

COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275  
Lawrence C. Gottlieb  
Jeffrey L. Cohen  
Richelle Kalnit

Hearing Date and Time: October 20, 2009 at 10:00 a.m. (Eastern)  
Objection Deadline: October 15, 2009 at 4:00 p.m. (Eastern)

Attorneys for Debtor and Debtor in Possession

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

----- X  
: **Chapter 11**  
: **Case No. 09-14267 (BRL)**  
: **Debtor.**  
:   
:   
----- X

**NOTICE OF MOTION REGARDING  
MOTION FOR AN ORDER PURSUANT TO SECTION  
365(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULES 6006 AND 9014 AUTHORIZING THE DEBTOR TO REJECT  
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

**PLEASE TAKE NOTICE** that a hearing on the annexed motion (the “Motion”) of Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the “Debtor”),<sup>1</sup> pursuant to section 365(a) of the Bankruptcy Code, for authorization to reject certain unexpired leases, 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 **October 20, 2009 at 10:00 a.m. (prevailing Eastern Time)**, or as soon thereafter as counsel may be heard.

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

**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](http://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, 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.), (iv) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, and (v) Hahn & Hessen LLP, 488 Madison Avenue, 15<sup>th</sup> Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the statutory committee of unsecured creditors, so as to be received no later than **October 15, 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: September 25, 2009  
New York, New York

Respectfully submitted,

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

COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275  
Lawrence C. Gottlieb (LG 2565)  
Jeffrey L. Cohen (JC 2556)  
Richelle Kalnit (RK 3728)

Attorneys for Debtor and Debtor in  
Possession

COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275  
Lawrence C. Gottlieb  
Jeffrey L. Cohen  
Richelle Kalnit

Hearing Date and Time: October 20, 2009 at 10:00 a.m. (Eastern)  
Objection Deadline: October 15, 2009 at 4:00 p.m. (Eastern)

Attorneys for Debtor and Debtor in Possession

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

----- X  
: **Chapter 11**  
: **Case No. 09-14267 (BRL)**  
: **Debtor.**  
:   
----- X

**MOTION FOR AN ORDER PURSUANT TO SECTION  
365(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULES 6006 AND 9014 AUTHORIZING THE DEBTOR TO REJECT  
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**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

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

authorized to operate its businesses and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Crabtree & Evelyn has evolved from a small, entrepreneurial business, to a company with worldwide manufacturing and distribution capabilities, worldwide distribution channels and 96 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.<sup>2</sup> 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 96 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.

---

<sup>2</sup> 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.

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 31 states.

5. On July 10, 2009, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee").

6. On July 30, 2009, the Court entered an order authorizing the Debtor to establish procedures for the rejection of executory contracts and unexpired leases (the "Rejection Procedures Order", Docket No. 116).

### **JURISDICTION**

7. 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**

8. By this motion (the "Motion"), the Debtor requests, pursuant to section 365(a) of the Bankruptcy Code and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorization to reject the unexpired leases identified on **Exhibit A** attached hereto (the "Leases")<sup>3</sup> located at the address listed on Exhibit A hereto (the "Premises").<sup>4</sup>

---

<sup>3</sup> Copies of the Leases will be made available to any party in interest upon request to the Debtor's undersigned attorneys.

<sup>4</sup> The Debtor files this Motion, instead of filing a notice in accordance with the Rejection Procedures Order, because the Leases involve a sublease arrangement. Pursuant to the Rejection Procedures Order, the effective date of rejection is tied to "the date the Debtor has vacated the premises and returned the keys, key codes and/or alarm codes to the affected landlord". Rejection Procedures Order, p. 3.

9. The Debtor currently subleases the Premises to a subtenant (the “Subtenant”), whereby the Debtor pays rent and other charges to the landlord pursuant to the primary lease (the “Primary Lease”), and the Subtenant pays the same amount of rent and other charges to the Debtor pursuant to a sublease (the “Sublease”). Accordingly, the Debtor is essentially acting as a “pass-through” with respect to the Primary Lease. The Debtor does not occupy the Premises, does not sell its own product on the Premises, and has no fixtures, furniture or equipment on the Premises. Absent rejection of the Leases, the Debtor continues to be obligated to pay rent under the Primary Lease, even if the Subtenant does not perform its obligations under the Sublease. Even if the Subtenant performs its obligations under the Sublease, the Debtor receives no benefit from continuing to sublease the Premises.

10. After careful review, the Debtor has determined in its business judgment that the Leases identified on Exhibit A are unnecessary to the continued operation of the Debtor’s business, has no value to the estate, and should be rejected. In considering its options with respect to the Leases, the Debtor, in consultation with its financial advisor, believes that there remains no other viable possibility other than rejection of the Leases and that the Leases have no marketable value beneficial to the Debtor’s estate.<sup>5</sup>

11. Through the rejection of the Leases, the Debtor will be relieved from paying the rent, as well as certain other costs, including taxes, utilities, water and sewer charges, insurance, operating expenses, and other related charges associated with the Primary Lease, in the event that the Subtenant does not perform its obligations under the Sublease. By rejecting the Leases, the

---

However, as discussed more fully below, because the Debtor does not currently occupy the Premises (indeed, its Subtenant does), the Debtor files this Motion out of an abundance of caution so that all parties are on notice of the proposed Rejection Date (defined below).

<sup>5</sup> Given that the Subtenant may retain its rights under the Sublease, including rights related to the amount of rent, the Debtor does not believe that it can obtain any value for the Sublease from the Subtenant. See 11 U.S.C. § 365(h)(1)(A)(ii).

Debtor will avoid incurring unnecessary administrative charges associated with the Sublease that provide no tangible benefit to the Debtor's estate.

12. The Debtor has determined through an exercise of its business judgment to reject the Leases, and that such rejection is in the best interests of the Debtor and other parties in interest. The Debtor understands that the landlord for the Primary Lease (the "Landlord") and the Subtenant have an existing relationship, but, upon request, the Debtor will provide any information that either the Landlord or the Subtenant may need to ensure a smooth transition, including providing the Subtenant with all information required in order for it to make timely payments under the Primary Lease.

13. Moreover, rejection of the Leases effective as of the Rejection Date is necessary and justified under the circumstances. The Debtor does not currently occupy the Premises and its Subtenant is in possession of the Premises. Accordingly, the Debtor believes that the rejection of the Leases as of the Rejection Date is in the best interests of its estate, its creditors and other parties in interest.

### **BASIS FOR RELIEF REQUESTED**

#### **Rejection of the Leases is Supported by the Debtor's Business Judgment and Should be Approved by the Court**

14. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 521 (1984); In re Lavigne, 114 F.3d 379, 386 (2d Cir. 1997). "[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon

burdensome property.’” Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993).

15. Courts defer to a debtor’s business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve the rejection under section 365(a) of the Bankruptcy Code. See Bildisco & Bildisco, 465 U.S. at 523 (recognizing the “business judgment” standard used to approve rejection of executory contracts); Nostas Assocs. v. Costich (In re Klein Sleep Products, Inc.), 78 F.3d 18, 25 (2d Cir. 1996) (recognizing the “business judgment” standard used to approve rejection of executory contracts); In re Minges, 602 F.2d 38, 42-43 (2d Cir. 1979) (holding that the “business judgment” test is appropriate for determining when an executory contract can be rejected); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (approving rejection of license by debtor because such rejection satisfied the “business judgment” test); In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992) (stating that a debtor may assume or reject an unexpired lease under § 365(a) in the exercise of its “business judgment”).

16. As more fully explained above, the Debtor does not occupy the Premises and receives no benefit from the sublease arrangement. Based upon the Debtor’s efforts to date and its understanding of the current market conditions, the Debtor does not believe it is in the best interest of the Debtor’s estate or the creditors’ interests to market the Leases in an attempt to sell the affected premises. Accordingly, the Debtor submits that there is no potential value that might be realized by a future sale of either of the Leases.

17. After reviewing the terms of the Leases and the location of the leased premises, the Debtor has determined that the Leases have little or no value. Thus, the Debtor has

determined in the exercise of its business judgment, to reject the Leases and avoid the incurrence of any additional expenses with respect thereto.

18. Pursuant to section 365 of the Bankruptcy Code, the Debtor seeks to reject the Leases effective as of the date set forth in Exhibit A (the “Rejection Date”).

19. The counterparties to the Leases are not prejudiced by the Rejection Date as they will have received advance notice of the Debtor’s rejection of the Leases and the Rejection Date. See, e.g., In re Mid Region Petroleum, Inc., 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990) (effective date of rejection of leases was the date the trustee gave notice to lessor of intent to reject); In re Carlisle Homes, Inc., 103 B.R. 524, 535 (Bankr. D.N.J. 1988) (debtor may reject executory contract by clearly communicating intention to reject).

**Request to Fix Deadline for Filing Claims Arising From Rejection of the Leases**

20. Finally, the Debtor requests that the Court direct that any claim for damages arising as a result of the rejection of the Leases must be filed no later than thirty (30) days following entry of this Order, or be forever barred from doing so.

21. In light of the foregoing, the Debtor respectfully requests that the Court approve rejection of the Leases under section 365(a) of the Bankruptcy Code in the manner requested herein.

**NOTICE**

22. 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, as proposed postpetition lender and prepetition lender, (iii) Hahn & Hessen LLP, 488 Madison Avenue, 15<sup>th</sup>

Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee, (iv) the Lease counterparties set forth on Exhibit A hereto, and (v) 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.

23. 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: September 25, 2009  
New York, New York

Respectfully submitted,

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

COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275  
Lawrence C. Gottlieb (LG 2565)  
Jeffrey L. Cohen (JC 2556)  
Richelle Kalnit (RK 3728)

Attorneys for Debtor and Debtor in  
Possession

**EXHIBIT A**

**LEASES**

<b>Address of Subject Property</b>	<b>Monthly Rental Obligation</b>	<b>Remaining Lease Term</b>	<b>Counterparty Name / Address</b>	<b>Effective Date of Rejection</b>	<b>Property Proposed To Be Abandoned</b>
40 Grant Avenue San Francisco, California (Primary Lease)	\$13,833.88	Lease expires 1/31/2012	G&G Partners, L.P. c/o Yale Properties USA, Inc. 6256 Greenwich Drive Suite 550 San Diego, CA 92122	October 31, 2009	N/A
40 Grant Avenue San Francisco, California (Sublease)	\$13,833.88	Lease expires 1/31/2012	Nervous Tattoo, Inc. 8680 Hayden Place Culver City, CA 90232	October 31, 2009	N/A

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

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

**ORDER PURSUANT TO SECTION 365(a) OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULES  
6006 AND 9014 AUTHORIZING THE DEBTOR TO REJECT  
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Upon the motion, dated September 25, 2009 (the “Motion”),<sup>1</sup> of Crabtree & Evelyn, Ltd., as debtor and debtor in possession (the “Debtor”),<sup>2</sup> for authorization to reject those certain unexpired leases identified on **Exhibit A** attached hereto (the “Leases”) pursuant to section 365(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure 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, 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:

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

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

Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, (iii) Hahn & Hessen LLP, 488 Madison Avenue, 15<sup>th</sup> Floor, New York, New York 10022 (Attn: Mark Indelicato, Esq.), as counsel for the Committee, (iv) the lease counterparties identified on Exhibit A to the Motion, and (v) 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 is further

ORDERED that, pursuant to section 365(a) of the Bankruptcy Code, the Debtor is authorized to reject each of the Leases listed on Exhibit A hereto; and it is further

ORDERED that each Lease rejection is effective as of the respective date listed on Exhibit A hereto; and it is further

ORDERED that all claims for damages arising as a result of the rejection of the Leases shall be filed no later than thirty (30) days following entry of this Order, or be forever barred from doing so; and it is further

ORDERED that the Debtor shall serve a copy of this Order on all counterparties to the Leases and/or their respective attorneys (if known) within three (3) days of entry of this Order; 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: October \_\_\_\_, 2009  
New York, New York

---

HONORABLE BURTON R. LIFLAND  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**  
**LEASES**

Address of Subject Property	Monthly Rental Obligation	Remaining Lease Term	Counterparty Name / Address	Effective Date of Rejection	Property Proposed To Be Abandoned
40 Grant Avenue San Francisco, California (Primary Lease)	\$13,833.88	Lease expires 1/31/2012	Landlord: G&G Partners, L.P. c/o Yale Properties USA, Inc. 6256 Greenwich Drive Suite 550 San Diego, CA 92122	October 31, 2009	N/A
40 Grant Avenue San Francisco, California (Sublease)	\$13,833.88	Lease expires 1/31/2012	Nervous Tattoo, Inc. 8680 Hayden Place Culver City, CA 90232	October 31, 2009	N/A