managing professionals engaged by the Debtors in connection with the Restructuring; (c) supervising the preparation of the documentation necessary to implement the Restructuring; and (d) consulting, on a regular basis, with the Debtors' officers and executives, and members of the Debtors' Board of Directors or their equivalent, with respect to the foregoing.

5. On November 6, 2008 (the "Petition Date"), the Debtors each filed voluntary petitions (the "Petitions") for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") in an effort to preserve and maximize the value of their Chapter 11 estates.

6. The Debtors intend to operate their businesses and to manage their properties as debtors-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code. As of the date of this Motion, an Official Committee of Unsecured Creditors has not been appointed in the Debtors' Chapter 11 cases.

7. I have been advised by counsel that this Court has jurisdiction over these cases pursuant to 28 U.S.C. §§ 157 and 1334. In addition, I have also been advised by counsel that venue of these cases is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

A. The Debtors' Businesses

8. The Debtors' primary business is providing PC-based products and services.

9. The Debtors serve mid-sized businesses, government agencies and educational organizations. This focus enables the Debtors to tailor operating models to better support the needs of customers for customized products, services and programs.

10. The Debtors sell directly to their customers and use a build-to-order manufacturing process that is an efficient means to provide customized computing solutions, including desktop personal computers ("PCs"), notebook PCs, servers and storage products. The Debtors' PCs have garnered numerous industry awards. In addition to PCs, servers and storage products, the Debtors fulfill customers' requirements for third-party products produced by other vendors, including peripherals and software.

11. As of October 1, 2008, the Debtors employed approximately 900 employees. Since October 1, 2008, the Debtors have downsized their workforce and currently employ approximately 340 employees.

12. The Debtors' revenues were approximately \$249 million for the six months ended June 30, 2008, \$285 million in 2006 and \$365 million in 2007.

B. Corporate Structure

13. MPC Corporation is a Colorado corporation that, until November 3, 2008, was listed on the NYSE Euronext Exchange (ticker: MPZ). MPC Corporation has 626,546 issued and outstanding Series A Preferred shares, 249,171 issued and outstanding Series B preferred shares and 35,244,349 issued and outstanding common shares.

14. MPC Corporation is a holding company that wholly owns GTG PC Holdings, LLC and MPC-Pro, LLC.

15. GTG PC Holdings, LLC wholly owns MPC Computers, LLC, which wholly owns both MPC-G, LLC and MPC Solutions Sales, LLC.

16. MPC-Pro, LLC wholly owns Gateway Companies, Inc., a Delaware corporation, which wholly owns Gateway Pro Partners, LLC and Gateway Professional, LLC. All of the Debtors other than MPC Corporation and Gateway Companies, Inc. are single member Delaware limited liability companies.

C. The Debtors' Pre-Petition Funding

17. On November 16, 2006, MPC Computers, LLC, MPC-G, LLC and MPC Solutions Sales, LLC, and on October 1, 2007, MPC-Pro, LLC and Gateway Companies, Inc., each entered into an Account Purchase Agreement with Wells Fargo Bank, National Association ("Wells Fargo") acting through its Wells Fargo Business Credit operating division (collectively, the "Account Purchase Agreements").

18. Under the Account Purchase Agreements, Wells Fargo had the right to purchase certain accounts receivable (an "Account").

19. The Account Purchase Agreements also required the Debtors to repurchase any Account (i) that was not satisfied by the Debtors' customers within a timeframe specified under the Account Purchase Agreements, (ii) if a material customer dispute arose with respect to the Account, or (iii) there was a default under the applicable Account Purchase Agreement.

20. The Account Purchase Agreements also granted Wells Fargo a security interest to secure any obligations and liabilities owed to Wells Fargo by the applicable Debtors under the Account Purchase Agreements. Pursuant to that certain Cross-Collateral and Cross-Default Agreement dated October 1, 2007, the obligations of each of the Debtors under the Account

Purchase Agreements were cross-collateralized and cross-defaulted. The obligations under the Account Purchase Agreements were guaranteed by the other Debtors.

21. In the weeks preceding the Petition Date, Wells Fargo purchased a relatively small number of Accounts and applied collections from both purchased Accounts and unpurchased Accounts to reduce its claims against the Debtors.

22. As of the Petition Date, the Debtors' obligations to Wells Fargo under the Account Purchase Agreements have been fully satisfied and Wells Fargo has indicated that it will not continue to purchase Accounts under the Account Purchase Agreements.

D. Other Events Leading to the Debtors' Bankruptcy Filing

1. The Gateway Acquisition

23. On October 1, 2007, MPC-Pro, LLC acquired (the "Gateway Acquisition") all of the capital stock of Gateway Companies, Inc., and the membership interests of Gateway Professional, LLC and Gateway Pro Partners, LLC (collectively, the "Acquired Gateway Entities"). With the completion of the Gateway Acquisition, the Debtors had operations in Idaho, South Dakota and Tennessee.

24. In connection with the Gateway Acquisition, on October 1, 2007, MPC-Pro, LLC ("MPC-Pro") and Gateway Companies, Inc. ("Gateway Companies") entered into a Transition Services Agreement (the "TSA") with Gateway, Inc. ("Gateway"). Pursuant to the TSA, Gateway performed certain accounting, human resource, manufacturing, procurement, marketing, information technology and other specified services set forth in the TSA. Gateway, Inc. also undertook certain other activities on behalf of MPC-Pro and Gateway Companies and sold certain component inventory to MPC-Pro. A true and correct copy of the TSA is attached as Exhibit A.

25. In connection with the TSA, Wells Fargo, Gateway, Gateway Companies and MPC-Pro entered into an intercreditor agreement (the “Intercreditor Agreement”) pursuant to which Gateway Companies and MPC-Pro granted Gateway a security interest in certain of their personal property, subject and subordinate to the security interests granted to Wells Fargo under the Account Purchase Agreements. A true and correct copy of the Intercreditor Agreement with all amendments thereto are attached as Exhibit B.

26. The Gateway Acquisition increased the scale of the Debtors’ businesses. In 2006, the Acquired Gateway Entities had reported revenue of \$895 million as compared to revenue of \$285 million in 2006 for the other Debtors.

27. The Gateway Acquisition substantially increased the Debtors’ operating costs and expenses, but did not have a commensurate impact on revenue or profitability.

28. As of the Petition Date, Gateway asserts that it is owed approximately \$15 million under the TSA.

2. The Flextronics Manufacturing Services Agreement

29. In April of 2008, the Debtors made the decision to cease manufacturing operations in Tennessee and to outsource a large portion of their manufacturing to a third party provider.

30. On April 14, 2008, MPC Corporation entered into a Manufacturing Services Agreement (the “MSA”) with Flextronics Computing Mauritius Limited (“Flextronics”).

31. Under the MSA, Flextronics agreed to perform procurement, supply chain management, manufacturing, assembly and testing for MPC Corporation at the Flextronics manufacturing facility in Juarez, Mexico. Pursuant to the MSA, Flextronics agreed to use commercially reasonable efforts to adhere to a timeline associated with the manufacturing

operations at its facility in Juarez, Mexico. The MSA also contemplates that certain cost reduction targets will be achieved.

32. To date, the ramp up of the manufacturing operations by Flextronics has proceeded slower than planned, and there has been a limited amount of finished product produced for the Debtors by Flextronics. On October 28, 2008, Flextronics notified the Debtors that it does not intend to continue to supply product or services under the MSA.

33. As of the Petition Date, Flextronics and certain of its affiliates assert that they are owed over \$50 million by the Debtors.

34. The Gateway Acquisition and the outsourcing of manufacturing to Flextronics under the MSA, combined with current liquidity issues, have impaired the Debtors' ability to operate their businesses. Accordingly, the Debtors have filed the Chapter 11 cases to preserve and maximize the value of their estates while they seek to reorganize their businesses or, alternatively, pursue a strategic transaction with a third party.

B. First Day Motions

35. I have formed opinions as to (a) the necessity of obtaining the relief sought by the Debtors in their first-day applications and motions described herein (collectively referred to as the "First Day Pleadings"), (b) the need for the Debtors to continue to effectively operate, (c) the deleterious effects if the Debtors do not obtain the requested relief, and (d) the immediate and irreparable harm that the Debtors will be exposed to in the event that the Court does not approve the relief requested in the First Day Pleadings. My opinions are based upon my first-hand experience as CFO, Vice President, Secretary and Treasurer of MPC Corporation and CFO of Gateway Companies, Inc. for the past twenty-two months and through my review of various

materials and information, discussions with other executives of the Debtors, and discussions with the Debtors' outside advisors.

36. This Declaration is submitted in support of the Debtors' voluntary petitions and the First Day Pleadings.

37. I reviewed each of the First Day Pleadings and participated in the preparation thereof. I believe, to the best of my knowledge, that the facts set forth in the voluntary petitions and the First Day Pleadings are true and correct. This representation is based upon information and belief and through my review of various materials and information, as well as my experience and knowledge of the Debtors' operations and financial condition. Based upon the foregoing, if called to testify, I could and would, testify competently to the facts set forth in each of the First Day Pleadings.

38. The relief sought in the First Day Pleadings will minimize the adverse impact of these cases on the Debtors and will maximize value for the Debtors' creditors. I believe that the relief sought in the First Day Pleadings is necessary to enable the Debtors to operate effectively as Chapter 11 debtors-in-possession.

39. As described more fully below, the Debtors carefully tailored the relief requested in the First Day Pleadings in consultation with their professionals to ensure that the Debtors' immediate operational needs are met and that the Debtors will not suffer any immediate and irreparable harm. I personally participated in the analysis that led to the creation of each of the First Day Pleadings and assisted in the drafting and development of the relief requested therein. The relief requested is narrowly tailored to address those issues that require urgent relief to sustain the Debtors' immediate operability.

1. **Motion for Joint Administration**

39. The Debtors believe that many of the motions, applications, hearings and orders that will arise in these Chapter 11 cases will jointly affect all of the Debtors. For this reason, the Debtors believe that the interests of the Debtors, their creditors and other parties in interest would be best served by the joint administration of these Chapter 11 cases. The Debtors further believe that in order to optimally and economically administer the Debtors' pending Chapter 11 cases, such cases should be jointly administered, for procedural purposes only, under the case number assigned to MPC Computers, LLC. The Debtors believe that joint administration will also significantly reduce the volume of paper that otherwise would be filed with the Clerk of this Court, render the completion of various administrative tasks less costly and minimize the number of unnecessary delays. Moreover, the Debtors believe that the relief requested by this motion will also simplify supervision of the administrative aspects of these cases by the Office of the United States Trustee. For these reasons, I believe, and the Debtors submit, that the relief requested in this motion is in the best interests of the Debtors, their estates and their creditors and should therefore be approved.

2. **Motion For An Order (I) Authorizing And Approving Continued Use Of Cash Management System, (II) Authorizing Use Of Pre-Petition Bank Accounts And Business Forms, (III) Authorizing Intercompany Transactions, And (IV) Waiving The Requirements Of 11 U.S.C. § 345(b) On An Interim Basis**

40. The Debtors seek entry of an order of the Court (i) authorizing and approving the Debtors' continued use of their existing cash management system, (ii) authorizing the Debtors' continued use of pre-petition bank accounts and business forms, (iii) the continuation of ordinary course intercompany transactions, and (iv) waiving the requirements of Section 345(b) on an interim basis with respect to the Debtors' deposit practices.

41. The Debtors maintain a cash management and disbursement system in the ordinary course of their operations (the “Cash Management System”) that utilizes the accounts identified on Exhibit A to the motion. In order to lessen the disruption caused by the bankruptcy filings and maximize the value of their estates in these Chapter 11 cases, it is vital to the Debtors that they maintain their existing system of managing cash.

42. The majority of the Debtors collections are paid by their customers through wires and electronic funds transfers into cash concentration accounts held at Wells Fargo. Prior to the satisfaction of the claims of Wells Fargo, a portion of the funds paid into the cash concentration accounts was applied by Wells Fargo to their claims and a portion was transferred to operating accounts of MPC Computers, LLC and MPC-Pro, LLC. Now that the claims of Wells Fargo have been paid in full, the Debtors expect that all such funds paid into the cash concentration accounts will be paid into the operating accounts of MPC Computers, LLC and MPC-Pro, LLC.

43. The Cash Management System generally works as follows:

(a) Collections received from customers paid into the cash concentration accounts for MPC Computers, LLC; MPC-G, LLC; and MPC Solutions Sales, LLC are transferred into the operating account of MPC Computers, LLC.

(b) Collections received from customers paid into the cash concentration accounts of MPC-Pro, LLC are transferred into the operating account of MPC-Pro, LLC.

(c) Collections from credit card transactions are transferred from credit card accounts of MPC Computers, LLC, MPC-G, LLC, and MPC Solutions Sales, LLC into the MPC Computers, LLC operating account.

(d) Collections from credit card transactions are transferred from a credit card account of MPC-Pro, LLC into the operating account of MPC-Pro, LLC. The credit card accounts of MPC Computers, LLC, MPC-G, LLC, MPC Solutions Sales, LLC and MPC-Pro, LLC shall be collectively referred to herein as the “Credit Card Clearing Accounts.”

(e) From the operating account of MPC Computers, LLC disbursements are made to fund operating expenses and transfers are made into (i) accounts of MPC Computers, LLC that are used to fund disbursements of MPC Computers, LLC for payroll and benefits, and (ii) accounts of MPC-G, LLC, MPC Solutions Sales, LLC, MPC-Pro, LLC, MPC Corporation and Gateway Pro-Partners, LLC that are used to fund payroll and other operating expenses.

(f) From the operating account of MPC-Pro LLC disbursements are made to fund operating expenses and transfers are made into (i) accounts of MPC-Pro, LLC used to fund payroll, utilities and other expenses, and (ii) an account of Gateway Pro Partners, LLC used to fund utilities and other expenses.

A diagram showing the Cash Management System in place prior to the Petition Date is attached to the motion as Exhibit B.

44. The Cash Management System utilizes the bank accounts to effectively and efficiently collect, transfer and disburse funds as needed in the Debtors' general business operations. The Cash Management System provides significant benefits to the Debtors, including the ability to: (a) closely track, and thus control, all corporate funds, (b) ensure cash availability, and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. A disruption in the Cash Management System could cause delays in the collection and disbursement of funds, thus impeding the Debtors' ability to carry out their normal business operations.

45. The Debtors represent that if the relief requested is granted, they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by them prior to the Petition Date, other than those authorized by this Court. To prevent the possible inadvertent payment of pre-petition claims, except for those otherwise authorized by the Court, the Debtors will work closely with the banks maintaining the Debtors' accounts comprising its Cash Management System to ensure appropriate procedures are in place to prevent checks issued pre-petition from being honored absent this Court's approval.

46. The Debtors also request that no bank participating in the Cash Management System (i.e., US Bank or Wells Fargo, the "Cash Management Banks") that honors a pre-petition check or other item drawn on any account that is the subject of this Motion (a) at the direction of

the Debtors, (b) in a good faith belief that the Court has authorized such pre-petition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such pre-petition check or other item being honored post-petition. The Debtors believe that having such flexibility accorded the Cash Management Banks is necessary to induce the Cash Management Banks to continue providing cash management services without additional credit exposure.

47. The Debtors also request that they be authorized to continue to use all correspondence and business forms existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession. Parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors-in-possession as a result of the size and publicity surrounding these cases. If the Debtors were required to change their preprinted correspondence and business forms, they would be forced to choose standard forms rather than the current forms with which the Debtors' employees, customers and vendors are familiar. Such a change in operations would create a sense of disruption and potential confusion within the Debtors' organization and for the Debtors' employees, customers and vendors. The Debtors believe that it would be costly and disruptive to cease using all existing forms and to purchase and begin using new stationary and business forms. The Debtors respectfully submit that to do so would be unnecessary and that appropriate care can be taken to assure the proper use of the existing forms.

48. The Debtors seek a waiver of the U.S. Trustee requirement that their bank accounts be closed and that new post-petition bank accounts be opened. If enforced in these cases, such requirements would cause enormous disruption to the Debtors' businesses and would

impair the Debtors' Chapter 11 efforts. The Debtors' bank accounts comprise an established cash management system that the Debtors need to maintain to ensure smooth collections and disbursements in the ordinary course of their businesses. Therefore, to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition to Chapter 11 as possible, the Debtors should be permitted to continue to maintain the existing bank accounts and, if necessary, to open new accounts and close existing accounts in the normal course of business operations. Otherwise, transferring the bank accounts will be disruptive, time consuming and expensive.

49. The Debtors also seek authority to, in the ordinary course of the Debtors' businesses, continue to engage in intercompany transactions with each other (collectively, the "Intercompany Transactions"). The Intercompany Transactions are ordinary course transactions that are integral to the Debtors' businesses and the function of their Cash Management System and reduce the Debtor's administrative costs. The Intercompany Transactions cover a variety of items, depending on the entity, including, without limitation, payroll transactions and other general corporate transactions made by one entity on behalf of another. The Debtors will reflect the Intercompany Transactions in each individual debtor entity's books and records. In order to ensure that the businesses of the Debtors are not interrupted by these Chapter 11 Cases, the Debtors believe that it is necessary to continue to undertake the Intercompany Transactions in the ordinary course and consistent with past practice.

3. Employee Wages/Benefits Motion

50. As of October 1, 2008, the Debtors employed approximately 900 employees. Since October 1, 2008, the Debtors have downsized their workforce and currently employ approximately 340 employees nationwide (collectively referred to as the "Employees"). The Debtors are obligated to pay and to honor numerous Pre-petition Employee Claims and Employee Benefits, as defined and described in detail below. The Debtors' failure to pay these

claims and benefits would severely undermine the Employees' morale and result in significant hardship to the Employees and, as a result, the Debtors' businesses.

51. Employee support is critical to the Debtors' reorganization efforts. The Debtors cannot risk the substantial disruption to their business operations that would inevitably follow any decline in the work force morale if the Debtors failed to pay the Pre-petition Employee Claims or honor the Employee Benefits in the ordinary course of their businesses. Authority to continue to pay the Employees and to maintain current employee benefit programs is necessary to ensure that the Debtors can retain personnel that are knowledgeable about the Debtors' business, to provide incentives for Employees to continue to provide quality services to the Debtors at this critical time, and to allow the Debtors to remain competitive in the job markets in which they maintain operations.

52. It is very difficult for financially troubled companies such as the Debtors to retain employees and to attract and hire replacement employees. Therefore, preserving Employee morale and retaining Employees is critical to the Debtors' ability to maximize value, maintain operations and attempt to reorganize.

a. The Debtors' Employees

53. Approximately 46 percent of the Debtors' Employees are compensated through fixed salaries and the remaining Employees are compensated on an hourly basis. The Debtors' Employees are either exempt or non-exempt Employees. Non-exempt Employees are entitled to overtime pay. Exempt Employees are not entitled to overtime pay. Most Employees are non-exempt. The Debtors currently have 160 exempt Employees and 181 non-exempt Employees. In addition, the Debtors have the following additional categories of employees: (1) sales commissioned employees (the "Sales Commissioned Employees"); (2) variable pay plan

employees (the “Variable Pay Plan Employees”); (3) incentive pay plan employees (the “Incentive Pay Plan Employees”); and (4) officers with employment contracts (“Contract Officers”).

54. The Debtors currently employ 158 Sales Commissioned Employees. The Sales Commissioned Employees are paid once a month based upon the margin dollar each individual/team representative sells, less returns, evaluation units over 120 days, usage fees, and other manual adjustments as approved by the Debtors management. Each Sales Commissioned Employee is placed in one of the five commission pay plans:

- a. Quarterly True-Up Plan – The Debtors have 31 Sales Commissioned Employees in the Quarterly True-Up Plan. This plan pays the Sales Commissioned Employees on a monthly basis against a quarterly quota. At the end of the quarter, the plan is “trued up” to determine how the Sales Commissioned Employees actually performed for the quarter against their quota. Any Sales Commissioned Employee who exceeds the quarterly quota receives an “accelerated” payout.
- b. Percentage Based With Quota – The Debtors have 9 Sales Commissioned Employees in the Percentage Based With Quota Plan. These Sales Commissioned Employees are paid on a percentage of the margin dollar they sell with an “accelerator” for going over their quota.
- c. Percentage Based Team Plan – The Debtors have 4 Sales Commissioned Employees in the Percentage Based Team Plan. The Debtors pay a “team” of Sales Commissioned Employees on a margin dollar (which is revenue minus costs) that the team attains. The amount earned is split between the Sales Commissioned Employees, or adjusted at the manager’s discretion.
- d. Percentage Based Plan – The Debtors have 98 Sales Commissioned Employees in the Percentage Based Plan. The Sales Commissioned Employees in this plan are paid on a percentage of each margin dollar they sell without any accelerated rate of commissions.
- e. Manager and Above Quarterly True-Up Plan – The Debtors have 16 Sales Commissioned Employees in the Manager and Above Quarterly True-Up Plan. The Sales Commissioned Employees in this plan are paid on a percentage of each margin dollar they sell with an accelerator rate for all sales above 100% of their quota.

55. The Debtors currently employ 7 Variable Pay Plan Employees. The Variable Pay Plan Employees receive a quarterly incentive based upon an individual's ability to meet certain defined goals at the end of each quarter. Failure to achieve the defined goals at the end of the a quarter results in either a reduced payout or a zero payout at the end of the quarter. Variable Pay Plan Employees are paid once per quarter.

56. The Debtors currently employ 4 Incentive Pay Plan Employees. The Incentive Pay Plan Employees are paid on an 80% base pay plan with 20% of their compensation based upon incentive achievement. The Incentive Pay Plan Employees are measured each month on a defined set of criteria. The payout of their incentives is based upon a set attainment level and is paid once per month.

57. The Debtors currently employ 3 Contract Officers whose employment is governed by a written contract.

b. The Debtors' Employee Obligations

58. As more fully described below, the Debtors are obligated to pay or honor a variety of pre-petition Employee claims including: (i) accrued salary, wages, bonuses, and other compensation earned prior to Petition Date, but scheduled to be paid post-petition; (ii) withholding taxes to federal, state and local authorities related to these payments; (iii) certain amounts withheld from some of the Employees' payments for a variety of reasons including, but not limited to, certain insurance programs, savings plans, child support, and garnishments; (iv) accrued paid time off; (v) outstanding claims for reimbursement of business expenses that were incurred and paid by Employees pre-petition, but for which they have not yet been reimbursed; and (vi) obligations under workers' compensation programs. The foregoing pre-

petition Employee claims are collectively referred to herein as the “Pre-petition Employee Claims”).

(1) Wages and Salaries

59. All Employees are paid every other Friday one week in arrears.

60. Based upon the Debtors’ ordinary course payroll schedule, the aggregate amount of current earned, but unpaid, pre-petition wages and salaries inclusive of withholding for payroll taxes is approximately \$665,943.44 as of the Petition Date. The aggregate amount of current earned and unpaid pre-petition wages and salaries could be higher as some payroll checks from prior work periods may be and/or remain outstanding and may need to be reissued due to the Debtors’ filing for Chapter 11 protection.

61. To the best of the Debtors’ knowledge and belief, no pre-petition wages and salaries payable to any single individual exceed the \$10,950 priority limit in Section 507(a)(4) of the Bankruptcy Code.

62. The majority of the Employees are reliant on the timely payment of their wages and salaries to cover their monthly living expenses. The Debtors’ failure to remit full payment of the Pre-Petition Employee Claims to the Employees would inflict great hardship on the Employees and would seriously damage morale at a very critical time for the Debtors. The full commitment of the Employees is required for the Debtors to successfully navigate through the bankruptcy process.

63. A majority of the Debtors’ Employees are paid by check from the Debtors’ payroll accounts. It is very likely that many Employees may not have received or cashed their checks prior to the Petition Date. Accordingly, the Debtors seek authority to honor those checks

that remain outstanding as of the Petition Date, or if necessary, to issue replacement checks to Employees.

(2) Compensation-Related Taxes

64. The Debtors are obligated to pay federal, state and local withholding taxes. Such withholding taxes and social security contributions are withheld from payroll by the Debtors. These taxes are paid to the appropriate authorities twice a month, as appropriate, from the Debtors' company payroll account.²

65. The outstanding pre-petition tax amount is approximately \$178,818.15, inclusive of both the Debtors' and Employees' portions as of the Petition Date. The Debtors request authorization to pay any outstanding withholding taxes, tax deposits and processing fees that accrued and were owed to the taxing authorities prior to the Petition Date. In addition, the Debtors seek authorization to pay all federal, state and local withholding taxes, tax deposits and processing fees in the ordinary course of business on a going forward basis.

(3) Paid Time Off and Holidays

66. Certain Employees are eligible for paid time off and holidays. Pursuant to the Debtors' procedures and policies, Employees are entitled to earn paid time off from the date of hire. Paid time off is provided through a Time Off Plan ("TOP"), which incorporates vacation and sick leave into one plan. TOP accrual begins from the date of hire at the rate of 138 hours annually (or 5.31 hours per 2 week period) and incremented by 6 hours for each year of service to a maximum of 180 hours annually. TOP hours can be carried over from year to year with a cap of 350 hours.

² The Debtors' bank accounts are more fully described in the Debtors' motion for authority to continue use of existing business forms and records and to maintain existing bank accounts and cash management system, filed contemporaneously herewith.

67. All Employees are eligible upon the date of hire for paid holidays. The Debtors recognize 7 holidays per year and one floating holiday.

68. Accordingly, the Debtors request authority, in accordance with the Debtors' pre-petition policies and procedures, to pay Employees for pre-petition accrued paid time off and holidays. In addition, the Debtors request authority to continue to accrue paid time off and holiday obligations for post-petition periods in accordance with the Debtors' pre-petition policies and procedures. Further, the Debtors request authority to permit all Employees to take ordinary course paid time off and holidays in accordance with the Debtors' pre-petition policies and procedures.

(4) Designated Withholdings

69. The Debtors withhold money from the Employee payroll pursuant to instructions from certain Employees or orders by judicial or administrative authorities (collectively, the "Designated Withholdings") to pay for, among other things, supplemental insurance programs, savings plans, child support, and garnishments. Out of an abundance of caution, the Debtors request authority to remit and continue to remit these withholdings from Employees' payroll checks.

(5) Reimbursable Employee Business Expenses

70. Prior to the Petition Date, certain of the Employees regularly incurred business expenses, which are reimbursable by the Debtors in the ordinary course of business. These reimbursable expenses include, but are not limited to, expenses for travel, auto expenses, telephone charges and meals. Typically, the Employee incurs and pays the expense with a personal credit card and then the Debtors reimburse the Employee after submission and approval of the expense reimbursement request. These business expenses are processed on a daily or

near-daily basis. However, sometimes there is some lag time between the time the expenses were incurred and the time an expense reimbursement request is submitted. Therefore, it is difficult to determine with any precision the aggregate outstanding amount of such Employee expense obligations. The Debtors estimate, however, that the pre-petition Employee expense obligations are approximately \$90,000 as of the Petition Date.

71. It would be inequitable to require the Employees to personally bear these expenses, all of which were incurred on behalf of the Debtors with the expectation that they would be reimbursed promptly. Therefore, the Debtors request authority to reimburse the Employees for pre-petition business expenses in the ordinary course of business, regardless of when such obligations arose.

(6) Workers' Compensation and Unemployment Programs and Benefits

72. The various states in which the Debtors conduct business have laws that require the Debtors to maintain workers' compensation liability insurance and to provide employees with workers' compensation coverage for claims that arise from or are related to their employment with the Debtors. The Debtors provide workers' compensation benefits to their Employees either through policies with and through Travelers or directly with the States of Washington, Ohio and West Virginia (the "Workers' Compensation Policies"). Pre-petition, the claims under the Workers' Compensation Policies were administered by Travelers and the States of Washington, Ohio and West Virginia.

73. Historically, the Debtors have paid approximately \$362,515 annually on account of their Workers' Compensation Policies. The Debtors anticipate that the average quarterly expense for their Workers' Compensation Policies will be approximately \$90,629.

74. The Debtors' failure to maintain workers' compensation insurance in the various states in which the Debtors conduct business could result in the commencement of legal or administrative proceedings. In addition, failure to maintain the workers' compensation insurance could subject the Debtors and their officers and directors to material fines. Moreover, as required by certain states in which the Debtors conduct business, some of the workers' compensation claims are covered by letters of credit. If the Debtors fail to maintain workers' compensation insurance, claimants and the various state workers' compensation authorities may have recourse to the letters of credit to satisfy unpaid claims. In that case, the Debtors may be required to replenish the letters of credit.

75. The Debtors contract with Ceridian Tax Service, a third party administrator, to administer the Debtors' payroll taxes (the "Unemployment Obligations").

76. The Debtors request authority to continue paying all outstanding amounts related to Workers' Compensation Policies and Unemployment Obligations that arose prior to the Petition Date, including, without limitation, any payments for workers' compensation claims, premiums and fees owed for administrative costs and other amounts required in connection with the Debtors workers' compensation programs, as such amounts become due in the ordinary course of business.

77. In addition, the Debtors request authority to continue paying all outstanding amounts related to Workers' Compensation Policies and Unemployment Obligations that arise from and after the Petition Date, including, without limitation, any payments for workers' compensation claims, premiums and fees owed for administrative costs and other amounts required in connection with the Debtors workers' compensation programs, as such amounts become due in the ordinary course of business.

c. Employee Benefits

78. Prior to the Petition Date, the Debtors offered the Employees certain standard employee benefits funded by either the Debtors, the Employees, or both, including among others: (i) medical, dental, vision, prescription drug, long and short term disability, business travel/accident insurance and life insurance; (ii) 401(k) plan to eligible Employees; (iii) the Debtors' employee assistance program; and (iv) other miscellaneous benefits described below (collectively, the "Employee Benefits"). Failure to continue these Employee Benefits would severely undermine the Employees' morale and result in significant hardship to the Employees. To retain the services of the Employees and maintain their morale and loyalty during these Chapter 11 cases, the Debtors seek authority: (a) to pay any amounts related to the Employee Benefits that were due as of the Petition Date, and (b) to continue to provide the Employee Benefits to the Employees after the Petition Date.

79. As of the Petition Date, the Debtors were obligated to pay certain accrued, but unpaid, contributions under its benefit plans (collectively, the "Benefit Contributions"). Although the Debtors are current on these payments, certain of the Benefit Contributions accrued either in whole or in part prior to the commencement of these Chapter 11 cases, but will not become payable in the ordinary course of the Debtors' business until a later date.

80. On or about November 5, 2008, the Debtors terminated approximately 327 employees covered by the Employee Benefits plans (the "Terminated Employees"). Pursuant to the Employee Benefits plans, the Debtors are obligated to provide Employee Benefits for the balance of the calendar Month following termination. Therefore, the Debtors seek authority to pay all Benefit Contributions for Terminated Employees for the month of November as well as all Benefits Contributions for Employees and estimate that the total of such Benefit

Contributions as of the Petition Date is approximately \$356,000. The Debtors also seek authority to continue the Employee Benefits in the ordinary course of business post-petition.

(1) Medical, Dental and Prescription Plans

81. The Debtors offer three medical plans for eligible Employees. The first plan offers a basic medical coverage plan through Blue Cross of Idaho (the "Basic Plan"). The second plan is offered through a Preferred Provider Organization and is administered by Blue Cross of Idaho (the "PPO Plan"). The third plan is a Consumer Driven Health Plan (the "CDHP") and collectively with the Basic Plan and the PPO Plan, the "Medical Plans", which is a high deductible plan. Currently, approximately 609 of the Employees and Terminated Employees and their dependents participate in the Medical Plans. Under the Medical Plans, the Debtors are responsible for the first \$200,000 per member (including Employees and their dependents) per year. The Debtors also offer a medical coverage opt out credit for employees that have medical coverage under another plan (the "Medical Opt Out Credit Plan"). For those Employees that opt out of the medical plan coverage (and can show proof of other medical coverage), the Debtors offer a \$50 per month credit towards a medical flexible spending account (the "Medical Opt Out Credit Obligations").

82. Dental coverage is offered for eligible Employees through a plan administered by Blue Cross of Idaho (the "Dental Plan"). Currently approximately 619 of the Employees and Terminated Employees and their dependents participate in the Dental Plan. Under the Dental Plan, the Debtors are responsible for the first \$1,500 per member per year (the "Dental Plan Obligations"). The Employees bear the remaining cost of the Dental Plan.

83. Self-insured prescription drug coverage is offered for certain eligible Employees through a plan administered by Blue Cross of Idaho (the "Prescription Drug Plan"). The Debtors

seek authority to honor all obligations under the Prescription Drug Plan, including (a) payment of any administrative fees that may have accrued prior to the Petition Date but will not become due until a later date, and (b) payment of all valid claims incurred prior to the Petition Date (collectively, the “Prescription Drug Plan Obligations”).

84. The Debtors estimate that as of the Petition Date the total claims and administrative fees owing under the Medical Plans, Medical Opt Out Credit Obligations, Dental Plan Obligations and Prescription Drug Plan Obligations are approximately \$225,000.

85. The Debtors seek authority to honor all obligations owed under the Medical Plans, Medical Opt Out Credit Plan, Dental Plan and Prescription Drug Plan, including (a) payment of all claims and administrative fees currently in arrears; (b) payment of any claims and administrative fees that may have accrued prior to the Petition Date but will not become due until a later date; and (c) the premiums already collected on behalf of the participating Employees (collectively, the “Medical Plan Obligations”). The Debtors also seek authority to continue the Medical Plans, Medical Opt Out Credit Plan, Dental Plan and Prescription Drug Plan, including payment of arising claims and administrative fees, in the ordinary course of their businesses.

(2) Vision Plan

86. Vision coverage is offered for eligible Employees through a plan administered by Davis Vision, Inc. (the “Vision Plan”). Currently, approximately 561 of the Employees and Terminated Employees and their dependents participate in the Vision Plan. Under the Vision Plan, the Debtors are responsible for specific services identified in the Vision Plan, which averages \$400 per year per member. The Employees bear the remaining cost of the Vision Plan.

87. The Debtors seek authority to honor all obligations owed under the Vision Plan, including (a) payment of all claims and administrative fees currently in arrears; (b) payment of any claims and administrative fees that may have accrued prior to the Petition Date but will not become due until a later date; and (c) the premiums already collected on behalf of the participating Employees (collectively, the “Vision Plan Obligations”). The Debtors also seek authority to continue the Vision Plan Obligations, including payment of arising claims and administrative fees, in the ordinary course of the Debtors’ businesses.

(3) Life and Short and Long-Term Disability Insurance

88. The Debtors offer basic and supplemental life insurance to certain eligible Employees. Life insurance coverage is offered through The Hartford Company (the “Life Insurance Policies”). The Debtors pay the premium for basic life insurance coverage (up to one time annual base pay up to \$1,000,000) for all Employees. The Employees are responsible for the contributions associated with the supplemental life insurance coverage and supplemental life insurance coverage for children and spouses. The Debtors also offer an accidental death and dismemberment rider to the life insurance coverage (the “AD&D Rider”) through The Hartford Company. The Debtors also offer business travel/accident insurance to their Employees (the “Travel Insurance”). The Debtors pay the premium for Travel Insurance coverage (up to four and one-half times annual base pay up to a maximum of \$1,000,000) for all Employees. The Debtors seek authority to continue to offer the Life Insurance Policies and AD&D Rider and Travel Insurance to their Employees in the ordinary course of the Debtors’ business.

89. The Debtors also offer Employees access to short term disability coverage at the expense of the Debtors (the “STD Coverage”). In addition, the Debtors offer Employees access to long term disability coverage at the Employee’s expense (the “LTD Coverage” and together

with the STD Coverage, the “Disability Coverage”). The Disability Coverage is provided by The Hartford Company.

90. The Debtors seek authority to continue the Life Insurance Policies, AD&D Rider, Travel Insurance, and Disability Coverage, including payment of the valid claims and administrative fees, in the ordinary course of the Debtors’ business.

(4) 401(k) Plan

91. The Debtors offer a qualified 401(k) plan (the “401(k) Plan”) for all Employees. As of the Petition Date, there were approximately 300 Employees participating in the 401(k) Plan, which is administered by Putnam Fiduciary Trust Company (“Putnam”). For these services, Putnam receives certain *de minimis* administrative fees from the Debtors (the “401(k) Plan Administrative Fees”).

92. Under the 401(k) Plan, participating Employees may make voluntary contributions to the extent permitted by applicable law. The Debtors match the 401(k) contributions in an amount equal to 50% of the first 4% deferred each pay period for all participating Employees. Employees are eligible to participate in the 401(k) Plan and receive matching contributions from the Debtors upon the date of hire.

93. The amount typically contributed to the 401(k) Plan by the Employees is approximately \$60,000 every two weeks (the “Employee Contributions”). In accordance with the terms of the 401(k) Plan and the Debtors’ past practices, the Debtors also make their contributions every two weeks. The Debtors intend to make their next contribution on November 15, 2008 and estimate that the amount of the Debtors’ matching contribution will be approximately \$17,000. As of the Petition Date, the Debtors’ matching contributions to the 401(k) Plan that were accrued and unpaid were approximately \$34,000 (the “Outstanding 401(k)”).

Plan Match Obligations”). The Debtors also collect, through payroll deductions, funds from participating Employees to repay 401(k) Plan loans (the “401(k) Loan Obligations”). The Debtors collect approximately \$12,000 every two weeks for 401(k) Loan Obligations.

94. The Debtors request authorization to (a) make the contributions comprising the Outstanding 401(k) Plan Match Obligations of approximately \$34,000; (b) make Employee Contributions of approximately \$60,000; (c) pay any 401(k) Plan Administrative Fees outstanding as of the Petition Date; (d) pay any 401(k) Loan Obligations; and (e) continue the 401(k) Plan in the ordinary course of the Debtors’ businesses (subject to the Debtors’ post-petition discontinuation of their pre-petition practice of matching Employee 401(k) contributions).

(5) Flexible Spending Accounts

95. The Debtors offer Employees the ability to contribute a portion of their annual earnings into a flexible spending account for health and dependent care (the “Flexible Spending Account Plan”). The Flexible Spending Account Plan is administered by Flores & Associates (“Flores”). Under the terms of the Flexible Spending Account Plan, eligible Employees can elect to make pre-tax contributions through payroll deductions, which the Debtors pay to Flores as requested to cover reimbursements made under the Flexible Spending Account Plan. Approximately 185 Employees and Terminated Employees participate in the Flexible Spending Account Plan. The Employee contributions are approximately \$20,000 per month (the “Employee Contributions”). The Debtors typically pay approximately \$1,200 per month for the administration of the Flexible Spending Account Plan. The Debtors’ Pre-petition unpaid administrative costs associated with these obligations are primarily current, so any unpaid administrative costs associated with these obligations would be *de minimus*.

96. Accordingly, the Debtors seek authorization to pay the Employee Contributions to Flores, to pay to Flores any administrative fees outstanding as of the Petition Date; and continue making payments on account of the Flexible Savings Account Plan in the ordinary course of the their businesses.

(6) Employee Assistance Program

97. The Debtors offer an employee assistance program to all Employees (the “EAP Program”). The EAP Program provides confidential, professional counseling and referral services 24 hours a day, 7 days a week to all Employees. The Debtors pay approximately \$2,010 per month for the EAP Program (the “EAP Program Obligations”).

98. Accordingly, the Debtors seek authorization to honor the EAP Obligations, including (a) payment of all amounts currently in arrears; and (b) payment of all amounts that have accrued prior to the Petition Date but will not become due until a later date. The Debtors also seek authority to continue the EAP Program, including payment of all obligations associated therewith in the ordinary course of the Debtors’ business.

(7) Miscellaneous Benefits

99. In addition to the programs described above, the Debtors provide the Employees miscellaneous benefits described below that are designed to reward employee loyalty and performance (the “Miscellaneous Benefits”). For example, Employees are entitled to a discount on the purchase of personal computers.

100. The Debtors request authority to maintain the Miscellaneous Benefits in the ordinary course of business and in accordance with their pre-petition practices. The Debtors believe that the costs associated with the Miscellaneous Benefits will be *de minimis*.

4. Motion for Authority to Pay Certain Critical Vendors

101. The Debtors seek entry of an order authorizing the Debtors, in their sole discretion, to pay certain pre-petition claims of certain critical vendors (the “Critical Vendors”) that are essential to the Debtors’ business operations, in an aggregate amount not to exceed \$1.0 Million.³

102. The Debtors believe that immediate payment of the claims of those vendors and service providers that the Debtors deem to be Critical Vendors is not only critical to the Debtors’ reorganization efforts, but immediately necessary in light of the industry in which the Debtors operate.

103. The Critical Vendors are the suppliers of vital products and services that are absolutely essential to the Debtors’ ability to continue operating from day-to-day. The Debtors believe that the failure to pay certain claims of Critical Vendors would, in the Debtors’ business judgment, result in the Critical Vendors refusing to provide goods or services to the Debtors post-petition, which would have an immediate and devastating effect on the Debtors’ ability to operate their businesses. Moreover, the delay attendant to the Debtors changing from a Critical Vendor to another vendor of similar products or services (assuming one could be located) would very likely delay the Debtors’ ability to operate their businesses, which would be devastating to the Debtors’ operations.

104. The Debtors and their advisors have examined (and continue to examine) whether the payment of Critical Vendor claims is necessary, will ameliorate immediate and irreparable harm to the Debtors’ business operations and will ensure that the Debtors have access to adequate trade credit post-petition. Specifically, the Debtors have undertaken a thorough review

³ The Debtors reserve the right to seek to increase the Critical Vendor payment cap if necessary, subject to this Court’s approval.

of their accounts payable and their list of pre-petition vendors to identify those vendors who are essential to the Debtors' operations.

105. The Debtors have developed certain procedures (for which they seek this Court's approval) that, when implemented, will ensure that the Debtors derive value for payments to Critical Vendors such that vendors receiving payment of Critical Vendor Claims will continue to supply trade credit necessary to the Debtors' continued post-petition operations.

106. In estimating the Critical Vendor Claims the Debtors seek authority to pay pursuant to this Motion, the Debtors consulted with the appropriate members of their management team to identify those vendors that are most essential to the Debtors' operations, using the following criteria: (a) whether the vendor in question is a "sole-source" or "limited source" provider, (b) whether the Debtors receive advantageous pricing or other terms from a vendor such that replacing the vendor post-petition would result in significantly higher costs to the Debtors and/or inadequate or unsatisfactory services, and (c) the overall impact on the Debtors' operations if the particular Critical Vendor ceased or delayed shipments or services.

107. After evaluating the information received in response to these inquiries, the Debtors estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors and, further, considered the Debtors' urgent need to continue to receive goods and services uninterrupted, their ability to find alternate sources, or satisfactory alternate services, and the likelihood that a vendor would extend trade terms post-petition despite the Debtors' failure to pay such vendors' pre-petition outstanding trade debt.

108. If the Debtors are unable to pay their Critical Vendors and those vendors cease or delay delivery of those products or services for even one day, the Debtors could not operate their businesses. Without a full supply of these goods and services, the Debtors would be extremely

disadvantaged in a highly competitive market segment and would suffer an immediate erosion in customer, creditor and employee trust and confidence which would be difficult, if not impossible, to restore.

5. Motion to Pay Warehouses and Shippers

109. The Debtors seek authority to pay, in their discretion, the Obligations up to an aggregate cap of \$1.9 million to (a) obtain the release of valuable inventory or other goods or materials, (b) maintain the Debtors' distribution system in an efficient and smooth manner, and/or (c) induce critical shippers, carriers and support providers to continue to make timely deliveries of inventory and other goods and materials.

110. The Debtors' businesses are extremely dependent on the sale and distribution of their own products and those received from vendors. The Debtors rely upon carriers, warehouses and other applicable shippers and service providers (collectively, the "Carriers and Warehouses") and the distribution system supported by the Carriers and Warehouses to maintain necessary inventory and deliver products timely to their customers and their various locations. Transportation charges are a small portion of the cost of sale of the Debtors' inventory, and if the Debtors are unable to pay such invoices timely, the cost in lost inventory and lost sales may greatly exceed the amount of those invoices.

111. The Debtors' believe that the Carriers and Warehouses may assert liens on the Debtors' property in their possession upon nonpayment. Even if the Carriers and Warehouses do not have valid liens under applicable non-bankruptcy law, possession and retention of or control over the Debtors' inventory and supplies and any attendant delay in delivery or shipment may severely disrupt the Debtors' operations. For these reasons, the Debtors believe that to continue to operate their businesses and to preserve and maximize the value of the assets of the estates, the

Debtors must be allowed to make payments on account of the pre-petition claims of the Carriers and Warehouses in the ordinary course of business.

112. The Debtors have developed certain procedures (for which they seek this Court's approval) that, when implemented, will ensure that the Debtors derive value for payments to Carriers and Warehouses. In return for payment of some or all of the pre-petition claims of the Carriers and Warehouses, the Debtors will require the Carriers and Warehouses to continue to provide services to the Debtors pursuant to trade agreements during the pendency of these Chapter 11 cases on the most favorable terms that existed prior to the Petition Date.

113. It is essential for the Debtors' business operations and efforts that the Debtors maintain a reliable and efficient supply and distribution network. Because the Debtors are dependent on third parties for the delivery of materials and supplies to their customers, it is essential that the Debtors' bankruptcy cases not be a reason or excuse for any such party to cease timely performing or delaying delivery services or to retain goods in their possession on account of unpaid pre-petition claims. If the Debtors and their customers are unable to receive deliveries on a timely and uninterrupted basis, the Debtors' operations may be impeded with devastating consequences. Disruption in the continuous flow of the Debtors' goods and supplies will likely result in shortages of inventory and supplies necessary to the Debtors' businesses, adverse responses from the Debtors' customers, a significant loss of credibility and customer goodwill, and a resulting loss of revenue, thereby causing substantial harm to the Debtors' businesses and efforts to maximize the value of their assets for the benefit of the estates. Accordingly, the Debtors believe that paying the certain prepetition claims of Carriers and Warehouses is critical and is necessary to avoid immediate and irreparable harm to, and is in the best interests of, the Debtors, the estates and their creditors.

6. Motion to Pay Certain Pre-Petition Taxes

114. In the ordinary course of their businesses, the Debtors are required to collect certain taxes, including sales and use taxes, from third-parties and hold them for a period of time before remitting them to the appropriate taxing authorities (the “Trust Fund Taxes”). In addition, certain taxing authorities are authorized under state law to collect certain unpaid business and occupation taxes directly from individual officers and directors of the Debtors (the “Business Taxes,” and together with the Trust Fund Taxes and the penalties, interest or other such charges that may be assessed thereon, the “Taxes”).⁴ The Taxes are paid monthly, quarterly or annually to the respective taxing authorities, depending on the given Tax and the relevant taxing authority to which it is paid.

115. The Debtors seek authority to pay any Taxes that were accrued pre-petition but were not in fact paid or processed pre-petition, or were paid pre-petition in an amount less than is actually owed, or to the extent any such payments made pre-petition were rejected, lost or otherwise not received in full by any taxing authority. Further, there may be Taxes incurred or collected from sales and services provided pre-petition that will come due shortly after the filing, which the Debtors seek authority to pay. The Debtors estimate that outstanding pre-petition liabilities owing to the various taxing authorities for Taxes are approximately \$1,063,278.68, exclusive of any Taxes that may have been paid prior to the Petition Date but had not cleared as of the Petition Date.

116. Without this relief, some, if not all, of the taxing authorities may initiate an audit of the Debtors if the Taxes are not paid on time. Such audits will unnecessarily divert the Debtors’ attention away from the reorganization process and result in unnecessary expenses.

⁴ The Debtors have a taxable presence in all 50 states.

Moreover, if the Debtors do not pay such amounts in a timely manner, the taxing authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, seek payment from the Debtors' directors and officers and pursue other remedies that will irreparably and immediately harm the estates. Additionally, some states hold corporate officers personally liable for unpaid "trust fund" taxes, including sales and use taxes, in certain circumstances. To the extent that any such "trust fund" taxes remain unpaid by the Debtors, their officers could be subject to lawsuits or criminal prosecution during the pendency of these Chapter 11 cases. Even the possibility of any such lawsuit or criminal prosecution would most certainly distract the Debtors and their officers from their efforts in these Chapter 11 cases.

117. I believe that the Debtors' failure to pay the Taxes could have a materially adverse impact on their ability to operate in the ordinary course of business and to reorganize.

7. Motion to Continue Customer Practices

118. The Debtors request entry of an order authorizing (but not directing) the Debtors, in their sole discretion, to continue honoring their customer programs, on a customer-by-customer basis, including, but not limited to, their warranty, refund and return programs, which are targeted to develop and sustain positive reputations in the marketplace for their products and businesses generally (collectively, the "Customer Programs").

119. In the ordinary course of their businesses, the Debtors honor warranty claims. The warranties provided by the Debtors take a variety of forms and often include coverings for a period of 3 to 5 years after a sale. The Debtors also accept, in limited circumstances, refunds and returns from customers.

120. The Debtors believe that entry of an order approving the Debtors' ability to continue to honor their Customer Programs for certain customers is necessary to avoid immediate and irreparable harm to the Debtors and their estates. The Debtors estimate that there

are more than 2,300,000 active warranties that they have provided to customers. The Debtors believe that it is essential to have the ability, but not be required, to honor, in their sole discretion, certain of these warranties to preserve valuable customer relationships. The Debtors also believe that it is essential to have the ability, but not be required, to accept returns and give refunds, in their sole discretion, to preserve valuable customer relationships. The success and viability of the Debtors' businesses are dependent upon the loyalty and confidence of customers. The Debtors believe that any delay in honoring Customer Programs or discontinuation of Customer Programs for certain customers as a result of the commencement of these cases will severely and irreparably impair the Debtors' customer relations at a time when the loyalty and support of customers is extremely critical.

121. Moreover, certain of the Debtors' customers could be severely harmed if the Customer Programs are not honored which could cause devastating results for the Debtors' business and reorganization prospects. Many of the Debtors' customers are government entities which rely upon the Debtors' products to perform their daily functions. Given the extensive reliance on technology in the workplace, specifically, computer technology, these customers are dependent upon the proper functioning of the Debtors' products. Further, because many of the Debtors' customers are government entities, they face budgetary constraints with respect to the manner and means in which they are permitted to allocate spending. If the Debtors are not able, in their sole discretion, to honor Customer Programs for certain customers, these customers may not be able to readily replace or repair the Debtors' products, which could bring their every day functions to a grinding halt. In the face of such risks to these customers, absent the Debtors' ability to honor their Customer Programs, the Debtors have no hope of preserving their customer base and the prospect of reorganization is severely hampered.

122. To provide necessary assurances to certain of the Debtors' customers on a going-forward basis, the Debtors believe that it is necessary to continue honoring or paying obligations to certain customers that arise from and after the Petition Date in the ordinary course of the Debtors' businesses. The Debtors expect to have sufficient resources available to honor the Customer Programs for certain customers.

8. Adequate Assurance for Utilities Motion

123. In the ordinary course of business, the Debtors regularly incur expenses for water, sewer, electricity, gas, local and long-distance telephone service, cellular phone service, internet service, and other utility services provided by approximately 85 service providers (the "Utility Providers"). The approximate monthly charges for the utility services provided by the Utility Providers totals \$244,850. The provision of utility service by the Utility Providers is governed, in some instances, by applicable federal or state tariffs, and by service agreements.

124. On a monthly basis, the Debtors pay amounts due to the Utility Providers. As of the Petition Date, however, the Debtors may have: (i) pre-petition accounts payable to certain Utility Providers; (ii) outstanding checks issued to certain Utility Providers in payment for pre-petition charges for utility services that had not cleared the Debtors' bank account prior to the Petition Date; or (iii) liabilities for pre-petition utility services for which the Debtors have not been billed.

125. The Debtors request that the Court enter an order (i) prohibiting the Utility Providers from altering, refusing, or discontinuing services; (ii) approving the Debtors' establishment of a deposit account to be held by US Bank in the amount of \$122,425 (the "Deposit") as affording the Utility Providers with adequate assurance of payment, as the term is defined in Section 366(c)(1)(A) of the Bankruptcy Code, and deeming the Utility Providers to have received adequate assurance of payment pursuant to Section 366(b); (iii) establishing

procedures and mechanisms under which the parties may determine adequate assurance of future payment; and (iv) authorizing the Debtors to supplement, as necessary, the list of Utility Providers and providing that any newly added Utility Provider will be subject to the terms of the order.

126. Such relief is necessary to enable the Debtors to continue their business operations uninterrupted by threats of potential termination of, or suspension or interruption in their utility services. Because the Utility Providers administer essential services to the Debtors' facilities, any interruption in utility services could be devastating. In fact, the temporary or permanent discontinuation of utility services at any of the Debtors' facilities could irreparably disrupt the Debtors' business operations and, as a result, fundamentally undermine the Debtors' reorganization efforts.

127. The Debtors fully intend to pay all post-petition obligations owed to the Utility Providers in a timely manner and expect that they will have sufficient funds with which to satisfy fully all their post-petition utility obligations. The Debtors believe that their available cash will enable the Debtors to pay promptly all of their respective obligations to the Utility Providers for post-petition utility service on an ongoing basis and in the ordinary course of business.

128. Nevertheless, to provide additional adequate assurance of payment, the Debtors propose to provide the Utility Providers with adequate assurance by funding the Deposit, a sum equal to fifty percent of the Debtors' estimated monthly utility costs, into a segregated, interest bearing account.

9. Cash Collateral Motion

129. The Debtors have an immediate need to use cash to facilitate, among other things, (a) the orderly continuation of the operation of their businesses until they can reorganize in chapter 11 or sell their assets, (b) the management and preservation of Debtors' assets and

properties, (c) the maintenance of business relationships with vendors, suppliers and customers, (d) payment of payroll obligations, (e) the satisfaction of other working capital and operational needs and (f) the maintenance of the going concern value of the Debtors' estates. Without authority to use cash, the Debtors lack sufficient liquidity to preserve and maintain the going concern value of the Debtors during these Chapter 11 cases and their estates would be irreparably harmed.

130. As indicated above, pursuant to the Intercreditor Agreement, MPC-Pro and Gateway Companies granted Gateway a junior security interest in certain of their personal property (the "Gateway Cash Collateral"). At various times subsequent to entering into the Intercreditor Agreement, the parties have executed certain amendments to the Intercreditor Agreement. Most recently, on October 17, 2008, the parties entered into a Fifth Agreement Amendment (the "Fifth Amendment"). True and correct copies of the Intercreditor Agreement and all amendments thereto are attached as Exhibit B.

131. The Fifth Amendment provides, *inter alia*, that:

Gateway[, Inc.] consents to the use of cash collateral by Gateway Companies[, Inc.] and MPC[-Pro, LLC] during the course of any case with respect to these entities under Chapter 11 of Title 11 of the United States Code.

See Fifth Amendment, § 2, p.1.

132. As of the Petition Date, the Debtors' obligations to Wells Fargo under the Account Purchase Agreements have been fully satisfied.

133. As of the Petition Date, Gateway asserts that it is owed approximately \$15 million under the TSA, which claims are secured by liens on the assets of Gateway Companies and MPC-Pro to the extent provided in the Intercreditor Agreement.

134. In addition, UCC searches performed by the Debtors revealed various UCC-1 financing statements filed with respect to certain of the Debtors other than Gateway Companies and MPC-Pro for which no termination statements have been filed. With respect to each of these financing statements,⁵ the Debtors believe that the financing statement was erroneously filed against the applicable Debtor or that the related claims have been satisfied and any liens have been released. With respect to certain federal tax liens filed against Debtor MPC Corporation, these liens relate to a separate and distinct Colorado corporation named “MPC Corporation” which is not affiliated with or related to the Debtors.⁶

135. By way of the motion, the Debtors seek entry of an order authorizing Gateway Companies and MPC-Pro to use the Gateway Cash Collateral pursuant to the prior written consent of Gateway. No other entities hold any interest in the Gateway Cash Collateral.

136. In addition, to the extent that any other valid liens create an interest in cash collateral of Debtors other than Gateway Companies and MPC-Pro (the “Other Cash Collateral” and together with the Gateway Cash Collateral, the “Cash Collateral”), the Debtors seek authority to use the Other Cash Collateral on an interim and final basis.

⁵ The Debtors believe that each of the following parties filing financing statements hold no present claims or security interests against the Debtors:

- a. Storagetek Financial Services Corporation (filed against MPC Computers, LLC);
- b. Alec E. Gores (filed against MPC Solutions Sales, Inc.);
- c. Hitachi Capital America Corp. (filed against MPC-G, LLC);
- d. Government Leasing Company (filed against MPC-G, LLC);
- e. RBS Asset Finance DBA Citizens Asset Finance (filed against MPC-G, LLC); and
- f. Union Bank & Trust and Keybank National Association (filed against MPC Corporation).

⁶ The federal tax liens are asserted against “MPC Corporation” with an Employer Identification Number (“EIN”) of 84-1495522 and addresses of 5081 W. Colorado Ave., Denver, CO 80219 and PO Box 19640, Denver CO 80219. None of the Debtors have ever used EIN or those address for any purpose. The records of the Colorado Secretary of State reflect that a separate entity, unaffiliated with the Debtors, named “MPC Corporation” was formed on March 29, 1999 and dissolved on September 23, 2004.

137. The Debtors do not believe that any non-consenting entity has any interest in the Other Cash Collateral. However, to the extent that any non-consenting entity does hold a valid lien on the Other Cash Collateral (a “Lienholder”), the Debtors believe that any secured claim of a Lienholder will be *de minimus*. Therefore, any such Lienholder is adequately protected through an equity cushion.

138. In addition to the equity cushion, the Debtors propose to adequately protect any Lienholder with a valid lien or interest in the Other Cash Collateral with a replacement lien on the applicable Debtor(s)’ post-petition accounts receivable and inventory to the same extent, validity and priority as the prepetition lien to extent of any diminution of the value of such Lienholder’s interest in the Other Cash Collateral.

139. The Debtors require immediate authority to use the Cash Collateral to continue their business operations without interruption toward the objective of selling all of their assets or formulating a chapter 11 plan. The Debtors’ ability to use of Cash Collateral is necessary to avoid immediate and irreparable harm to their estates.

10. Debtors’ Application to Retain Claims, Noticing, And Balloting Agent

140. The Debtors seek authorization to retain Logan & Company, Inc. (“Logan”) as their claims, noticing, and balloting agent in these Chapter 11 cases. Logan is a data processing firm that specializes in claims processing, noticing and other administrative tasks in chapter 11 cases. The Debtors seek to engage Logan to transmit certain designated notices, maintain claims files and claims registers, mail and tabulate ballots for purposes of plan voting in these cases, and otherwise assist the Debtors with administrative functions. The Debtors believe that the retention of Logan will reduce the administrative burdens on the Debtors, as well as those of the Court and the Office of the Clerk of the Court.

11. Motion for Authority to File (I) Consolidated List of Creditors and (II) Consolidated List of Debtors' Top Thirty Creditors

141. The Debtors respectfully request that the Court authorize the Debtors to file (i) a consolidated list of creditors, and (ii) a consolidated list of the Debtors' thirty (30) largest unsecured creditors.⁷ The Debtors presently maintain various computerized lists of the names and addresses of their respective creditors that are entitled to receive the Notices and other documents in these cases. The Debtors believe that the information, as maintained in computer files (or those of their agents), may be consolidated and utilized efficiently to provide interested parties with the Notices and other similar documents, as contemplated by Local Rule 1007-2. Accordingly, the Debtors seek authority to file the lists on a consolidated basis, identifying their creditors and equity security holders in the format or formats currently maintained in the ordinary course of the Debtors' business.


142. Moreover, the Debtors are also filing a motion seeking the appointment of Logan & Company, Inc. (the "Agent") as claims, noticing and balloting agent in these Chapter 11 cases. If the Claims, Noticing and Balloting Motion is granted, the Agent will, among other things, (a) assist with the consolidation of the Debtors' computer records into a creditor and security holder database, and (b) complete the mailing of the Notices to the parties in these databases. After consultation with the Agent, the Debtors believe that filing the lists in the format or formats currently maintained in the ordinary course of business will be sufficient to permit the Agent to notice promptly all applicable parties as required by Local Rule 1007-2.

⁷ In connection with this request, the Debtors also request authority to submit one declaration under Bankruptcy Rule 1008 verifying the validity of the consolidated list of creditors and one declaration verifying the Consolidated Top 30 List (as defined below).

143. The Debtors submit that a single consolidated list of their combined thirty (30) largest unsecured creditors in these cases would be more reflective of the body of unsecured creditors that have the greatest stake in these cases than separate lists for each of the Debtors. Therefore, the Debtors respectfully request authorization to file a single consolidated list of their thirty (30) largest unsecured creditors in these cases.

144. For the foregoing reasons and the reasons set forth in each of the First Day Motions, I respectfully request that each of the First Day Motions be granted in its entirety, together with such other and further relief as is appropriate.

I certify under penalty of perjury that the foregoing is true and correct based upon my knowledge, information and belief as set forth in this Declaration.


Curtis Akey

Chief Financial Officer, Vice
President, Secretary and Treasurer of
MPC Corporation and Gateway
Companies, Inc.