

**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)

**DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105 AND 363
FOR AN ORDER AUTHORIZING THE PAYMENT OF CERTAIN
PRE-PETITION CLAIMS OF CERTAIN CRITICAL VENDORS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, respectfully submit this motion (the “Motion”) for entry of an order authorizing the payment of certain pre-petition claims of critical vendors and service providers (collectively, the “Critical Vendors”) pursuant to Sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). In support of this Motion, the Debtors rely on and incorporate by reference the Declaration of Curtis Akey in Support of Debtors’ Chapter 11 Petitions and First Day Motions (the “Akey Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to hear the Motion under 28 U.S.C. § § 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue of these cases and the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

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.

3. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a) and 363(b).

Factual Background

4. On November 6, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. An Official Committee of Unsecured Creditors has not yet been appointed in the Debtors' Chapter 11 cases.

A. The Debtors' Businesses

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

6. 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.

7. 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.

8. 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.

9. 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

10. 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.

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

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

13. 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

14. 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").

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

16. 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.

17. 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.

18. 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.

19. 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

20. 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.

21. 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.

22. 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.

23. 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.

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

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

2. The Flextronics Manufacturing Services Agreement

26. 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.

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

28. 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.

29. 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.

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

31. 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 these 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.

Relief Requested

32. By this Motion, 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”

Vendor Claims”) that are essential to the Debtors’ business operations, in an aggregate amount not to exceed \$1.0 million (the “Critical Vendor Cap”).²

Critical Vendor Claims

33. 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.

34. The Critical Vendors are the suppliers of vital products and services that are absolutely essential to the Debtors’ ability to continue operating their businesses from day-to-day. The Debtors believe that the failure to pay the Critical Vendor Claims 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.

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

² The Debtors reserve the right to seek to increase the Critical Vendor Cap if necessary, subject to this Court’s approval.

36. 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.

37. 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.

38. 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. Based on the foregoing considerations, the Debtors anticipate that the amount of Critical Vendor Claims will be less than the Critical Vendor Cap, and ask the Court to grant the Debtors the authority to pay those vendors and service providers that the Debtors, in their discretion, determine to be Critical Vendors.

39. 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 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.

40. The Debtors propose to condition the payment of Critical Vendor Claims on the agreement of the individual Critical Vendors to continue supplying goods and/or services to the Debtors on terms that are consistent with the historical trade terms between the parties (the “Customary Trade Terms”). The Debtors, however, reserve the right to negotiate different trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim to the extent the Debtors determine that such trade terms are necessary to procure essential goods or services or are otherwise in the best interests of the Debtors’ estates.

41. The Debtors propose that a letter be sent to the Critical Vendors, along with a copy of the order granting this Motion, in substantially the form attached hereto as Exhibit A (the “Order”), including, without limitation, the following terms:

- (a) The amount of such Critical Vendor’s estimated pre-petition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The Critical Vendor’s agreement through the effective date of a Chapter 11 plan to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), so long as the Debtors are not then in post-petition default of such Customary Trade

Terms, which Customary Trade Terms were the most favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;

- (c) The Critical Vendor's agreement to provide goods to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining pre-petition amounts allegedly owed to the Critical Vendor by the Debtors, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (g) The Critical Vendor's agreement that to the extent that it has received payment of a pre-petition claim but subsequently refuses to supply goods to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding, undisputed post-petition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the undisputed post-petition obligations then outstanding, without the right of setoff or reclamation by the Critical Vendor.

42. Such a letter, once agreed to and accepted by a Critical Vendor, shall be the agreement between the parties that governs their post-petition trade relationship (the "Trade Agreement"). The Debtors hereby seek authority to enter into Trade Agreements with the Critical Vendors if the Debtors determine, in their discretion, that such an agreement is necessary to their post-petition operations. In the event that the Debtors are unable to enter into a Trade

Agreement with any Critical Vendor, however, the Debtors nevertheless seek authority to pay such vendor's Critical Vendor Claim if the Debtors determine, in their sole discretion, that such payment is necessary to prevent irreparable harm to the Debtors' business operations.

43. The Debtors also seek authority, in their sole discretion, to reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not less than five (5) business days following the Debtors' notification to the Critical Vendor of such default had occurred; or the Debtors, in their discretion, reach a favorable alternative agreement with the Critical Vendor.

44. For those Critical Vendors who have agreed to provide goods to the Debtors on terms different from their Customary Trade Terms, the Debtors reserve the right to seek written acknowledgment of such terms on a case-by-case basis.

45. If a Critical Vendor refuses to supply goods to the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim as set forth above, or fails to comply with any Trade Agreement it entered into with the Debtors, the Debtors hereby seek authority to, in their discretion and without further order of the Court, (i) declare that any Trade Agreement between the Debtors and such Critical Vendor is terminated (if applicable), and (ii) declare that any payments made to such Critical Vendor on account of its Critical Vendor Claim, whether pursuant to a Trade Agreement or otherwise, be deemed to have been in payment of then-outstanding undisputed post-petition claims of such Critical Vendor without further order of the Court.

46. In the event the Debtors exercise either of the rights set forth in the preceding paragraph, the Debtors request that the Critical Vendor against which the Debtors exercise such rights be required to immediately return to the Debtors any payments made on account of its

Critical Vendor Claim to the extent that such payments exceed the post-petition amounts then owed to such Critical Vendor, without giving effect to any rights of setoff or reclamation. In essence, the Debtors seek to return the parties to their respective positions immediately prior to entry of the Order in the event a Trade Agreement is terminated or a Critical Vendor refuses to supply goods to the Debtors on Customary Trade Terms through the effective date of a Chapter 11 plan following payment of its Critical Vendor Claim.

47. The execution of a Trade Agreement by the Debtors shall not constitute a waiver of any other cause of action, including avoidance actions held by the Debtors' estates.

Basis For Relief Requested

48. Section 363(b)(1) of the Bankruptcy Code authorizes the Debtors to use property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1). The Court's general equitable powers, codified in Section 105(a) of the Bankruptcy Code empower the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a).

49. Under Section 105(a), a court "can permit pre-plan payment of a pre-petition 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). In fact, a bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition 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. 174, 175 (Bankr. S.D.N.Y. 1989) (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)).

50. The "necessity of payment" rule further supports the relief requested in this Motion. See, e.g., In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (authorizing payment of pre-petition claims of trade creditors that continue customary trade terms). To

invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is critical to the debtor's reorganization." Id. (internal quotation omitted)

51. The "necessity of payment" doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition 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.

52. The Debtors believe that obtaining immediate authorization to pay Critical Vendor Claims is vital to their continued viability. Specifically, the Debtors believe that any delay or interruption in supply of the goods provided by the Critical Vendors, however temporary, would immediately jeopardize the Debtors' continued ability to operate their businesses and generate revenues.

53. In light of these considerations, granting the relief requested herein is compelling. Indeed, unless authorized to pay the Critical Vendor Claims, the Debtors' business operations will be significantly threatened by immediate shutdown, thereby immediately and irreparably jeopardizing the Debtors' restructuring efforts.

54. For all of the foregoing reasons, the Debtors seek authority, pursuant to Sections 105(a) and 363 of the Bankruptcy Code to pay, in the Debtors' sole discretion, the undisputed amounts owed by the Debtors on account of outstanding Critical Vendor Claims, up to the Critical Vendor Cap.

**Request For Immediate Relief and Waiver of Stay to Avoid
Immediate and Irreparable Harm**

55. The Debtors seek immediate authorization for the relief contemplated by this Motion. Pursuant to Bankruptcy Rule 6003(b), the Court cannot grant relief regarding “a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within 20 days of the filing of the petition unless the relief is “necessary to avoid immediate and irreparable harm.” Fed.R.Bankr.P. 6003(b). For the reasons set forth above, the Debtors submit that the requirements of Rule 6003(b) are met and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

56. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” For the reasons set forth above, the Debtors submit that ample cause exists to justify a waiver of the ten-day stay imposed by Bankruptcy Rule 6004(h).

Notice

57. The Debtors will serve notice of this Motion upon: (i) the Office of the United States Trustee; (ii) the Debtors’ consolidated list of creditors holding the 30 largest unsecured claims; and (iii) Wells Fargo and Gateway. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

No Prior Request

58. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief the Court may deem necessary and proper.

Dated: November 6, 2008
Wilmington, Delaware

Respectfully submitted,

REED SMITH LLP

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