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

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 In re : Chapter 11
 :
 CRABTREE & EVELYN, LTD., : Case No. 09- _____ (___)
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 Debtor. :
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**MOTION FOR AN ORDER PURSUANT TO
 SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE
 (I) AUTHORIZING PAYMENT OF WAGES, COMPENSATION AND EMPLOYEE
 BENEFITS AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR
AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the “Debtor”),¹
 respectfully represents:

BACKGROUND

General

1. On the date hereof (the “Petition Date”), 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

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

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.

The Debtor's Businesses

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 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

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.

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.

RELIEF REQUESTED

6. By this motion (the "Motion"), the Debtor requests, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, entry of an order authorizing, but not requiring, the Debtor to (i) pay, in its sole discretion, Wage Obligations, Expense Reimbursements, Payroll Taxes, certain Severance Obligations, and Employee Benefits (each as defined below, and collectively, the "Employee Obligations"), and costs incident to the foregoing, (ii) maintain and continue to honor its practices, programs, and policies for its employees (the "Employee Benefits") as they were in effect on the Petition Date, and as such may be modified, amended, or supplemented from time to time in the ordinary course, and (iii) pay, in its sole discretion, compensation owed to Contract Employees and Wholesale Representatives (each as defined below).

7. By this Motion, the Debtor seeks to pay amounts owed prior to the Petition Date in the aggregate amount of \$1,035,000, comprised of amounts owed (i) to the Debtor's Employees, up to \$500,000, which is comprised of (a) Wage Obligations in the amount of \$449,552.00; (b) amounts owed under the Incentive Sales Programs (for store-level

employees) in the amount of \$20,000; (c) Severance Obligations in the amount of \$14,636.75; and (d) Expense Reimbursements in the amount of \$5,000; (ii) to the Debtor's Contract Employees, up to \$100,000; (iii) to the Debtor's Wholesale Representatives, up to \$135,000; and (iv) on account of the Debtor's Health and Welfare Plans, up to \$300,000.

8. As part of its cash management system, the Debtor maintains certain accounts (the "Accounts") at the banks identified on **Exhibit A** hereto (the "Banks"). The Debtor may draw upon funds in three of its Accounts to satisfy obligations arising from the Employee Obligations, Employee Benefits, and compensation due to Contract Employees and Wholesale Representatives. The Debtor requests that the Court authorize the Banks, or such other banks or financial institutions, as applicable, to receive, honor, process, and pay any and all checks drawn, or electronic fund transfers requested or to be requested, on the Accounts to the extent that such checks or electronic fund transfers relate to any Employee Obligations, Employee Benefits, and compensation due to Contract Employees and Wholesale Representatives.

BASIS FOR RELIEF REQUESTED

The Debtor's Prepetition Employee Obligations

9. In the ordinary course of its businesses, the Debtor incurs payroll and employee benefits obligations to its employees for the performance of services. As of the Petition Date, the Debtor employs approximately 950 individuals, of which approximately 750 are paid on an hourly basis (the "Hourly Employees") and 200 are salaried employees (the "Salaried Employees") and, together with the Hourly Employees, the "Employees").

10. The Debtor has incurred obligations with respect to the Employees relating to the period prior to the Petition Date. Certain of these costs and obligations are outstanding, due and payable now, while others will become due and payable in the ordinary course of the Debtor's business after the Petition Date.

11. The Debtor submits that since approximately 79 percent of its employees are hourly, and the Debtor's business is service-oriented, any delay in the process of regular payment to Employees would cause the Debtor irreparable harm.

Wages and Salaries

12. Prior to the Petition Date and in the ordinary course of business, the Debtor typically paid obligations relating to wages and salaries for its Employees on a rotating weekly basis (the "Wage Obligations"), through direct deposits to Employees or by check delivered to particular Employees. Approximately 65 percent of the Debtor's employees receive payment by direct deposit, while the remaining 35 percent receive a check from the Debtor. Wage Obligations are processed bi-weekly, on a rotating weekly cycle, whereby the Debtor's headquarters employees, including district managers and employees responsible for manufacturing and distributing the Debtor's products (the "Headquarters Employees") are paid in one week, and the store-level employees (the "Store Employees") are paid in the next week. The Debtor's current estimated bi-weekly gross payroll for its Employees is approximately \$800,000, of which approximately \$350,000 is paid to Headquarters Employees and approximately \$450,000 is paid to Store Employees.

13. In addition to traditional wage obligations, the Debtor provides various incentives to its employees, including tuition reimbursement of up to \$1,500 per employee per year for its full time Employees and car and communications allowances, the amounts of which vary depending on the employee, but which do not exceed an aggregate amount of approximately \$5,100 per month for certain of its employees based on travel requirements.

14. The Debtor's payroll compensates Employees for work already performed. Thus, when Employees receive their payroll check or direct deposit, those Employees have accrued an additional five days' worth of compensation, which is payable in the

next pay period. On or about June 25, 2009, the Debtor funded payroll for the bi-weekly pay period ending June 20, 2009. Because its Employees are paid in arrears, the Debtor has accrued outstanding Wage Obligations aggregating approximately \$449,552.

15. ADP manages the payment of the Debtor's Wage Obligations and Expense Reimbursements (defined below). ADP calculates the funds needed to satisfy any outstanding Wage Obligations and Expense Reimbursements. To pay the Wage Obligations and Expense Reimbursements, ADP withdraws the funds from the Debtor's operating account and then remits the funds to the Employees.

16. The Debtor pays a monthly administrative fee to ADP for these services. The Debtor requires ADP's continued services in satisfying Wage Obligations and processing Expense Reimbursements for its Employees. As of the Petition Date, the Debtor estimates that approximately \$7,500 in fees to ADP are outstanding, or accrued and unpaid.

17. The Debtor also offers certain incentive and award payments to its employees. One of such programs provides incentive payments to district managers, regional managers and retail store employees for which the district, region or store, as applicable, exceeds certain sales numbers (the "Incentive Sales Programs"). For the first quarter of 2009, the Debtor made approximately \$15,126 in payments to its Employees in respect of the Incentive Sales Programs. The Debtor believes that less than \$20,000 will have accrued prior to the Petition Date and remains unpaid as of the Petition Date in respect of the Incentive Sales Programs. The Debtor seeks authority to pay such amount when it becomes payable in accordance with prepetition practice. In addition, the Debtor offers various payments to its retail store Employees, its outlet store Employees and its field training store managers (the "Achievement Programs"). For the first quarter of 2009, the Debtor made approximately \$46,036 in payments

to its Employees in respect of the Achievement Programs. As of the Petition Date, there are no amounts owed to any Employees under the Achievement Programs. Finally, the Debtor offers various recognition programs (the “Recognition Programs” and, together with the Incentive Sales Programs and the Achievement Programs, the “Employee Programs”) to its retail store Employees. Prior to the Petition Date, the Debtor temporarily suspended payments under the Recognition Programs until 2010. Accordingly, in accordance with prepetition practice, the Debtor does not seek to pay accrued amounts under the Recognition Programs at this time.

18. The Debtor pays OC Tanner Company (“OC Tanner”) approximately \$15,000 per year to administer the Employee Programs. No amounts are owed to OC Tanner as of the Petition Date.

Garnishments and Payroll Taxes

19. In the ordinary course of processing payroll checks for its Employees, the Debtor withholds certain amounts for various garnishments (such as tax levies, child support, any other court-ordered garnishments and 401(k) loans). For each bi-weekly payroll period, the Debtor garnishes an aggregate amount of approximately \$1,376. As ADP processes the garnishments on a bi-weekly basis in connection with processing the Debtor’s Wage Obligations, any amounts owed on account of garnishments are included, on a net basis, in amounts owed on account of Wage Obligations.

20. The Debtor is also required by law to withhold from its Employees’ wages amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the “Withholding Taxes”) and to remit the same to the appropriate taxing authorities (collectively, the “Taxing Authorities”). In addition, the Debtor is required to make matching payments from its own funds on account of social security and Medicare taxes, and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), additional

amounts to the Taxing Authorities for, among other things, state and federal unemployment insurance (collectively, the “Employer Payroll Taxes” and, together with the Withholding Taxes, the “Payroll Taxes”). The Debtor’s accrued liability for Payroll Taxes as of the Petition Date is approximately \$225,000.

21. ADP calculates the funds needed to satisfy any outstanding Payroll Taxes. To pay the Payroll Taxes, ADP withdraws the funds from the Debtor’s operating account and then remits the funds to the applicable Taxing Authorities.

22. The administrative fee paid to ADP in connection with its services related to the Wage Obligations and Expense Reimbursements includes fees owed by the Debtor in connection with ADP’s services in satisfying Payroll Taxes for the Debtor’s Employees.

Reimbursement Expenses

23. The Debtor’s Employees incur various expenses in the discharge of their ordinary duties, such as travel and meal expenses. Because these expenses are incurred as part of their official duties and in furtherance of the Debtor’s businesses, the Employees are reimbursed in full (the “Expense Reimbursements”) after submission of appropriate documentation to the Debtor’s accounting department. A majority of Expense Reimbursements are travel-related expenses. Expenses are reimbursed in every pay cycle. Regardless of whether an Employee pays for the expense with a corporate American Express credit card provided by the Debtor or otherwise, Expense Reimbursements are paid by the Employee and reimbursed by the Debtor.

24. In the first quarter of 2009, Expense Reimbursements averaged approximately \$20,000 per month. The Debtor estimates that there are no Expense Reimbursements currently outstanding. However, Employees may have incurred expenses prior to the Petition Date but may have not submitted requests for reimbursement of such expenses prior to the Petition Date.

Severance

25. Prior to the Petition Date and in the ordinary course of business, the Debtor initiated two reductions in force (the “RIFs”), one in February 2009 and one in June 2009, resulting in a total of approximately 32 involuntarily terminated employees. The terminated Employees consist of certain Headquarters Employees, including (i) office, manufacturing and distribution center Employees, (ii) district managers, (iii) one director, and (iv) one vice president. In connection with the RIFs, it provided its terminated Headquarters Employees with between four and sixteen weeks pay, depending upon the Employees’ length of service (the “Headquarters Severance Program”). The Debtor made approximately \$361,000 in severance payments in connection with the RIFs.

26. The Debtor has long observed a severance program for its Store Employees (the “Store Severance Program” and, together with the Headquarters Severance Program, the “Severance Programs”). Store Employees are entitled to receive: (i) severance pay equal to between two and six weeks pay, and (ii) a retention bonus to those Employees who remain through the scheduled last work day equal to between \$250 and \$2,000, depending upon the Employees’ position and length of service. To receive severance payments under the Severance Programs, an Employee must have signed a separation agreement and general release form.

27. In addition, the Debtor’s former chief executive officer has received and is due severance payments under his employment agreement with the Debtor. Finally, one of the Debtor’s former vice presidents has received severance and continues to receive severance payments under his termination agreement with the Debtor. The Debtor does not seek to make any payments to its former chief executive officer. However, the Debtor seeks permission to

make a final severance payment of \$9,230.75 to its former vice president in September, when such amount will become due.

28. As of the Petition Date, the Debtor estimates that it owes approximately \$5,406 on account of accrued and unpaid obligations under the Severance Programs to Employees terminated pre-petition (the “Severance Obligations”),³ of which all of which would receive payment priority under section 507(a)(4) of the Bankruptcy Code.⁴

Employee Benefits Plans

29. In the ordinary course of business, the Debtor has established various benefit plans and policies for its Employees that can be divided into the following categories: (i) paid time-off plans, including vacation days, sick days, and personal days (collectively, the “PTO Plans”), (ii) medical insurance (including vision and prescription drug coverage), dental insurance, life insurance, AD&D insurance, disability insurance, and flexible spending plans (collectively, the “Health and Welfare Plans”), (iii) a 401(k) plan (the “401(k) Plan”), and (iv) a fitness/weight loss plan, smoking cessation program and an employee assistance program (together with the PTO Plans, Health and Welfare Plans, and the 401(k) Plan, the “Employee Benefits”). The Debtor directly deducts specified amounts from certain Employees’ wages in connection with certain of the Employee Benefits, such as medical insurance and 401(k) Plan contributions.

³ This amount reflects obligations owed to Store Employees at the Hawaii location, which is in the process of closing. It does not reflect amounts owed to the Debtor’s former chief executive officer (which the Debtor does not seek to pay at this time) or amounts owed to one of the Debtor’s former vice presidents (which, as set forth above, the Debtor seeks to pay as and when the obligation becomes due).

⁴ Section 507(a)(4) of the Bankruptcy Code provides priority status for amounts up to \$10,950 earned within 180 days before the filing date.

(i) Paid Time-Off Benefits

30. Under the PTO Plans, eligible Employees may receive their full wages for, among other things, vacation, personal days, and sick days. Employees who have completed 30 days of employment become eligible under the PTO Plans if they are scheduled to work at least 40 hours per week on a regular full-time basis⁵ or a part-time salaried exempt basis (on a pro-rated basis based upon their normal work schedule).

31. Under the PTO Plans, eligible Employees receive a fixed number of days off at the beginning of each calendar year, which varies based upon the number of years of service provided by each Employee. Time under the PTO Plans accrues on January 1st of each year. Such time-off may be used, generally, at the Employee's discretion but subject to supervisor approval for vacation or personal days. Employees may carry five paid time-off days from one calendar year to another. Employees are paid for any unused paid time-off days upon termination.⁶ In addition, Employees are permitted to take approximately ten to twelve paid holidays during each year, the amount of which depends on whether the Employee is a Headquarters Employee or a Store Employee.

(ii) Health and Welfare Plans

32. The Debtor sponsors several Health and Welfare Plans to provide benefits to full-time Employees, including, without limitation, (i) medical, dental, or other health plans, (ii) life, accidental death, and dismemberment (“AD&D”), (iii) short- and long-term disability insurance, and (iv) flexible spending programs for medical and dependent care benefits.

⁵ Full-time Employees are those who work at least 40 hours per week.

⁶ There are no outstanding, or accrued and unpaid, amounts owing to terminated eligible Employees as of the Petition Date in connection with the PTO Plans.

33. The Debtor employs Paradigm Associates (“Paradigm”) as its benefits consultant and broker. Paradigm assists the Debtor with (i) designing the Health and Welfare Plans to meet the needs of the Debtor’s Employees, (ii) negotiating the Health and Welfare Plans with the respective providers thereof, and (iii) managing the costs associated with the Health and Welfare Plans. Amounts paid to Paradigm are included in the monthly payments to the various Health and Welfare Plan providers.

(a) Medical, Dental, and Other Health Plans

34. The Debtor offers various health benefits to eligible Employees, including, among others, medical, dental, vision, prescription drug, hospital care, emergency care, preventative care, medical care, outpatient care, rehabilitation services, mental health coverage, home health care and nursing facility or hospice care. The medical coverage, which includes a vision plan and prescription drug coverage, is a self-insured plan administered by Anthem Blue Cross Blue Shield of Connecticut (“Anthem”). The dental coverage is a self-insured plan administered by Delta Dental (together with the medical coverage, the “Medical Plans”). Generally, the Debtor pays approximately 70 percent of the combined cost of medical health insurance, vision plan, and prescription drug coverage and approximately 55 percent of the cost of dental insurance for each eligible Employee. The Debtor withholds from eligible Employees’ wages amounts related to the Medical Plans and remits the same to the medical health care plan providers. Anthem and Delta Dental withdraw, on a daily basis, the amounts paid on behalf of the Debtor in connection with the Medical Plans.

35. The Debtor also offers COBRA benefits to its terminated Employees. The Debtor pays Crosby Benefit Systems (“Crosby”) approximately \$500 per month to administer the Debtor’s COBRA obligations. Approximately \$1,500 is outstanding as of the Petition Date in respect of the Debtor’s obligations to Crosby.

(b) Life and AD&D Insurance

36. The Debtor maintains basic life and additional insurance coverage for all full-time Employees in the event of serious illness, injury or death. The Debtor pays the full premium cost of the basic life insurance and AD&D plans. The Debtor's life insurance and AD&D plans are maintained under the same insurance policy, provided by Standard Insurance Company ("Standard"), as well as supplemental voluntary life insurance and AD&D plans for those eligible Employees with a need for a higher level of protection than afforded under the basic life insurance plan. Under the basic life insurance plan, in the event of an Employee's death, an Employee's designee is entitled to receive one (1) times the Employee's annual base salary, up to a maximum of \$1 million. The spouses and children of Employees are also covered under the life insurance plan, up to \$10,000. Under the AD&D plan, depending upon the type and severity of an injury, an eligible Employee or an Employee's designee (as applicable) may receive an amount equal to the amount they are entitled to receive under the basic life insurance plan.

(c) Disability Benefits

37. The Debtor maintains short- and long-term disability plans that it makes available to full-time Employees. The Debtor pays the full premium cost of the disability plans. An Employee is eligible to receive short-term disability benefits if the Employee has been disabled for more than seven consecutive days and long-term disability benefits if the Employee has been on short-term disability for 13 weeks. Under the short-term disability plan, eligible Employees receive 60 percent of their base salary, up to a maximum of \$2,500 per week for eligible non-executive Employees and \$3,500 per week for eligible executive Employees. Under the long-term disability plan, eligible Employees receive 50 percent of their base salary, up to a maximum of \$10,000 per month for eligible non-executive Employees and \$15,000 per month

for eligible executive Employees. The short- and long-term disability plans are provided by Standard.⁷ Standard also provides supplemental disability benefits for those eligible Employees with a need for a higher level of protection than afforded under the basic short- and long-term disability benefits plans.

(d) *Flexible Spending Programs for Medical and Dependent Care*

38. The Debtor offers full-time Employees two flexible spending programs, one to be used for health care costs, and one to be used for dependent care costs (collectively, the “Flexible Spending Programs”). Funds contributed by eligible Employees under the Flexible Spending Programs are held by the Debtor in trust for the benefit of the eligible Employees.

39. The Flexible Spending Programs allow Employees to contribute up to \$2,000 per year of pre-tax income through payroll deductions to be used for out-of-pocket medical, dental or vision expenses, and up to \$5,000 per year for child-care or elder-care expenses. Benefit Resources, Inc. (“Benefit Resources”) administers the Flexible Spending Programs on the Debtor’s behalf and directly pays eligible Employees the portion of their pre-tax contributions related to eligible expenses incurred under these programs. Typically, the Debtor’s obligations under these programs amount to approximately \$4,200 per month.

40. Because of the manner in which expenses are incurred and claims are processed under the Health and Welfare Plans, it is difficult for the Debtor to determine the aggregate amount of accrued and unpaid obligations under the Health and Welfare Plans that are outstanding at any particular time. Nevertheless, the Debtor estimates that, as of the Petition Date, outstanding accrued obligations under the Health and Welfare Plans (which include medical insurance, dental insurance, life insurance, AD&D insurance, short- and long-term

⁷ The Debtor is required to maintain a separate disability benefits program for its Employees in Hawaii. The Debtor pays an annual fee of \$700 to Pacific Guardian Life (“Pacific Guardian”) to administer this program. No amounts are due Pacific Guardian as of the Petition Date.

disability insurance, flexible spending plans, as well as administrative fees to benefit providers, monthly premiums and estimated claims to be paid) aggregate approximately \$300,000.

(iii) 401(k) Plan

41. The Debtor sponsors a retirement investment plan and withholds from the wages of participating Employees contributions toward the 401(k) Plan. Certain Employees are eligible to participate in the 401(k) Plan if they have: (i) completed 12 months of service with the Debtor, (ii) worked 1,000 hours with the Debtor during that period, and (iii) reached the age of 21. As of January 1, 2009, the Debtor discontinued its policy of matching contributions to the 401(k) Plan.

42. The 401(k) Plan is held in a trust maintained by Nationwide Financial, as trustee, and administered by Pension Alliance, Inc. ("Pension Alliance"). Eligible Employee contributions accrue, and are drawn by Nationwide Financial, from the Debtor's Accounts. Nationwide Financial is paid an annual fee for its services, and Pension Alliance is paid a quarterly fee for its services. As of the Petition Date, the Debtor estimates that there are no outstanding amounts owed for services related to the 401(k) Plan.⁸

(iv) Employee Assistance Program

43. The Debtor maintains an employee assistance program (the "Employee Assistance Program") with Standard for its full-time Employees. The Employee Assistance Program offers confidential counseling and referrals to local resources and agencies to Employees and their eligible dependents, with respect to, among other things, marital and family-related problems, stress, anxiety, depression and other emotional problems, career counseling, and financial issues. If an Employee is referred to a specialist outside of the

⁸ In connection with the 401(k) Plan, the Debtor utilizes the consulting/broker services of Pioneer Valley Financial Group ("Pioneer Valley"). Amounts owed to Pioneer Valley are included in the commission paid as part of the 401(k) Plan.

Employee Assistance Program, a portion of any resulting cost may be covered through the Employee's health plan. The cost of the Employee Assistance Plan is included in the cost of the Health and Welfare Plans. Accordingly, the Debtor estimates that there are no additional accrued and unpaid obligations related to the Employee Assistance Program as of the Petition Date.

(v) Additional Programs

44. The Debtor maintains a fitness/weight loss program (the "Fitness/Weight Loss Program") with Benefit Resources for its full-time Employees. The Fitness/Weight Loss Program permits full-time Employees and their spouses to be reimbursed, up to \$250 per person, up to a maximum of \$500, for fitness club or qualified weight loss program membership fees. The Debtor estimates that as of the Petition Date, there are approximately \$900 in accrued and unpaid obligations related to the Fitness/Weight Loss Program.

45. The Debtor maintains a smoking cessation program (the "Smoking Cessation Program") which is designed to assist full-time Employees who seek to stop smoking cigarettes or other tobacco products. The Debtor administers this program and, accordingly, there are no accrued and unpaid obligations related to the Smoking Cessation Program as of the Petition Date.

Obligations to Contract Employees and Wholesale Representatives

46. From time to time in the ordinary course of its businesses, the Debtor engages the services of temporary contract labor (the "Contract Employees") to augment its existing work force. As of the Petition Date, the most significant arrangements include approximately 50 to 75 individuals supplementing the Debtor's manufacturing facilities, approximately 25 to 50 individuals supplementing the Debtor's distribution facilities and approximately 2 to 8 individuals supplementing the Debtor's headquarters. In addition, the

Debtor employs various freelance contractors and consultants. Although these individuals are independent contractors, they perform their services for the Debtor in exchange for regular compensation, which compensation is either paid to various temporary labor agencies and then remitted by such agencies to the Contract Employees or paid directly to the Contract Employees. On a monthly basis, the Debtor owes approximately \$150,000 to certain agencies on account of work performed by the Contract Employees, including certain freelance employees and one consultant who do not use the services of an agency. As of the Petition Date, approximately \$100,000 is owed to Contract Employees, including certain freelance employees and one consultant who do not use the services of an agency.

47. In addition, the Debtor engages the services of wholesale sales representatives (the "Wholesale Representatives"), who solicit wholesale orders for those products manufactured by the Debtor designated for wholesale distribution. Wholesale Representatives are paid on a monthly basis no later than 60 days in arrears. In the first quarter of 2009, the Debtor paid approximately \$222,942 to its Wholesale Representatives through various agencies. The Debtor estimates that approximately \$135,000 in obligations to certain agencies on account of work performed by its Wholesale Representatives is accrued and unpaid as of the Petition Date.

48. Certain compensation obligations to Contract Employees and Wholesale Representatives are outstanding, due and payable, while others will become due and payable in the ordinary course of the Debtor's businesses after the Petition Date. Similar to their regular Employees, any delay in the process of regular payments to the Contract Employees and the Wholesale Representatives would cause the Debtor irreparable harm because the Debtor would likely lose the benefit of these services. Because the Debtor would experience significant

disruption to the operation of its businesses if it were to lose the services of the Contract Employee or the Wholesale Representatives, the Debtor requests authority to honor and pay such obligations on a pre- and post-petition basis.

Cause Exists to Authorize Payment to the Debtor's Employees

49. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims against the Debtor for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$10,950 per individual. Similarly, section 507(a)(5) of the Bankruptcy Code provides that Employees’ claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$10,950 per Employee covered by such plan, less any amount paid pursuant to section 507(a)(4) of the Bankruptcy Code.

50. The Debtor believes that substantially all, if not all, of the Employee Obligations relating to the period prior to the Petition Date constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtor may be satisfied. Accordingly, the relief requested may affect only the timing of the payment of these priority obligations, and will not prejudice the rights of general unsecured creditors or other parties in interest.

51. Notwithstanding the foregoing, the Debtor submits that, to the extent Employees are owed in excess of \$10,950,⁹ satisfaction and payment of the amounts owed (other than Severance Obligations exceeding the statutory cap) is necessary and appropriate and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code pursuant to the “necessity

⁹ The Debtor believes that two Employees are owed in excess of the statutory cap, one being owed approximately \$1,050 in excess of the cap and one being owed approximately \$800 in excess of the cap.

of payment” doctrine. The “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition employee wages and benefits); see also Mich. Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279-285-86 (S.D.N.Y. 1987), appeal dismissed 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits). This doctrine is consistent with the paramount goal of chapter 11 of “facilitating the continued operation and rehabilitation of the debtor.” Ionosphere Clubs, 98 B.R. at 176.

52. 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.” Ionosphere Clubs, 98 B.R. at 175. “Under Section 105, the 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) (citing Ionosphere Clubs, 98 B.R. at 177).

53. Furthermore, section 363(b)(1) of the Bankruptcy Code provides, “[t]he trustee, 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).

54. Any delay or failure to pay wages, salaries, benefits, severance and other similar items would irreparably impair the Employees’ morale, dedication, confidence, and

cooperation, and would adversely impact the Debtor's relationship with its Employees at a time when the Employees' support is critical to the success of the Debtor's chapter 11 case. At this early stage, the Debtor simply cannot risk the substantial damage to its business that would inevitably attend any decline in their Employees' morale.

55. Absent an order granting the relief requested herein, the Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of the Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtor will be undermined, perhaps irreparably, by the distinct possibility that otherwise loyal Employees will seek other employment alternatives. In addition, it would be inequitable to require the Debtor's Employees to bear personally the cost of any business expenses they incurred prepetition for the benefit of the Debtor, with the understanding that they would be reimbursed.

56. Moreover, the continuation of the Severance Programs offers financial protection and support for employees who have been displaced due to business circumstances. Cessation of severance payments to the former employees may result in lower morale and loyalty among the remaining Employees – many of whom have developed strong and lasting relationships with those who have been terminated – and cause those remaining Employees to devote less care and attention to their duties, or lead them to seek other employment. This would severely hinder the Debtor's ability to reorganize.

57. With respect to Payroll Taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtor's estate, as the relevant Taxing Authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code with respect to such obligations. Moreover, the portion of the Payroll Taxes withheld from an Employee's wages on

behalf of the applicable Taxing Authority are held in trust by the Debtor. As such, these Payroll Taxes are not property of the Debtor's estate under section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53 (1990) (withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estate).

58. In addition, the Debtor believes it is necessary to continue payment of administrative fees to the administrators of the Debtor's Employee Obligations and the administrators of programs related to Employee Benefits. Without the continued services of these administrators, the Debtor would be unable to continue to honor its Wage Obligations and Employee Benefits obligations in an efficient and cost-effective manner.

59. The Debtor does not seek to alter any of its Employee Benefits at this time. This Motion is intended only to permit the Debtor, in its discretion, to make payments consistent with the Debtor's existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtor, in its discretion, to continue to honor its practices, programs, and policies with respect to its Employees, as such practices, programs, and policies were in effect as of the Petition Date. Payment of all Employee Obligations in accordance with the Debtor's prepetition business practices is in the best interests of the Debtor's estate, its creditors, and all parties in interest and will enable the Debtor to continue to operate its businesses in an economic and efficient manner without disruption. As explained more fully above, the Debtor's Employees are central to its operations as a service-oriented business and are vital to this chapter 11 case. A significant deterioration in employee morale at this critical time undoubtedly would have a devastating impact on the Debtor, its clients and vendors, the value of the Debtor's assets and businesses, and the Debtor's ability to continue operations. The total

amount sought to be paid herein is relatively modest compared with the size of the Debtor's overall business and the importance of the Employees to the Debtor's chapter 11 case and the Debtor's reorganization efforts.

60. In other chapter 11 cases, courts in this District have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein.¹⁰ See, e.g., In re Lenox Sales, Inc., et al., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. 2008); In re Steve & Barry's Manhattan LLC, et al., Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. 2008); In re Lexington Precision, et al., Case No. 08-11153 (MG) (Bankr. S.D.N.Y. 2008); In re PRC, LLC, et al., Case No. 08-10239 (MG) (Bankr. S.D.N.Y. 2008); In re Silicon Graphics, Inc., et al., Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. 2006); In re Atkins Nutritionals, Inc., et al., Case No. 05-15953 (ALG) (Bankr. S.D.N.Y. 2005); In re Footstar, Inc., et al., Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. 2004), In re Parmalat USA Corp., et al., Case No. 04-11139 (RDD) (Bankr. S.D.N.Y. 2004); In re Loral Space & Commc'ns Ltd., et al., Case Nos. 03-41709 through 03-41728 (RDD) (Bankr. S.D.N.Y. 2003); In re Twinlab Corp., et al., Case No. 03-15564 (CB) (Bankr. S.D.N.Y. 2003); In re Acterna Corp., et al., Case No. 03-12837 (Bankr. S.D.N.Y. 2003); In re Adelpia Bus. Solutions, Inc., et al., Case No. 02-11389 (REG) (Bankr. S.D.N.Y. 2002).

61. Accordingly, by this Motion, the Debtor seeks authority pursuant to sections 105(a) and 363(b) of the Bankruptcy Code to pay Employee Obligations as they become due and owing during the pendency of this case and to continue, uninterrupted, its practices, programs and policies with respect to its Employees, as such practices, programs, and policies were in effect as of the Petition Date.

¹⁰ Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon request of Debtor's counsel.

62. Furthermore, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the stay of the order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Cause Exists to Authorize Payment to the Debtor's Contract Employees and Wholesale Representatives

63. The Debtor also seeks authority to pay compensation to the Contract Employees and Wholesale Representatives as it becomes due and owing during the pendency of this case. As described above, section 507(a)(4)(A) of the Bankruptcy Code grants priority to all claims for “wages, salaries, or commissions” earned within 180 days before the Petition Date, so long as such claims are not greater than \$10,950 in amount and are asserted by an individual. The Debtor believes that all amounts due to its Contract Employees and Wholesale Representatives fall within the parameters of such priority wage claims.¹¹ Indeed, payment of this compensation is consistent with the underlying policy in the Bankruptcy Code to afford priority to individual workers, regardless of whether they work as employees or independent contractors. See In re Wang Labs., Inc., 164 B.R. 404, 405-08 (Bankr. D. Mass. 1994).

64. Moreover, as described above, the “doctrine of necessity” provides a mechanism by which this Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See, e.g., In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981). Here, the Debtor requires the services of its Contract Employees and Wholesale Representatives to the same extent as its Employees. Without such services, the Debtor and its businesses would lose the benefit of valuable knowledge and experience that is necessary to guide the Debtor through the reorganization

¹¹ Because the Debtor makes payments to various agencies on account of the work performed by the Contract Employees and the Wholesale Representatives, it is unable to determine the exact amounts owed to such individuals. However, based on the Debtor's estimates, no Contract Employee or Wholesale Representative is owed in excess of \$10,950.

process. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

Applicable Banks Should Be Authorized to Honor and Pay Checks Issued and Make Other Transfers to Pay Employee Obligations or Contract Employee and Wholesale Representative Compensation

65. The Debtor further requests that the Court authorize the applicable Banks, identified on Exhibit A annexed hereto, to receive, process, honor, and pay all prepetition and postpetition checks issued or to be issued, and electronic fund transfers requested or to be requested, by the Debtor in respect of the Employee Obligations, Contract Employee or Wholesale Representative compensation. The Debtor also seeks authority to issue new postpetition checks, or effect new electronic fund transfers, on account of the Employee Obligations and Contract Employee and Wholesale Representative compensation to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected.

66. As a result of the commencement of the Debtor's chapter 11 case, and in the absence of an order of the Court providing otherwise, the Debtor's checks, wire transfers and direct deposit transfers in respect of the Employee Obligations, Contract Employee or Wholesale Representative compensation may be dishonored or rejected by the Banks.

67. The Debtor represents that each of these checks or transfers is or will be drawn on specific Accounts that can be readily identified as relating directly to payment of Employee Obligations, Contract Employee and Wholesale Representative compensation. Accordingly, the Debtor believes that prepetition checks and transfers other than those for Employee Obligations, Contract Employee and Wholesale Representative compensation will not be honored inadvertently.

68. Authorization to pay all amounts on account of Employee Obligations, Contract Employee or Wholesale Representative compensation shall not be deemed to constitute

postpetition assumption or adoption of any contract, program, or policy pursuant to section 365 of the Bankruptcy Code. The Debtor is in the process of reviewing these matters and reserves all of its rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts on account of Employee Obligations, Contract Employee or Wholesale Representative compensation shall not affect the Debtor's right to contest the amount or validity of any such claims, including without limitation, the Payroll Taxes that may be due to any Taxing Authority.

NOTICE

69. 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, (iii) the Debtor's 40 largest unsecured creditors, and (iv) the Banks listed on Exhibit A hereto. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

70. 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 1, 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

BANK ACCOUNTS

<u>Account Description</u>	<u>Bank Name and Address</u>	<u>Account No.</u>
Crabtree & Evelyn Operating Account	HSBC USA, NA 950 Third Avenue New York, NY 10022	629748403
Crabtree & Evelyn Operating Account	Citibank, N.A. 399 Park Avenue New York, NY 10022	30440584
C&E Controlled Disbursement Account	HSBC USA, NA 950 Third Avenue New York, NY 10022	797044132

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

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

**INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF
THE BANKRUPTCY CODE (I) AUTHORIZING PAYMENT OF
WAGES, COMPENSATION AND EMPLOYEE BENEFITS AND
(II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion, dated July 1, 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) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) (i) authorizing payment of wages, compensation, certain severance, and employee benefits and (ii) authorizing the banks identified in Exhibit A (the “Banks”) to honor and process checks and electronic funds transfers related to such obligations, all as more fully described 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 Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested 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

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.

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, (iii) the Debtor's 40 largest unsecured creditors, and (iv) the Banks listed on Exhibit A hereto, 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 on an interim basis; and it is further

ORDERED that, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized, but not required, to satisfy certain prepetition Employee Obligations (as defined below) without further Order of the Court, and in accordance with the Debtor's stated policies, including, without limitation, all obligations with respect to (i) wages and salaries, (ii) payroll taxes, social security taxes, Medicare taxes, (iii) paid time-off benefits, health and welfare benefit plans, (iv) savings plans, (v) business expense reimbursements, (vi) severance obligations (up to the statutory priority cap), (vii) other employee benefit programs, and (viii) all obligations with respect to insurance policies and coverage related to the foregoing (collectively, the "Employee Obligations"); and it is further

ORDERED that, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized, but not required, to pay amounts owed prior to the Petition Date in the aggregate amount of \$1,035,000, comprised of amounts owed (i) to the Debtor's Employees, up

to \$500,000, which is comprised of (a) Wage Obligations in the amount of \$449,552.00;³ (b) amounts owed under the Incentive Sales Programs (for store-level employees) in the amount of \$20,000; (c) Severance Obligations in the amount of \$14,636.75; and (d) Expense Reimbursements in the amount of \$5,000; (ii) to the Debtor's Contract Employees, up to \$100,000; (iii) to the Debtor's Wholesale Representatives, up to \$135,000; and (iv) on account of the Debtor's Health and Welfare Plans, up to \$300,000; and it is further

ORDERED that the Debtor is authorized, but not required, to continue to honor its practices, programs, and policies with respect to its employees as such practices, programs, and policies were in effect as of the Petition Date, including, but not limited to the Employee Obligations; and it is further

ORDERED that the Debtor is authorized, but not required, to pay costs and expenses incidental to the payment of the Employee Obligations, including all administration and processing costs and payments to outside professionals or independent contractors, in the ordinary course of business, in order to facilitate the administration and maintenance of the Debtor's programs and policies related to the Employee Obligations; and it is further

ORDERED that, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized, but not required, to pay certain prepetition amounts due to Contract Employees and Wholesale Representatives without further order of the Court, and in accordance with the Debtor's agreements relating to such Contract Employees and Wholesale Representatives; and it is further

ORDERED that nothing in this Order nor any action taken by the Debtor in furtherance of the implementation hereof shall be deemed an approval of the assumption or

³ The Debtor believes that two Employees are owed in excess of the statutory cap, one being owed approximately \$1,050 in excess of the cap and one being owed approximately \$800 in excess of the cap.

rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that nothing in this Order shall impair the ability of the Debtor or appropriate party in interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto; and it is further

ORDERED that each Bank and all other applicable banks or financial institutions are authorized, when requested by the Debtor in the Debtor's sole discretion, to receive, process, honor and pay all checks drawn on or direct deposit and funds transfer instructions relating to the Debtor's Accounts and any other transfers that are related to Employee Obligations, Contract Employee or Wholesale Representative compensation, and the costs and expenses incident thereto; provided, however, that sufficient funds are available in the Accounts to make such payments; provided, further, that any such bank or financial institution may rely on the representations of the Debtor regarding which checks that were drawn or instructions that were issued by the Debtor before the Petition Date should be honored postpetition pursuant to an order of this Court and that any such bank or financial institution shall not have any liability to any party for relying on the representations of the Debtor as provided herein; and it is further

ORDERED that the Debtor is authorized (consistent with this Order) to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests related to Employee Obligations, Contract Employee or Wholesale Representative compensation to the extent that such checks or transfers have been dishonored or rejected as a consequence of the commencement of the Debtor's chapter 11 case; 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 a final hearing on the relief requested in the Motion shall be scheduled for _____, 2009 at ____:____ __.m. (prevailing Eastern time); 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

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

BANK ACCOUNTS

<u>Account Description</u>	<u>Bank Name and Address</u>	<u>Account No.</u>
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