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Hearing Date and Time: July 29, 2009 at 10:00 a.m. (Eastern)
Objection Deadline: July 22, 2009 at 4:00 p.m. (Eastern)

Proposed Attorneys for Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re : Chapter 11
: CRABTREE & EVELYN, LTD.,
: Debtor. : Case No. 09-14267 (BRL)
: :
: :
----- X

**NOTICE OF MOTION OF THE DEBTOR PURSUANT TO
SECTIONS 105(a), 362, 363 AND 365 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 2002 AND 6004 FOR AN ORDER (I) GRANTING
ASSUMPTION OF SETTLEMENT AGREEMENT, OR, ALTERNATIVELY,
GRANTING APPROVAL TO ENTER INTO SETTLEMENT AGREEMENT, (II)
MODIFYING THE AUTOMATIC STAY FOR THE LIMITED PURPOSE OF
PERMITTING ACTIONS CONTEMPLATED BY SETTLEMENT AGREEMENT TO
PROCEED, AND (III) UPON STATE COURT APPROVAL OF SETTLEMENT
AGREEMENT, ALLOWING CLAIM OF POTENTIAL CLASS AND PERMITTING
PAYMENT THEREOF**

PLEASE TAKE NOTICE that a hearing on the Motion of Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"),¹ For an Order Pursuant to Sections 105(a), 362, 363 and 365 of the Bankruptcy Code (I) Granting Assumption of Settlement Agreement, Or, Alternatively, Granting Approval to Enter Into Settlement Agreement, (II) Modifying the Automatic Stay for the Limited Purpose of Permitting Actions Contemplated by Settlement Agreement to Proceed, and (III) Upon State Court Approval of Settlement

¹ The last four digits of the Debtor's federal tax identification number are 1685.

Agreement, Allowing Claim of Potential Class and Permitting Payment Thereof (the “Motion”), all as more fully described in the Motion, will be held before the Honorable Burton R. Lifland, United States Bankruptcy Judge, Room 623 of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, on **July 29, 2009 at 10:00 a.m. (prevailing Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion, must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Southern District of New York, must set forth the name of the objecting party, the nature and amount of claims or interests held or asserted by the objecting party against the Debtor’s estate or property, the basis for the objection and the specific grounds therefor, and must be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User’s Manual for the Electronic Case Filing System may be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court’s case filing system, and by all other parties in interest on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182, and any objection must further be served upon: (i) the Debtor, 102 Peake Brook Road, P.O. Box 167, Woodstock, CT 06281 (Attn.: Colleen Cording, Esq.), (ii) counsel to the Debtor, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. and Richelle Kalnit, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Serene Nakano, Esq.), and (iv)

SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, so as to be received no later than **July 22, 2009 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if no objections to the Motion are timely filed, served and received in accordance with this Notice, the Bankruptcy Court may grant the relief requested in the Motion without further notice or hearing.

Dated: July 9, 2009
New York, New York

Respectfully submitted,

By: /s/ Lawrence C. Gottlieb
Lawrence C. Gottlieb

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PROCEED, AND (III) UPON STATE COURT APPROVAL OF SETTLEMENT
AGREEMENT, ALLOWING CLAIM OF POTENTIAL CLASS AND PERMITTING
PAYMENT THEREOF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the "Debtor"),¹

respectfully represents:

¹ The last four digits of the Debtor's federal tax identification number are 1685.

BACKGROUND

1. On July 1, 2009, the Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is authorized to operate its businesses and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors’ committee has been appointed in this chapter 11 case.

2. Crabtree & Evelyn has evolved from a small, entrepreneurial business, to a company with worldwide manufacturing and distribution capabilities, worldwide distribution channels and 126 retail locations in the United States, making it well-known and respected for its English-style elegance. Through a multi-channel sales strategy, including sales through retail, wholesale, export, affiliate and internet channels, the Debtor manufactures and distributes its products worldwide.

3. Founded as a purveyor of fine soaps from around the world, products were first sold under the Crabtree & Evelyn name starting in approximately 1972.² During nearly four decades Crabtree & Evelyn has expanded its product offerings from fine soaps to include personal care products and related accessories, fragrances, comestibles (*i.e.*, food products including cookies, teas and jams), products for the home and gift arrangements. The Debtor also sells Vera Bradley (purses and related accessories) products in its retail store locations. Crabtree & Evelyn manufactures and distributes more than twenty-five product lines, including LaSource®, Gardeners, India Hicks Island Living® and Naturals and its products have been frequently mentioned in numerous magazines, including Vogue, Glamour, and Lucky. In 1977, Crabtree & Evelyn opened its first retail store, and its retail business has gradually expanded to

² The name of the Debtor is inspired from (i) the crabapple tree, the original species from which all cultivated apple trees have derived, and (ii) John Evelyn, the seventeenth century renaissance Englishman, who wrote one of the first works on conservation of forests and timber.

include a manufacturing and distribution facility, as well as 126 stores in the United States. In 1996, Kuala Lumpur Kepong Berhad purchased 100 percent of the equity of the Debtor. The Debtor is incorporated in Connecticut, and its headquarters, distribution center, manufacturing facility, and warehouse are located in Woodstock, Connecticut.

4. The Debtor's primary assets include inventory, contract rights, intellectual property rights, and accounts receivable for goods sold. The Debtor also owns its headquarters, manufacturing facility, distribution center and warehouse in Woodstock, Connecticut. In addition, the Debtor leases a significant number of retail stores located in 34 states.

JURISDICTION

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELEVANT BACKGROUND

6. On or about January 29, 2008, attorneys purporting to represent Manya Devoe ("Devoe"), one of the Debtor's former store managers, contacted the Debtor, alleging that the Debtor had violated the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (the "FLSA") and various state wage-hour laws (together with the FLSA, the "Wage Laws"). Specifically, such attorneys alleged, among other things, that the Debtor had misclassified its store managers (the "Store Managers") as exempt from the Wage Laws and, accordingly, that the Debtor denied such employees certain overtime wages and compensation (the "Potential Action"). Such attorneys alleged that the Potential Action would involve a class of current and former Store Managers (the "Potential Class"). Thereafter, the parties entered into a tolling agreement which, among other things, provided that, as of January 29, 2008, the statute of limitations for claims under the Wage Laws is tolled. To date, the Potential Action has not been filed in any court.

7. The Debtor's position is that its Store Managers are and have been correctly classified as exempt employees under the Wage Laws and were properly paid for all hours worked, including overtime. Nevertheless, any litigation bears risk, and the possibility exists that a court could rule against the Debtor and award the Potential Class substantial damages. The Debtor considers it desirable to avoid the risks of any litigation and resolve the Potential Action to avoid further expense, inconvenience and interference with its ongoing operations, and to dispose of burdensome litigation.

8. Accordingly, the parties have engaged in good faith, arms' length negotiations in an attempt to resolve the Potential Action without litigation. On or about June 30, 2009, the parties entered into that certain Class Action Settlement Agreement and Release (the "Settlement Agreement"), attached hereto as **Exhibit A**. The Settlement Agreement provides, in part, as follows:³

- A. Conditions Precedent. Settlement of the Potential Action is conditioned upon, among other things, (I) entry of an order by this Court (i) either (a) permitting assumption of the Settlement Agreement under section 365 of the Bankruptcy Code or (b) approving the Settlement Agreement, and (ii) modifying the automatic stay for the limited purpose of permitting the actions contemplated by the Settlement Agreement to proceed (the "Bankruptcy Court Order"), and (II) entry of an order by the State Court, which has not been appealed within the statutory time periods, approving the Settlement Agreement (the "State Court Approval Order"). (Settlement Agreement, p. 8, ¶ 3)
- B. Filing of Action, Request for Approval of Settlement Agreement and Related Documents. Within 21 days of entry of entry of the Bankruptcy Court Order (to the extent such an order is entered), the plaintiff will file a complaint (the "Complaint") on behalf of herself and the class she purports to represent in the New York State Supreme Court for the County of Monroe (the "State Court"), simultaneously with the Settlement Agreement, a proposed class notice, and opt-out form and a motion for

³ The summary of the Settlement Agreement as set forth herein is qualified in its entirety by the Settlement Agreement itself. To the extent there is a discrepancy between the description set forth herein and the Settlement Agreement, the Settlement Agreement shall control.

preliminary approval of the Settlement Agreement. (Settlement Agreement, pp. 14-15, ¶ 13)

- C. Class Certification. For purposes of settlement only, the parties stipulate to certification of a settlement class consisting of all Store Managers during the period of six years prior to January 29, 2008 through the Effective Date (defined below) of the Settlement Agreement, excluding those employed in the State of California. (Settlement Agreement, pp. 5-6, ¶ 1)
- D. Class Notice. No later than seven (7) business days following preliminary approval of the Settlement Agreement, notice of the Settlement Agreement and of the final approval hearing will be mailed to the last known address of each settlement class member. (Settlement Agreement, pp. 10-11, ¶ 6)
- E. Settlement Payment. In full settlement of plaintiffs' claims, upon the Effective Date of the Settlement Agreement, the Debtor will pay two hundred and seventy thousand dollars (\$270,000.00) (the "Settlement Amount") to the Settlement Administrator. The Settlement Amount will be allocated (i) first, to actual and reasonable fees and expenses of the Settlement Administrator, (ii) second, to Devoe, as compensation for being the class representative, (iii) third, to plaintiff's counsel fees, costs and expenses, and (iv) fourth, to the settlement class members who do not opt-out of the settlement. To the extent a settlement class member does not cash his or her settlement check, that amount will remain the property of and revert to the Debtor. (Settlement Agreement, pp. 6, 12-13, ¶¶ 2, 9)
- F. Effective Date. The "Effective Date" of the Settlement Agreement shall be the date that is ten (10) calendar days following satisfaction of all conditions precedent. Upon the Effective Date, plaintiff will dismiss the Complaint with prejudice and the Release (described below) will be effective. (Settlement Agreement, pp. 8-9, 15, ¶¶ 4, 14)
- G. Release. In consideration of the Settlement Amount, upon the Effective Date, the settlement class members and all their respective agents, employees, successors, heirs, spouses, administrators, executors, partners, assigns, and all of their past, present and future representatives and predecessors hereby release and forever discharge the Debtor, and each of its parent, subsidiary and affiliated entities, institutions, predecessors, successors and each of their owners, shareholders, officers, trustees, directors, agents, servants, employees, attorneys, independent contractors, insurers, affiliated entities, including benefit plans and their plan administrators, and all other persons acting on their behalf, including any persons acting on behalf of any pension or benefit plan maintained by the Debtor, from any and all claims, causes of action, demands, rights, damages, requests for equitable relief, expenses, interest, penalties, and attorneys' fees, arising out of the Debtor's alleged non-payment of wages,

benefits, and/or overtime compensation for work performed by any of plaintiffs in a Store Manager position, due to the Debtor's classification of plaintiffs as exempt from the overtime requirements of federal and state law, including but not limited to, claims under the Wage Laws and claims that were or could have been asserted in the Action. The release will not apply to those settlement class members who submit an Opt-Out Form (as defined in the Settlement Agreement) to the Settlement Administrator postmarked no later than forty-five (45) days after the State Court preliminarily approves the Settlement Agreement. (Settlement Agreement, pp. 9-10, ¶ 5)

RELIEF REQUESTED

9. By this motion (the "Motion"), the Debtor seeks an order (I) granting assumption of the Settlement Agreement under section 365 of the Bankruptcy Code, or, alternatively, granting approval to enter into the Settlement Agreement under section 363 of the Bankruptcy Code, (II) modifying the automatic stay, to the extent necessary, for the limited purpose of permitting the actions contemplated by the Settlement Agreement to proceed (namely, filing of the Complaint and Settlement Agreement, class notice and motion for preliminary approval in the State Court), and (III) upon entry of a final, non-appealable State Court Approval Order, allowing the claim of the Potential Class related to the Debtor's alleged violation of the Wage Laws to be satisfied in full with a one-time payment of two hundred and seventy thousand dollars (\$270,000), to be paid within ten (10) calendar days of the Effective Date.

10. To the extent the State Court does not enter an order approving the Settlement Agreement, the Debtor shall not be obligated to pay the Settlement Amount.

BASIS FOR RELIEF REQUESTED

A. Assumption of the Settlement Agreement, or, Alternatively, Approval of the Settlement Agreement is Appropriate

11. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease.” 11 U.S.C. § 365(a). Courts routinely approve motions to assume or reject executory contracts or unexpired leases upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993) (stating that section 365 of the Bankruptcy Code “permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject”); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts under section 365 is that of “business judgment”); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) (“A bankruptcy court reviewing a trustee’s decision to assume or reject an executory contract should apply its ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume it.”).

12. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under applicable case law in this circuit, if a debtor’s proposed use of property pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. See, e.g., Licensing By Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d

1063, 1070 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. The LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented a good business reason to grant such application); see also In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is "good business reason"). When a valid business judgment exists, the law vests the debtor's decision with a strong presumption "that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in honest belief that the action taken was in the best interests of the company." In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1990).

13. The business judgment rule is satisfied where the debtor acts "on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). In fact, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts generally will not entertain objections to the debtor's conduct." Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently and appropriately have been reluctant to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and have upheld such decisions as long as they are attributable to any "rational business purpose." Integrated Res., 147 B.R. at 656; See In re

Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (“[A] court will ordinarily defer to the business judgment of the debtor’s management”); Phar-Mor, Inc. v. Strouss Bldg. Assocs., 204 B.R. 948 (Bankr. N.D. Ohio 1997).

14. This Court should approve the Debtor’s assumption of the Settlement Agreement under section 365 of the Bankruptcy Code as an appropriate exercise of the Debtor’s business judgment under the circumstances. The Debtor’s analysis indicates that, if the Potential Class were to succeed in prosecuting the Potential Action, the Debtor’s exposure to liability in connection with the Potential Action far outweighs the Settlement Amount. Additionally, if the claims of the Potential Class are not settled, the Debtor and the Debtor’s estate could be faced with a lengthy and costly claims objection process to determine the validity and amounts of such claims, including (i) whether class certification of the Potential Class is appropriate in this case, the outcome of which would be far from certain,⁴ (ii) addressing the claims of potentially several hundred Store Managers based on the Wage Laws, or (iii) both. The Debtor believes that litigating the claims of the Potential Class would be expensive and would divert the Debtor’s limited resources away from its restructuring – something that the Debtor can ill-afford. Moreover, depending on the outcome of the claims objection process, the Potential Class could be awarded a substantial general unsecured claim against the Debtor. Given the Debtor’s exposure to liability and the risks and costs associated with litigating the issues raised by the Potential Class, the Debtor believes that assumption of the Settlement Agreement is in the best interests of the Debtor, its estate and creditors.

⁴ “The Second Circuit has not yet settled the issue but the majority rule in this district is that class proofs of claim are permissible, although at least one published opinion supports the minority view.” See In re Worldcom, Inc., No. 02-13533 (AJG), Memorandum Decision and Order, at 10 (Bankr. S.D.N.Y. Oct. 29, 2002).

15. Alternatively, for the same reasons, this Court should approve the Debtor's entry into the Settlement Agreement in accordance with section 363 of the Bankruptcy Code.

16. For the avoidance of doubt, to the extent the State Court does not enter the State Court Approval Order, in accordance with the Settlement Agreement, the Potential Action shall not be considered settled and all parties shall retain their rights, claims and defenses. See Settlement Agreement, pp. 16-17, ¶ 18.

B. The Stay Should Be Lifted for the Limited Purpose of Permitting the Actions Contemplated by the Settlement Agreement to Proceed in State Court

17. The Debtor seeks Court authority for the automatic stay to be lifted for the sole and limited purpose of permitting the actions contemplated by the Settlement Agreement to proceed.

18. Unlike most cases, maintenance of the stay with respect to the Potential Action would harm rather than protect the Debtor and the creditors' interests.⁵ This Court has discretion to modify the automatic stay. Under Section 362(d)(1), "[o]n request from a party in interest and after notice and a hearing," this Court may "grant relief from the stay . . . for cause." The phrase "for cause" used in Section 362(d)(1) is not defined in the Bankruptcy Code, but the Second Circuit has set forth a number of factors to guide the Court's inquiry in this area. As the Second Circuit stated in In re Bogdanovich, 292 F.3d 104 (2d Cir. 2002), these factors are:

⁵ The automatic stay applies to the Potential Action. See 11 U.S.C. § 362(a)(1) (staying "the commencement or continuation . . . of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title."); 11 U.S.C. § 362(a)(3) (staying "any act to obtain possession of the property of the estate or of property from the estate or to exercise control over property of the estate."); 11 U.S.C. § 362(a)(6) (staying "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title."). Each of these statutory sections independently bars the commencement of the Potential Action against the Debtor.

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for [a defense]; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether the movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) [the] impact of the stay on the parties and the balance of harms.

Id. at 110 n.1 (alteration in original) (citing In re Sonnax Indus., 907 F.2d 1280, 1285-86 (2d Cir. 1990)); see also, e.g., In re Mazzeo, 167 F.3d 139, 142-43 (2d Cir. 1999).

19. As the Bogdanovich court explained, “[n]ot every one of these factors will be relevant in every case,” and the “ultimate determination whether to lift a stay depends upon the facts underlying a given motion.” Bogdanovich, 292 F.3d at 110; see also In re Sonnax, 907 F.2d at 1288 (“[T]he inquiry called for by motions to lift the automatic stay are very fact-specific and involve the weighing of numerous factors peculiar to the particular case. Necessarily, broad discretion is accorded to bankruptcy and district courts, and other decisions are useful far more for general guidance than as binding precedents.”)

20. Here, all relevant factors counsel strongly in favor of modifying the automatic stay. In particular, as detailed below, modifying the stay for the purpose set forth herein allows for complete resolution of the issues, promotes judicial economy and prevents significant harm to the Debtor's estate.

21. Absent relief from the stay, the Potential Action would remain unresolved. The Debtor's estate could be burdened by hundreds of claims based on an alleged violation of

the Wage Laws. Alternatively, the Potential Class could seek class certification in this Court, litigation surrounding which would be expensive for the Debtor's estate and the outcome of such litigation would be uncertain. See supra note 4. In contrast, if this Court grants relief from the stay in the limited fashion requested herein, the process would allow for a complete resolution of the Potential Action, subject to State Court approval of the Settlement Agreement. Such resolution would eliminate a potentially large liability of the Debtor and would impart certainty and finality with respect to the Potential Action.

22. For similar reasons, judicial economy is best served by permitting the Potential Action to be administered by the State Court in the manner set forth in the Settlement Agreement.

23. Finally, absent a modification of the stay, there is a significant danger that the Debtor will be exposed to claims that far outweigh the Settlement Amount, and that the Debtor will be forced to expend its limited resources in litigation, the outcome of which is uncertain. Accordingly, limited modification of the stay prevents significant harm to the Debtor's estate.

C. This Court Should Allow the Claim of the Potential Class in the Amount of The Settlement Amount and Permit Payment Thereof Within Ten (10) Calendar Days of the Effective Date

24. Under section 363 of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Further, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the

debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

25. To the extent the State Court approves the Settlement Agreement, the Debtor requests that this Court allow the claim of the Potential Class in the amount of the Settlement Amount and permit a one-time payment of such amount, to be made within ten (10) calendar days of the Effective Date, in full satisfaction of the claims in the Potential Action of members of the Potential Class related to any alleged violation of the Wage Laws.

D. The Court Should Waive or Reduce the Period Required by Rule 6004(h) of The Federal Rules of Bankruptcy Procedure

26. Pursuant to Rule 6004(h) (formerly Rule 6004(g)) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), unless the court orders otherwise, all orders authorizing the use of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 10 days after entry of the order. Fed. R. Bankr. P. 6004(h).⁶ The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h).

27. The Debtor hereby requests that the Court waive the 10-day stay period under Bankruptcy Rule 6004(h), or in the alternative, if an objection to the relief requested herein is filed, reduce the stay period to the minimum amount of time reasonably required by the objecting party to file its appeal. Limiting this time frame will enable the parties to take appropriate action in the State Court promptly.

⁶ Bankruptcy Rule 6004(h) is an interim bankruptcy rule adopted pursuant to standing General Order M-308 of the United States Bankruptcy Court for the Southern District of New York, signed on October 11, 2005 by Chief Judge Stuart M. Bernstein.

NOTICE

28. The Debtor has served notice of this Motion on: (i) the Office of the United States Trustee for the Southern District of New York (Attn: Serene Nakano, Esq.), (ii) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, (iii) the Debtor's 40 largest unsecured creditors, and (iv) parties in interest who have filed notices of appearance in this case. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

29. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as is just and appropriate.

Dated: July 9, 2009
New York, New York

Respectfully submitted,

By: /s/ Lawrence C. Gottlieb
Lawrence C. Gottlieb

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Jeffrey L. Cohen (JC 2556)
Richelle Kalnit (RK 3728)

Proposed Attorneys for Debtor and Debtor in
Possession

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

**MANYA DEVOE on behalf of herself and all other
employees similarly situated,**

Plaintiff,

- v -

CRABTREE & EVELYN, LTD.,

Defendants.

Index No. _____

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the "Agreement") is entered into by and between defendant Crabtree & Evelyn, Ltd. ("Crabtree" or "Defendant") and plaintiff Manya Devoe ("Plaintiff") and the class she purports to represent (hereinafter collectively "Plaintiffs" or "Settlement Class Members").

Recitals

A. On or about January 29, 2008, attorneys representing a former Crabtree employee, Manya Devoe, contacted Crabtree and threatened to file a class action lawsuit, alleging, *inter alia*, that Crabtree had misclassified its store managers as exempt and denied such employees wages and compensation for overtime worked in violation of the Fair Labor Standards Act ("FLSA") and various state wage-hour laws ("the Claim");

B. On or about April 22, 2008, the parties entered into an agreement which, *inter alia*, tolled the applicable statutes of limitations and set forth other terms and conditions governing the parties' actions in this matter ("Tolling Agreement");

C. There has been no action filed in any court in connection with the allegations referenced above;

D. Crabtree denies each and every allegation made by Plaintiff in the Claim. It is Crabtree's position that its store managers are and have been correctly classified as exempt employees under the FLSA and state wage and hour laws and were properly paid for all hours worked, including overtime.

E. The Parties have agreed, as provided in Paragraph 13, below, that Plaintiff shall file a Complaint with respect to the Claim ("Action") in the New York State Supreme Court for the County of Monroe ("State Court") on behalf of the Settlement Class Members simultaneously with the Agreement, proposed Class Notice, Opt-out Form, and Motion for Preliminary Approval of the Class Action Settlement Agreement and Release by an Order to Show Cause.

F. Plaintiff, on behalf of herself and the Settlement Class Members, and Crabtree desire to fully and finally settle and completely resolve all rights, claims, causes of action, and proceedings and avoid claims or litigation which Plaintiff and the Settlement Class Members have, or could have, alleged in the Claim and/or the Action against Crabtree and any of its parent, subsidiary and affiliated institutions, predecessors, successors, and each of their respective trustees, officers, directors, agents, employees, heirs, spouses, insurers, administrators, executors, partners, assigns, affiliated entities and all of their past, present and future representatives, arising out of the claims alleged in the Claim and/or the Action, or those which could have been alleged, and to enter into a permanent and binding resolution of the rights,

obligations and remedies concerning all liability and obligations arising out of the claims alleged in the Claim and/or the Action, or those which could have been alleged.

G. Plaintiff and her counsel have fully analyzed and evaluated the merits of her and the Settlement Class Members' respective claims, contentions, Crabtree's defenses, and this Agreement as it affects her and the Settlement Class Members. Plaintiff and her counsel, after taking into account the foregoing, along with the substantial risks of litigation, are satisfied that the terms of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Claim and the Action is in the best interests of the Settlement Class Members.

H. Crabtree, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims made against it in the Claim and the Action, considers it desirable to resolve the Claim and the Action on the terms stated herein, in order to avoid further expense, inconvenience, and interference with its ongoing business operations, and to dispose of burdensome litigation, and thus has determined that settlement of the Claim and the Action on the terms set forth herein is in its best interest.

I. This Agreement reflects a compromise between the parties and shall in no event be construed as or be deemed an admission or concession by any party of the truth or the validity of any substantive or procedural allegation, claim, or defense asserted in the Claim and/or the Action, or in any other action or proceeding, or of any fault, negligence, or breach of any alleged duty on the part of any party, and all such allegations are expressly denied.

J. This Agreement is subject to and its effectiveness conditioned upon legally final approval by the Court and the other conditions precedent specified in the Agreement Covenants, Paragraph 3, below.

NOW, THEREFORE, with no admission of any substantive or procedural fact, claim or liability by Crabtree, as a negotiated compromise, and in consideration of and in reliance upon the definitions, recitals, promises, covenants, understandings and obligations set forth in this Agreement, Plaintiffs and Crabtree hereby agree as follows:

Definitions

The following terms shall have the following meanings:

1. "Settlement Class Members" means all Crabtree employees and former employees holding the title of Store Manager during the Settlement Class Period, excluding those employed in the State of California, and who are eligible for a settlement payment pursuant to the Agreement.
2. "Plaintiffs" mean Manya Devoe and the Settlement Class Members.
3. "The Settlement Administrator" is Rust Consulting, Inc., who shall serve as the joint agent of Plaintiffs and Crabtree.
4. "Plaintiffs' counsel," for purposes of notice or service, means Patrick J. Solomon, Thomas & Solomon LLP, 693 East Avenue, Rochester, NY 14607.
5. "Crabtree's counsel" or "Crabtree through its counsel," for purposes of notice or service, means Stephen J. Jones, Nixon Peabody LLP, 1100 Clinton Square, Rochester, NY 14603.
6. "Parties" refers jointly to Plaintiffs and Crabtree.

7. "Preliminary Approval" shall mean an order entered by the New York State Supreme Court for the County of Monroe preliminarily finding that the terms in this Agreement are within the range of reasonableness and are fair, reasonable and adequate as to the Settlement Class Members and approving the Class Notice and therefore preliminarily approving the Class Action Settlement Agreement and Release.

8. The term "Final Approval Date" shall mean the occurrence of all of the conditions set forth in Paragraph 3.

9. "Opt-Out Form" shall mean the form executed by class members and returned to the Settlement Administrator post-marked no later than no later than forty-five (45) days after Preliminary Approval by which class members avoid becoming parties to and bound by the Agreement.

10. The "Settlement Class Period" shall be six years prior to the effective date of the Tolling Agreement through the Effective Date of this Agreement [as defined in Paragraph 4 below].

Agreement Covenants

1. *Settlement Class Certification.* For purposes of settlement only, and without any admission by any party in this or any other matter, the Parties stipulate to certification of a settlement class consisting of all Settlement Class Members pursuant to New York CPLR §§ 901 *et seq.*, subject to the terms and conditions set forth herein. If not all of the conditions set forth in Paragraph 3, below, are met, then the stipulation to class certification contained herein shall be null and void, and of no force and effect; and Plaintiff and Crabtree shall each retain all of their rights, remedies, defenses, and contentions for and against class certification. Under such circumstances, the terms

and conditions of the Tolling Agreement entered into by the Parties shall remain in full force and effect. The provisional stipulation to class certification contained in this Agreement is for the purpose of settlement only and shall not be argued by any of the Parties nor considered by the Court in ruling on the class certification issue in this or any other matter.

2. *Total Settlement Payments.* In full settlement of Plaintiffs' claims, and upon the Effective Date [as defined in Paragraph 4 below], Crabtree shall pay to the Settlement Administrator on behalf of the Settlement Class Members the sum of Two Hundred and Seventy Thousand dollars (\$270,000.00) ("Total Settlement Payment"). The Settlement Administrator shall hold the Total Settlement Payments in escrow in an IRC Section 468(b) qualified settlement fund ("Common Fund") to be administered by the Settlement Administrator on behalf of the Settlement Class Members. The Common Fund shall be invested by the Settlement Administrator in an interest bearing account returning the highest rate of guaranteed return. The amounts in the Common Fund shall remain the property of Crabtree unless and until disbursed pursuant to this Agreement.

Subject to the conditions precedent set forth in Paragraph 3, and as set forth herein, the Settlement Administrator shall make payments from the Common Fund to Settlement Class Members, payments to Plaintiffs' counsel for attorneys' fees, costs, and expenses, payment to Manya Devoe as the class representatives for class representative compensation, and all payments for settlement administration (including, without limitation, class notice, determination of the amount of settlement payments, and the services of the Settlement Administrator), all subject to approval by the Court

according to the standards established by law. Apart from the Total Settlement Payment to the Common Fund set forth above, Crabtree shall not be liable for and shall make no additional payment for any of the claims of the Plaintiffs for any reason including, but not limited to, pre or post judgment interest, liquidated damages or penalties, Plaintiffs' attorneys fees, costs or expenses, class representative compensation, costs of class notice or settlement administration, satisfaction of any liens, and any taxes associated with the settlement payment, including, but not limited to, taxes (including Crabtree's or the employer's share of any taxes or the employees' share of any taxes) imposed under the federal insurance contributions act (FICA), the federal unemployment tax act (FUTA) and any income tax withholding imposed under federal, state, or local law, all of which shall be paid solely from the settlement payment. Fifty percent (50%) of the settlement payments shall be deemed to be payments to compromise damages attributable to liquidated damages and shall not be treated as wages for purposes of taxes or withholding. The Settlement Administrator will issue to each member of the Settlement Class an IRS Form 1099 Miscellaneous in the amount of fifty percent (50%) of the settlement payment. The remainder of the settlement payments shall be treated as wages for the purposes of taxes and withholding. The Settlement Administrator shall make normal tax deductions and withholdings from those portions of the settlement payments which are considered to be wages. To the extent that any settlement payments hereunder are subject to IRS Form 1099 Miscellaneous reporting, Plaintiffs agree that they are completely responsible for the payment of any federal, state, or local tax liability associated with such payments. Plaintiffs shall be solely responsible for any tax liabilities arising from the settlement payment and for

satisfaction of any liens, concerning which Crabtree shall have no liability. Plaintiffs and Plaintiffs' Counsel, with respect to attorneys' fees, shall be solely responsible for any tax liabilities arising from the settlement payment and for satisfaction of any liens, concerning which Crabtree shall have no liability.

3. *Conditions Precedent.* The settlement of the Claim and the Action and payment of the settlement payments are conditioned upon:

- A. The entry of an Order by the State Court that gives final court approval of this Agreement, including, without limitation, the dismissal with prejudice of any claims for unpaid wages, premium rates, benefits, or overtime compensation or any other compensation by the Settlement Class Members;
- B. In the event of a bankruptcy filing by Crabtree on or before the Effective Date, the entry of an Order by the United States Bankruptcy Court (i) authorizing assumption of the Agreement by Crabtree pursuant to 11 U.S.C. § 365, subject to the Conditions Precedent set forth herein or, alternatively, approval of the Agreement, subject to any remaining Conditions Precedent set forth herein, and (ii) modifying the automatic stay for the limited purpose of seeking approval of the Agreement by the State Court, including but not limited to the actions contemplated in Paragraph 13 herein ("Bankruptcy Court Order");
- C. The legal finality of the final approval Orders of this Agreement, as referenced above, by virtue of no appeal(s) within the statutory time period(s) to file an appeal or upon entry of the order and/or an affirmance on appeal.

4. *Effective Date.* The date that is ten (10) calendar days following satisfaction of all the conditions precedent in Paragraph 3 shall be referred to as the "Effective Date." Upon the Effective Date, Plaintiffs' Complaint in the Action shall be dismissed with prejudice and the Release set forth in Paragraph 5, below, shall be

effective. Upon the Effective Date, the Tolling Agreement shall be null and void and of no further effect.

5. *Release.* In consideration of the Total Settlement Payment made by Crabtree and the Agreement made herein, and upon the Effective Date, the Settlement Class Members and all their respective agents, employees, successors, heirs, spouses, administrators, executors, partners, assigns, and all of their past, present and future representatives and predecessors hereby release and forever discharge Crabtree, and each of its parent, subsidiary and affiliated entities, institutions, predecessors, successors and each of their owners, shareholders, officers, trustees, directors, agents, servants, employees, attorneys, independent contractors, insurers, affiliated entities, including benefit plans and their plan administrators, and all other persons acting on their behalf, including any persons acting on behalf of any pension or benefit plan maintained by Crabtree (“the Released Parties”), from any and all claims, causes of action, demands, rights, damages, requests for equitable relief, expenses, interest, penalties, and attorneys’ fees, arising out of Crabtree’s alleged non-payment of wages, benefits, and/or overtime compensation for work performed by any of Plaintiffs in a Store Manager position, due to Crabtree’s classification of Plaintiffs as exempt from the overtime requirements of federal and state law, including but not limited to, the Claim, claims that were or could have been asserted in the Action, claims for unpaid wages, overtime compensation, benefits, breach of contract, breach of implied covenant and good faith and fair dealing, conversion, unjust enrichment/restitution, quantum meruit, fraud and deceit, misrepresentation, contractual or statutory premium rates, under any and all state and federal laws, orders, and regulations, including without limitation, the

Fair Labor Standards Act, the New York Labor Law, the New York Minimum Wage Act, and the laws of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Washington D.C., West Virginia, Wisconsin, and Wyoming, the Employment Retirement Income Security Act, the Racketeer Influenced and Corrupt Organizations Act, from the beginning of time through and including the Effective Date of this Agreement. No claims arising after the Effective Date are being released by this Agreement. This Release does not apply to Settlement Class Members who submit Opt-Out Forms to the Settlement Administrator postmarked no later than forty-five (45) days after Preliminary Approval ("opt-out").

Plaintiffs represent, agree, and acknowledge that the consideration to be provided under the terms of the Agreement is being made to settle, extinguish and release all of the Plaintiffs' claims against the Released Parties and that except for the consideration provided under the terms of this Agreement, Plaintiffs would not otherwise receive such relief and/or recovery under any of Crabtree's policies, plans, practices and/or procedures or pursuant to any prior agreement or contract (written or oral, express or implied).

6. *Class Notice.* No later than seven (7) business days following Preliminary Approval of this Agreement, notice of this Agreement and of the final approval hearing

shall be mailed to the last known address of each Settlement Class Member as provided by Crabtree to the Settlement Administrator. Class notice shall be given by:

- A. A single Class Notice mailing to each Settlement Class Member at his/her Last Known Address by United States Postal Service ("USPS") first class mail with notice of the terms of this Agreement and its legal effect, the date and time and place of the final approval hearing, the Settlement Class Member's right to object and appear at the hearing individually or through counsel, an Opt-Out Form, and the procedure for filing any objections to this Agreement.
- B. As to any Class Notice that are Returned Undeliverable Mail ("RUM"), within 3 days of receipt by such RUM notice, the Settlement Administrator shall update that Settlement Class Member's address by using the USPS National Change of Address List and, if necessary, perform a routine skip trace procedure for a commercially reasonable fee, and shall re-mail the Class Notice only once by USPS first class mail to such person. No further address checking or re-mailing shall be required or performed.
- C. The Class Notice shall inform Settlement Class Members that: (a) there are potential tax consequences to each Settlement Class Member associated with the settlement, including receipt of a lump sum payment, the payments to Plaintiffs' counsel and/or the Class Representative by Crabtree, and other issues; (b) Plaintiffs' counsel does not represent any Settlement Class Member as to the tax ramifications of the settlement and have not given any advice with respect thereto; and (c) each Settlement Class Member is advised to consult with his or her own tax advisor concerning the tax consequences of the settlement to him or her.
- D. To the extent that new or updated addresses of Settlement Class Members are discovered after the seven-day (7) period discussed above, the Parties and Settlement Administrator shall direct reasonable notice to that individual, but such notice shall not extend the deadlines by which that individual is

required to take action under the terms of this Agreement.

7. *Communication with Class.* Defendant agrees that should any Settlement Class Member contact it, or its counsel, about the Action or the proposed settlement, Defendant will not respond but instead direct that such inquiries be addressed to Plaintiffs' counsel, whose contact information will be provided in the proposed Class Notice.

8. *Settlement Administrator.* The Parties have selected Rust Consulting, Inc., as the Settlement Administrator to perform functions such as mailing class notice, appropriate tax payments, and mailing out settlement payments to class members, which Settlement Administrator shall be approved by the Court. If the Parties have not selected a Settlement Administrator that is satisfactory to the Court, then the Court shall appoint the Settlement Administrator.

9. *Allocation of settlement payments.* Subject to the approval of the Court, the Total Settlement Payment shall be distributed pursuant to the terms as set forth in this Agreement and in the following manner:

- A. First, the fees and expenses to pay the Settlement Administrator. The Settlement Administrator shall deduct such payments after providing the Parties with fifteen (15) days advance notice of such fees and expenses, provided neither party contests to the Court the payment of such amounts. Should either party contest the payments of the amounts in the fifteen-day (15) period, such contested payments shall not be made until the Court has ruled on the issues.
- B. Second, as set forth more fully in Paragraph 12, the Class Representative compensation, as finally approved by the Court, to be payable within ten (10) calendar days of the Effective Date.

- C. Third, as set forth more fully in Paragraph 10, Plaintiffs' counsel fees, costs and expenses, as finally approved by the Court, to be payable within ten (10) calendar days of the Effective Date.

- D. Fourth, settlement payments to the Settlement Class Members, as set forth herein, from the remaining amount in the Common Fund, to be payable within (10) calendar days of the Effective Date. Each Settlement Class Member who does not opt-out of the settlement shall be assigned a percentage of the remaining amount in the Common Fund calculated by dividing the number of full months such Settlement Class Member was employed as a Store Manager outside the State of California during the Settlement Class Period, by the total full months of employment of all Store Managers outside California in the Settlement Class Period who do not opt-out of the settlement. The settlement payments shall only be made to those Settlement Class Members who do not opt-out of the settlement. Defendant agrees to provide a breakdown of these calculations to plaintiffs' counsel for review prior to disbursement of the settlement payments. Any portion of a Settlement Class Member's percentage not paid out because the Settlement Class Member does not cash his or her settlement check, shall remain the property of and revert to Crabtree. The settlement payment checks issued to the Settlement Class Members shall bear the following statement: "By endorsing this check, I consent to join the FLSA portion of this Action and to be bound by the settlement of this Action and to have the Representative Plaintiff and her Counsel represent me pursuant to 29 U.S.C. §216(b)." Any amount of the Common Fund remaining after distribution of all settlement payment checks shall remain the property of and revert to Crabtree at the conclusion of the settlement administration process.

- E. Any settlement checks not cashed by Settlement Class Members within the one-hundred and eighty-day (180) time period in which to do so shall remain the property of and revert to Crabtree at the conclusion of the settlement administration process.

10. *Plaintiffs' Attorneys' Fees, Costs, and Expenses.* Within ten (10) calendar days of the Effective Date, the Settlement Administrator shall pay from the Common Fund, and not in addition thereto, Plaintiffs' reasonable attorneys' fees, costs, and expenses as approved by the Court herein. The Court's approval of this Agreement will also include the payment of the following amount as attorneys' fees, costs and expenses, or such amounts as modified by the Court within its discretion: thirty-seven and one half percent (37.5%) of the Common Fund. Crabtree shall not oppose the payment of Plaintiffs' counsel's attorneys' fees, costs and expenses in the amounts set forth above and takes no other position on the award of those amounts.

11. *Costs of Settlement Administration.* The actual and reasonable costs of settlement administration payable to the Settlement Administrator shall be payable from the Total Settlement Payments, and not in addition thereto, in amounts to be determined by the Court, for good cause shown according to applicable law.

12. *Class Representative Compensation.* Because of the time, effort, and expense expended by Manya Devoe and for her services to the class as Class Representative, the Court's approval of this settlement agreement will also include the payment of Five Thousand Dollars (\$5,000.00) as class representative compensation, or such amount as modified by the Court within its discretion, to be paid by the Settlement Administrator from the Total Settlement Payments (and not in addition thereto). Crabtree shall not oppose such application of such class representative compensation.

13. *Filing of Action and Agreement, Class Notice, and Motion for Preliminary Approval by Court.* No later than twenty-one days from execution of this Agreement, or

in the event of a bankruptcy filing by Crabtree, entry of the Bankruptcy Court Order, Plaintiff will file a Class Action Complaint on behalf of the Settlement Class Members based on the allegations in her Claim in the New York State Supreme Court for the County of Monroe simultaneously with the Agreement, proposed Class Notice, Opt-out Form, and Motion for Preliminary Approval of the Class Action Settlement Agreement and Release by an Order to Show Cause.

14. *Dismissal with Prejudice.* Immediately upon the Effective Date, the Action shall be dismissed with prejudice in its entirety. The Court will have continuing jurisdiction to enforce the terms of this settlement.

15. *Bankruptcy.* In the event Crabtree files for bankruptcy on or before the Effective Date, (a) Crabtree will move the United States Bankruptcy Court to assume this Agreement pursuant to 11 U.S.C. § 365, subject to all Conditions Precedent set forth in Paragraph 3, or alternatively, approve this Agreement, subject to all Conditions Precedent set forth in Paragraph 3; and (b) the Parties will move the United States Bankruptcy Court for relief from the automatic stay under 11 U.S.C. § 362 for the sole purpose of seeking final approval of this Agreement, including but not limited to the actions contemplated in Paragraph 13 herein.

16. *Final Fairness Hearing.* Within seventy (70) days of Preliminary Approval, the Court will hold a final fairness and approval hearing. At the final fairness hearing, the Court will review any objections to the settlement with the Parties and any class member who chooses to appear. The Parties have the right to present arguments and evidence regarding such objections, if any. To be heard at the hearing, a Settlement Class Member must submit any objections in writing to Plaintiffs' counsel and Crabtree's

counsel and such objections must be postmarked no later than forty-five (45) days after Preliminary Approval. Any objections received outside this time period will not be considered by the Court.

17. *No Impact On Benefits.* Payments made under this Agreement are not intended to: (a) form the basis for additional contributions to, benefits under, or any other monetary entitlement under; (b) count as earning or compensation with respect to; or (c) be considered to apply to, or be applied for purposes of, any of the Released Party's bonus, pension, and retirement programs, 401(k) plans, or any other benefit plan. The amounts paid pursuant to this Agreement are not compensation or wages for hours worked, hours paid or any similar measuring term as defined by any plans and programs for purposes of eligibility, vesting, benefit accrual or any other purpose.

18. *Termination of Settlement.* In the event that this Agreement is not finally approved by the Court, or in the event that the United States Bankruptcy Court does not lift the stay on litigation or permit this Agreement to be assumed, or in the event that the Effective Date does not occur, or in the event Manya Devoe opt-outs of the settlement, or to the extent that the termination, cancellation or voiding of the Agreement is otherwise provided in this Agreement, the parties shall preserve their claims, rights and defenses at that time as though no agreement had been entered into, and no payments shall be made by Crabtree to anyone in accordance with the terms of this Agreement, except for administrative costs already incurred by the Settlement Administrator; and the Parties and any Settlement Class Member will bear their own costs and fees with regard to efforts to obtain court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. In such event, the terms and provisions of

the Agreement shall have no further force and effect with respect to the parties and Settlement Class members and shall not be used in this Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Agreement shall be treated as vacated *nunc pro tunc*. This Agreement shall not constitute and shall not be deemed a waiver of any substantive or procedural defense or any argument Crabtree may have with respect to the exempt status of the Settlement Class Members or the appropriateness of the Settlement Class Members to be certified as a class or collective action. The provisional stipulation to class certification contained in this Agreement is for the purpose of settlement only and shall not be argued by any of the Parties nor considered by the Court in ruling on class or collective action certification in this or any other matter. This Agreement cannot and shall not be discoverable or used in evidence in any litigation against Crabtree.

General Terms Regarding Construction of Agreement, Etc.

19. *No representations.* This Agreement controls over prior communications regarding the matters contained herein between the signatories hereto or their representatives. Except as expressly stated in this Agreement, no party hereto has made any statement or representation to any other party regarding any fact relied upon by any other party in entering into this Agreement, and each party specifically does not rely upon any statement, representation or promise of any other party in executing this Agreement.

20. *Consent.* This Agreement has been carefully read by all Parties and the contents hereof are known and understood by all Parties. The Parties have each

received independent legal advice from attorneys of their choice with respect to the preparation, review, and advisability of executing this Agreement. Prior to the execution of this Agreement by each party, each party's attorney has reviewed the Agreement and each party acknowledges that such party has executed the Agreement after independent investigation and without fraud, duress or undue influence.

21. *Successors.* Subject to the provisions otherwise contained in this Agreement, this Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the respective Parties to this agreement.

22. *No assignments.* Each party represents that he or she has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, his or her rights in the Action or any interest therein, or any other interest in any claims or claims arising out of any of the matters which are the subject of the recitals herein.

23. *Negotiated Agreement.* This Agreement and each of its terms constitute a negotiated contract and not merely a recital and are the result of negotiation among the Parties. In interpreting this Agreement, there shall not be a presumption of interpretation against any party, and each party expressly waives the doctrine of *contra proferentum*.

24. *No Admissions.* This Agreement is the result of a compromise among the Parties and nothing in this Agreement shall constitute an admission of liability by any party with regard to the subject matter of the Action and of this Agreement; or with respect to the composition or certification of a class or collective action under the Federal Rules of Civil Procedure, the Fair Labor Standards Act, the New York Civil Practice Law and Rules, the New York Labor Law, or any other applicable law.

25. *Warranty of authority.* Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign it.

26. *Evidentiary Privilege.* This Agreement shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408, Federal Rules of Evidence, and Section 4547, New York Civil Practice Law and Rules.

27. *Confidentiality.* The Parties agree that pending Court approval and up until this document becomes public through the Court approved settlement process described herein, or, if applicable, prior to Crabtree filing a motion with the Bankruptcy Court as described in Paragraph 15 hereof, this Agreement shall remain confidential and not disclosed to the public by counsel or by any party to this Agreement. The Parties further agree that any information, negotiations, data, drafts and/or summaries exchanged between the Parties relating to the negotiation of this Agreement shall remain confidential and shall not be disclosed to the public for any purpose.

28. *Applicable law.* This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the domestic laws of the State of New York, without regard to conflicts of laws principles.

29. *Further actions.* The Parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby. Crabtree and Plaintiff mutually agree to cooperate to ensure the expeditious approval and administration of this settlement.

Manya Devoe expressly agrees that she will not opt-out of this settlement and that such action would be considered a material breach of this Agreement.

30. *Duty of good faith performance.* The Parties further agree not to take any action which would interfere with the performance of this Agreement by any of the Parties hereto or which would adversely affect any of the rights provided for herein.


31. *No third party beneficiaries.* The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

32. *Written modifications.* As approved by the Court, this Agreement may not be modified in whole or in part except by an agreement in writing signed by all Parties, and executed in the same manner as this agreement.

33. *Execution.* This document may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

34. *Entire Agreement.* This Agreement and the exhibits hereto embody the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein, and is a fully integrated contract.

IN WITNESS WHEREOF, THE PARTIES HEREBY EXECUTE THIS AGREEMENT AS OF THE DATE SET FORTH ABOVE.



MANYA DEVOE
on behalf of herself and all other
employees similarly situated

Dated: 6/30/09

CRABTREE & EVELYN, LTD.

By: _____
Stephen W. Bestwick
Acting President

Dated: _____

Approved as to Form:

Dated: _____, 2009


NIXON PEABODY LLP

By: _____
Stephen J. Jones, Esq.
1100 Clinton Square
Rochester, NY 14692-0704

*Attorneys for Defendant
Crabtree & Evelyn, Ltd.*

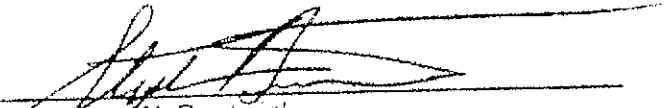
Dated: June 30, 2009

THOMAS & SOLOMON LLP

By:  _____
Patrick J. Solomon, Esq.
693 East Ave.
Rochester, NY 14607
Telephone: (585) 272-0540

*Attorneys for Plaintiff
Manya Devoe*

CRABTREE & EVELYN, LTD.

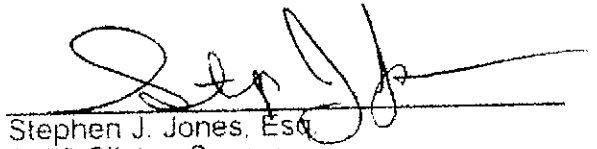
By: 
Stephen W. Bestwick
Acting President

Dated: 6/30/09

Approved as to Form:

Dated: 6/30 2009

NIXON PEABODY LLP

By: 
Stephen J. Jones, Esq.
1100 Clinton Square
Rochester, NY 14692-0704

*Attorneys for Defendant
Crabtree & Evelyn, Ltd.*

Dated: _____, 2009

THOMAS & SOLOMON LLP

By: _____
Patrick J. Solomon, Esq.
693 East Ave
Rochester, NY 14607
Telephone: (585) 272-0540

*Attorneys for Plaintiff
Manya Devoe*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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:
In re : **Chapter 11**
:
CRABTREE & EVELYN, LTD., :
:
: **Case No. 09-14267 (BRL)**
Debtor. :
:
----- X

**ORDER PURSUANT TO
SECTIONS 105(a), 362, 363 AND 365 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 2002 AND 6004 FOR AN ORDER (I) GRANTING
ASSUMPTION OF SETTLEMENT AGREEMENT, OR, ALTERNATIVELY,
GRANTING APPROVAL TO ENTER INTO SETTLEMENT AGREEMENT, (II)
MODIFYING THE AUTOMATIC STAY FOR THE LIMITED PURPOSE OF
PERMITTING ACTIONS CONTEMPLATED BY SETTLEMENT AGREEMENT TO
PROCEED, AND (III) UPON STATE COURT APPROVAL OF SETTLEMENT
AGREEMENT, ALLOWING CLAIM OF POTENTIAL CLASS AND PERMITTING
PAYMENT THEREOF**

Upon the motion, dated July 9, 2009 (the “Motion”),¹ of Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the “Debtor”),² For an Order Pursuant to Sections 105(a), 362, 363 and 365 of the Bankruptcy Code (I) Granting Assumption of Settlement Agreement, or, Alternatively, Granting Approval to Enter Into Settlement Agreement, (II) Modifying the Automatic Stay for the Limited Purpose of Permitting Actions Contemplated by Settlement Agreement to Proceed, and (III) Upon State Court Approval of Settlement Agreement, Allowing Claim of Potential Class and Permitting Payment Thereof, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges of the District Court for the Southern District of New York, dated July 19,

¹ Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Motion.

² The last four digits of the Debtor’s federal tax identification number are 1685.

1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York (Attn: Serene Nakano, Esq.), (ii) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, the Debtor's prepetition and postpetition lender, (iii) the Debtor's 40 largest unsecured creditors, and (iv) parties in interest who have filed notices of appearance in this case, and it appearing that no other or further notice need be provided; and the Court having determined that the relief requested in the Motion being in the best interests of the Debtor, its creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted to the extent provided herein; and it further

[ORDERED that the Debtor is authorized to assume the Settlement Agreement and the Settlement Agreement shall be deemed assumed pursuant to section 365 of the Bankruptcy Code; and it is further]

[ORDERED that the Debtor's entry into the Settlement Agreement is hereby approved in accordance with section 363 of the Bankruptcy Code; and it is further]

ORDERED that the automatic stay is modified, to the extent necessary, for the sole and limited purpose of permitting the actions explicitly set forth in the Settlement Agreement to proceed; and it is further

ORDERED that subject to the terms and conditions of the Settlement Agreement, the claim of the Potential Class related to any alleged violation of the Wage Laws shall be deemed allowed in the amount of two hundred and seventy thousand dollars (\$270,000) (the “Allowed Claim”); and it is further

ORDERED that the Allowed Claim shall be satisfied in full by the Debtor’s one-time payment of the Settlement Amount, to be paid within ten (10) calendar days of the Effective Date; and it is further

ORDERED that notwithstanding Bankruptcy Rule 6004 or otherwise, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order; and it is further

ORDERED that notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion.

Dated: _____, 2009
New York, New York

HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE