UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

MEMORANDUM OF LAW OF THE DEBTOR IN SUPPORT OF CONFIRMATION OF FIRST AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, AS MODIFIED ON JANUARY 12, 2010 AND CONSOLIDATED REPLY TO CERTAIN OBJECTIONS TO CONFIRMATION

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Table of Contents

Page

PRELIMINARY STATEMENT 1

ARGUMENT 2

I. THE PLAN MEETS EACH OF THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE 2

A. Section 1129(a)(1) — The Plan Complies with the Applicable Provisions of Title 11 3

1. Classification of Claims and Interests 4

2. Mandatory Contents of a Plan 6

a. § 1123(a)(1)-(4): Designation, Status, Treatment, and Equality of Treatment of Claims 6

b. § 1123(a)(5): Adequate Means of Implementation 7

c. § 1123(a)(6): Prohibition on Issuance of Nonvoting Equity Securities 7

d. § 1123(a)(7): Selection of Directors and Officers Consistent with Interest of Creditors and Public Policy 8

3. Permitted Contents of a Plan 8

a. The Plan's Release Provisions Are Permissible and Should be Approved 9

B. Section 1129(a)(2) — The Debtor Has Complied With Applicable Provisions of Title 11 14

1. Compliance with Section 1125 of the Bankruptcy Code 15

2. Compliance with Section 1126 of the Bankruptcy Code 16

C. Section 1129(a)(3) — The Plan Has Been Proposed in Good Faith 18

D. Section 1129(a)(4) — All Payments to Be Made By the Debtor in Connection With This Case Are Subject to the Approval of the Court 20

E. Section 1129(a)(5) — The Plan Discloses All Required Information Regarding Post-confirmation Management and Insiders 22

F. Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval 23

G. Section 1129(a)(7) — The Plan Is In the Best Interests of Creditors 23

H. Section 1129(a)(8) — The Plan Has Been Accepted By the Requisite Classes of Creditors and Interest Holders 26

I. Section 1129(a)(9) — The Plan Provides for the Payment of Priority Claims 26

Table of Contents
(continued)

Page

J. Section 1129(a)(10) — The Plan Has Been Accepted By at Least One Impaired, Non-Insider Class 29

K. Section 1129(a)(11) — The Plan Is Feasible 29

L. Section 1129(a)(12) — The Plan Provides for the Payment of Fees 32

M. Section 1129(a)(13) — The Plan Provides for the Debtor's Obligations to Pay Retiree Benefits 32

N. Section 1129(a)(16) — The Plan Does Not Provide for the Transfer of Property by Any Nonprofit Entities Not in Accordance with Applicable Nonbankruptcy Law 33

II. THE MODIFICATIONS TO THE PLAN ARE NOT MATERIAL AND ARE IN COMPLIANCE WITH SECTION 1127 OF THE BANKRUPTCY CODE 33

CONSOLIDATED REPLY TO OBJECTIONS 36

CONCLUSION 36

EXHIBIT A – CONFIRMATION COMPLIANCE SUMMARY

EXHIBIT B – PLAN MODIFICATIONS

EXHIBIT C – OBJECTION RESPONSE SUMMARY

TABLE OF AUTHORITIES

Page(s)

CASES

ACC Bondholder Group v. Adelphia Comm. Corp. (In re Adelphia Comm. Corp.),
361 B.R. 337 (S.D.N.Y. 2007).....24

Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship,
526 U.S. 434 (1999).....23, 24

Boston Post Road L.P. v. Fed. Deposit Ins. Corp. (In re Boston Post Road L.P.),
21 F.3d 477 (2d Cir. 1994).....4

Citicorp Acceptance Co., Inc. v. Ruti-Sweetwater (In re Sweetwater),
57 B.R. 354 (D. Utah 1985).....34

Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.),
416 F.3d 136 (2d Cir. 2005).....12, 13, 14

Enron Corp. v. New Power Co. (In re New Power Co.),
438 F.3d 1113 (11th Cir. 2006) 35

In re Adelphia Bus. Solutions, Inc.,
341 B.R. 415 (Bankr. S.D.N.Y. 2003).....30

In re Adelphia Comm. Corp.,
368 B.R. 140 (Bankr. S.D.N.Y. 2007).....12, 13, 14

In re Bally Total Fitness of Greater New York, Inc.,
Case No. 08-14818 (BRL), slip. op. (Bankr. S.D.N.Y. Aug. 19, 2009).....3

In re Best Products Co., Inc.,
168 B.R. 35 (Bankr. S.D.N.Y. 1994).....10

In re Calpine Corp.,
Case No. 05-60200 (BRL), 2007 WL 4565223 (Bankr. S.D.N.Y. Dec. 19, 2007), aff'd, 390 B.R. 508 (S.D.N.Y 2008).....3

In re Cellular Info Sys., Inc.,
171 B.R. 926 (Bankr. S.D.N.Y. 1994).....18

In re Coram Healthcare Corp.,
315 B.R. 321 (Bankr. D. Del. 2004).....10

In re Crowthers McCall Pattern, Inc.,
120 B.R. 279 (Bankr. S.D.N.Y. 1990).....24

In re Dana Corp.,
Case No. 06-10354 (BRL), 2007 WL 4589331 (Bankr. S.D.N.Y. Dec. 26, 2007) 3

In re Drexel Burnham Lambert Group Inc.,
138 B.R. 723 (Bankr. S.D.N.Y. 1992).....4, 20, 24, 30

In re Eagle-Picher Indus., Inc.,
203 B.R. 256 (Bankr. S.D. Ohio 1996).....19

In re Elsinore Shore Assocs.,
91 B.R. 238 (Bankr. D.N.J. 1988) 21

In re General Homes Corp., FGMC, Inc.,
134 B.R. 853 (Bankr. S.D. Tex. 1991) 10

In re Granite Broadcasting Corp.,
369 B.R. 120 (Bankr. S.D.N.Y. 2007), aff'd, 385 B.R. 41 (S.D.N.Y. 2008) 18

In re Johns-Manville Corp.,
68 B.R. 618 (Bankr. S.D.N.Y. 1986).....3, 15, 20, 31

In re Leslie Fay Cos.,
207 B.R. 764 (Bankr. S.D.N.Y. 1997).....18, 29, 30

In re M&S Assocs., Ltd.,
138 B.R. 845 (Bankr. W.D. Tex. 1992).....31

In re Mt. Vernon Plaza Cmty. Urban Redevelopment Corp. I,
79 B.R. 305 (Bankr. S.D. Ohio 1987).....35

In re Oneida Ltd.,
351 B.R. 79 (Bankr. S.D.N.Y. 2006).....18

In re Pacific Gas & Elec. Co.,
304 B.R. 395 (Bankr. N.D. Cal. 2004) 10

In re Spiegel, Inc.,
No. 03-11540 (BRL), 2006 WL 2577825 (Bankr. S.D.N.Y. Aug. 16, 2006) 12, 18

In re Texaco, Inc.,
84 B.R. 893 (Bankr. S.D.N.Y. 1988), appeal dismissed, 92 B.R. 38 (S.D.N.Y. 1988).....
.....4, 22, 30

In re Toy & Sports Warehouse, Inc.,
37 B.R. 141 (Bankr. S.D.N.Y. 1984).....4, 22

In re Woodmere Investors L.P.,
178 B.R. 346 (Bankr. S.D.N.Y. 1995).....29

In re WorldCom, Inc.,
No. 02-13533 (AJG), 2003 WL 23861928 (Bankr. S.D.N.Y. Oct. 31, 2003).....4, 15, 20, 21

In re Zenith Elecs. Corp.,
241 B.R. 92 (Bankr. D. Del. 1999).....10

Kane v. Johns-Manville Corp.,
843 F.2d 636 (2d Cir. 1988).....3, 18, 30

Koelbl v. Glessing (In re Koelbl),
751 F.2d 137 (2d Cir. 1984).....18

Mitchell v. Mitchell,
734 F.2d 129 (2d Cir. 1984).....10

NLRB v. Bildisco & Bildisco,
465 U.S. 513 (1984).....20

Rosenberg v. XO Comm., Inc. (In re XO Comm., Inc.),
330 B.R. 394 (Bankr. S.D.N.Y. 2005).....14

United States v. Reorganized CF&I Fabricators, Inc., 518 U.S. 213, 228 (1996).....24

STATUTES

11 U.S.C. § 350(a).....10

11 U.S.C. § 1122(a).....4

11 U.S.C. § 1123(a).....6

11 U.S.C. § 1123(a)(1).....6

11 U.S.C. § 1123(a)(5).....7

11 U.S.C. § 1123(a)(6).....7

11 U.S.C. § 1123(a)(7).....8

11 U.S.C. § 1123(a)(8).....6

11 U.S.C. § 1123(b).....8

11 U.S.C. § 1123(b)(3).....10

11 U.S.C. § 1125.....15

11 U.S.C. § 1125(b).....15

11 U.S.C. § 1126.....17

11 U.S.C. § 1127.....34, 35

11 U.S.C. § 1129(a)(1).....3

11 U.S.C. § 1129(a)(2).....14, 15

11 U.S.C. § 1129(a)(3).....18

11 U.S.C. § 1129(a)(4).....20

11 U.S.C. § 1129(a)(5).....22

11 U.S.C. § 1129(a)(6).....23

11 U.S.C. § 1129(a)(7).....23

11 U.S.C. § 1129(a)(8).....26

11 U.S.C. § 1129(a)(9).....26, 27

11 U.S.C. § 1129(a)(10).....29

11 U.S.C. § 1129(a)(11).....29

11 U.S.C. § 1129(a)(12).....32

11 U.S.C. § 1129(a)(13).....33

11 U.S.C. § 1129(a)(14).....33

11 U.S.C. § 1129(a)(15).....33

11 U.S.C. § 1129(a)(16).....33

OTHER AUTHORITIES

7 Collier on Bankruptcy (Henry J. Sommer & Alan N. Resnick eds. 15th ed. rev. 2007)..5, 20, 29

Bankruptcy Rule 3019 34

H.R. Rep. No. 109-31, 109th Cong. 1st Sess. 145 (2005) 33

H.R. Rep. No. 95-595 (1977), reprinted in 1978 U.S.C.C.A.N. 5963.....3, 15

S. Rep. No. 95-989 (1978), reprinted in 1978 U.S.C.C.A.N. 5787 .....3, 15

Crabtree & Evelyn, Ltd., as debtor in possession (the "Debtor") submits this memorandum of law in support of confirmation of the First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated November 17, 2009 (as it may be modified or amended from time to time, the "Plan"),[1] pursuant to section 1129 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").[2] In support of this memorandum of law and confirmation of the Plan, the Debtor submits the Declaration of Stephenie Kjontvedt of Epiq Bankruptcy Solutions, LLC Regarding Voting on, and Tabulation of, Ballots Accepting and Rejecting First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Voting Declaration", Docket No. 284) and respectfully represents as follows:

PRELIMINARY STATEMENT

At the outset of this case, the Debtor informed this Court that it believed the Debtor would be one of the few retailers to successfully reorganize since the enactment of the 2005 amendments to the Bankruptcy Code. Confirmation of the Plan will achieve this extraordinary result. Among other things, it will permit the Debtor to culminate the "right-sizing" of its retail footprint in providing for rejection of various non-residential real property leases and assumption of certain other leases, the terms of many of which were modified during the course of the Chapter 11 Case on terms favorable to the Debtor. In addition, confirmation of the Plan will permit the Debtor to implement its business plan adopted during the Chapter 11 Case. Finally, entry into the Exit Facility will permit the Debtor to obtain up to $26.3 million to meet its obligations under the Plan and on a go-forward basis after the Effective Date.

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1 Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan.

2 As explained in greater detail herein, the Plan, as modified, reflects certain non-material modifications, including agreed-upon language that resolved certain objections to confirmation of the Plan.

The Plan is the product of arms length negotiations among the Debtor, the Debtor's parent (which has also provided DIP financing and has committed to provide the Exit Financing), the Debtor's prepetition lender (an affiliate of the Debtor's parent) and the Committee and, accordingly, is supported by all of the foregoing. Moreover, the Plan has been accepted by both Classes of Claims entitled to vote, namely, Class 3 (General Unsecured Claims) and Class 4 (the Class Action Settlement Claim). As described in detail below, the Plan complies with each of the requirements for confirmation of a chapter 11 plan set forth in the Bankruptcy Code. Prompt confirmation and consummation of the Plan will allow the Debtor to emerge from this Chapter 11 Case in an improved competitive position and with the retail footprint and capital structure appropriate for the current challenging retail business environment.

The Debtor has received five timely objections to the Plan (each, an "Objection") — an extremely small number considering the multitude of interested parties. As described in greater detail below, the Debtor has resolved each of the Objections to confirmation of the Plan.

ARGUMENT[3]

I. THE PLAN MEETS EACH OF THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE

1. To obtain confirmation of a chapter 11 plan, the proponent must demonstrate that the plan satisfies each of the requirements set forth in section 1129 of the Bankruptcy Code. Through evidence to be presented at the Confirmation Hearing, as set forth in the Voting

[3] The facts relevant to confirmation of the Plan are set forth in the Disclosure Statement, the Plan, the Voting Declaration, and any evidence presented or testimony that may be adduced at the Confirmation Hearing, all of which are incorporated herein by reference.

Declaration and as demonstrated herein, the Debtor will demonstrate that the Plan satisfies such requirements by at least a preponderance of the evidence and should therefore be confirmed.[4]

A. Section 1129(a)(1) — The Plan Complies with the Applicable Provisions of Title 11

2. Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the plan "complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) of the Bankruptcy Code indicates that the primary focus of this requirement is to ensure that the form of the plan complies with the provisions of sections 1122 (classification of claims and interests) and section 1123 (contents of a plan) of the Bankruptcy Code. See S. Rep. No. 95-989, at 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, at 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986) (stating that "[o]bjections to confirmation raised under § 1129(a)(1) generally involve the failure of a plan to conform to the requirements of § 1122(a) or § 1123"), aff'd in part, rev'd in part on other grounds, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom., Kane v. Johns-Manville Corp., 843 F.2d 636 (2d Cir. 1988); In re Bally Total Fitness of Greater New York, Inc., Case No. 08-14818 (BRL), slip. op. at 4 (Bankr. S.D.N.Y. Aug. 19, 2009) (analyzing compliance of chapter 11 plan with sections 1122 and 1123 for purpose of determining compliance with section 1129(a)(1));[5] In re Dana Corp., Case No. 06-10354 (BRL), 2007 WL 4589331, at *2 (Bankr. S.D.N.Y. Dec. 26, 2007) (same); In re Calpine Corp., Case No. 05-60200

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[4] A chart summarizing each of the confirmation requirements in section 1129 of the Bankruptcy Code and the Plan's compliance with those requirements (the "Confirmation Compliance Summary") is attached hereto as Exhibit A and incorporated herein by reference.

[5] Because of the voluminous nature of the unreported orders and opinions cited herein, the Debtor has not attached copies of such orders and opinions as an exhibit hereto. Copies of any of the unreported orders and exhibits cited herein are available from Debtor's counsel upon request.

(BRL), 2007 WL 4565223, *7 (Bankr. S.D.N.Y. Dec. 19, 2007) (same), aff'd, 390 B.R. 508 (S.D.N.Y 2008); In re Texaco, Inc., 84 B.R. 893, 905 (Bankr. S.D.N.Y. 1988) ("In determining whether a plan complies with section 1129(a)(1), reference must be made to Code §§ 1122 and 1123 with respect to the classification of claims and the contents of a plan of reorganization."), appeal dismissed, 92 B.R. 38 (S.D.N.Y. 1988) (citing In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984)).

3. As demonstrated below, the Plan fully complies with all of the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1122 and 1123 of the Bankruptcy Code.

1. Classification of Claims and Interests

4. Section 1122 of the Bankruptcy Code sets forth the basic rule governing the classification of claims and interests: with the exception of "convenience classes" of unsecured claims, the claims or interests within a given class must be "substantially similar" to the other claims or interests in that class. See 11 U.S.C. § 1122(a). The Bankruptcy Code does not, however, require the converse — that all similar claims be placed in one class. "Separate classification of similar claims is permissible upon proof of a legitimate reason for separate classification." Boston Post Road L.P. v. Fed. Deposit Ins. Corp. (In re Boston Post Road L.P.), 21 F.3d 477, 481 (2d Cir. 1994); In re WorldCom, Inc., No. 02-13533 (AJG), 2003 WL 23861928, at *47 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that "[a] debtor need not place all substantially similar claims in the same class as long as the debtor has a reasonable basis for the separate classification"); In re Drexel Burnham Lambert Group Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) (stating that "[c]ourts frequently interpret § 1122 to permit separate classification of different groups of unsecured claims where a reasonable basis existed for the

classification."); see also 7 Collier on Bankruptcy, ¶ 1122.03[4][a] (Henry J. Sommer & Alan N. Resnick eds., 15th ed. rev. 2007) (stating that unsecured claims "may be divided into separate classes if separate classification is reasonable.").

5. The Plan properly classifies Claims and Interests. Article III of the Plan reasonably provides for the separate classification of Claims and Interests into the following 5 distinct Classes based upon (a) their security position, if any, (b) their legal priority against the Debtor's assets and (c) other relevant criteria:[6]

Class Number	**Class Description**
1	Secured Claims
2	Priority Non-Tax Claims
3	General Unsecured Claims
4	Class Action Settlement Claim
5	Interests

6. The legal rights under the Bankruptcy Code of each of the holders of Claims or Interests within a particular Class are substantially similar to other holders of Claims or Interests within that Class. The Debtor's classification of Claims and Interests under the Plan (i) is not an attempt to manufacture an impaired class that will vote in favor of the Plan and (ii) does not discriminate unfairly between or among holders of Claims or Interests.

7. Valid business, factual and legal reasons exist for the separate classification of Claims and Interests. To wit, the Plan separates Claims from Interests, Priority Tax Claims and Priority Non-Tax Claims from General Unsecured Claims and Secured Claims from both Priority and General Unsecured Claims. In addition, the Plan separates General Unsecured Claims from

[6] In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, DIP Claims, and Priority Tax Claims have not been classified.

the Class Action Settlement Claim, which Claim arises under different circumstances (namely, potential litigation of a large number of claimants) than General Unsecured Claims (which are primarily Claims of trade creditors and landlords). Accordingly, the Debtor submits that the classification of Claims and Interests in the Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code.

2. Mandatory Contents of a Plan

8. Section 1123(a) of the Bankruptcy Code requires that the contents of a chapter 11 plan of reorganization of a corporate debtor (i) designate classes of claims and interests; (ii) specify unimpaired classes of claims and interests; (iii) specify treatment of impaired classes of claims and interests; (iv) provide for equality of treatment within each class of claims or interests; (v) provide adequate means for a plan's implementation; (vi) prohibit the issuance of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (vii) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of a reorganized debtor's officers and directors. See 11 U.S.C. §§ 1123(a)(1)-(7).[7] As provided below, the Plan fully complies with each of these requirements.

a. § 1123(a)(1)-(4): Designation, Status, Treatment, and Equality of Treatment of Claims

9. As previously explained, in accordance with section 1123(a)(1), Article III of the Plan designates Classes of Claims and Interests (other than Administrative Claims, Professional Fee Claims, DIP Claims and Priority Tax Claims). Article III of the Plan further specifies for each Class of Claims or Interests whether such Class is impaired or unimpaired under the Plan.

[7] Section 1123(a)(8) of the Bankruptcy Code applies only in cases "in which the debtor is an individual" and is thus inapplicable to the Chapter 11 Case. 11 U.S.C. § 1123(a)(8).

In addition, Article III both (i) specifies the treatment of Claims or Interests in each Class under the Plan and (ii) provides identical treatment for all Claims or Interests within each such Class, unless the holder of a Claim or Interest agrees to less favorable treatment on account of its Claim or Interest.

b. § 1123(a)(5): Adequate Means of Implementation

10. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Article IV ("Means for Implementation of the Plan") of the Plan provide adequate means for the Plan's implementation. Those provisions relate to, among other things: (i) vesting of assets in the Reorganized Debtor; (ii) consummation of the Restructuring Transactions; (iii) the appointment of officers and directors of the Reorganized Debtor; (iv) authority of the Reorganized Debtor to maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification or other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement; and (v) obtaining Cash for Distributions and other payments to be made pursuant to the Plan.

c. § 1123(a)(6): Prohibition on Issuance of Nonvoting Equity Securities

11. Section 1123(a)(6) of the Bankruptcy Code requires a debtor's corporate documents to prohibit the issuance of nonvoting equity securities and requires that voting power be appropriately distributed among the classes of such securities. Pursuant to Section 4.3 of the Plan, the Reorganized Debtor's certificate of incorporation will prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. Accordingly, the form of certificate of incorporation of the Reorganized Debtor, which is attached as Exhibit A to the Plan, includes a provision prohibiting the issuance of nonvoting equity securities.

d. § 1123(a)(7): Selection of Directors and Officers Consistent with Interest of Creditors and Public Policy

12. Finally, section 1123(a)(7) of the Bankruptcy Code requires that a chapter 11 plan of reorganization "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director or trustee." 11 U.S.C. § 1123(a)(7). Section 4.4 of the Plan provides for the initial board of directors of the Reorganized Debtor to consist of two members, as follows: (i) Lee Oi Hian and (ii) Ling Wei Feng Sandra. See Exhibit C to the Plan (Docket No. 265). Section 4.4 of the Plan further provides that the initial officers of the Reorganized Debtor will consist of the officers of the Debtor immediately prior to the Effective Date. Accordingly, the manner of selection of the initial officers and directors of the Reorganized Debtor is consistent with the interests of creditors, equity security holders and public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

3. Permitted Contents of a Plan

13. Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization, such as the impairment or unimpairment of claims or interests, the rejection or assumption of executory contracts and unexpired leases, the retention of claims by the debtor, and other provisions that are "not inconsistent with" applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1123(b).

14. As permitted under section 1123(b) of the Bankruptcy Code, the Plan provides (i) pursuant to Article III, for the impairment or unimpairment of Classes of Claims and Interests; (ii) pursuant to Article V, for the assumption, assumption and assignment or rejection of certain Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned or

rejected (or for which motions for assumption or rejection are pending) under section 365 of the Bankruptcy Code; (iii) pursuant to Section 4.9, preservation of certain rights and causes of action by the Debtor and the Reorganized Debtor (unless otherwise released under the Plan); (iv) pursuant to Article VI, provisions for distributions under the Plan on account of Allowed Claims; (v) pursuant to Article IX, provisions related to the discharge, injunction, release and exculpation against the pursuit of Claims; and (vi) pursuant to Article X, for the retention of jurisdiction by the Court over certain matters after the Effective Date.

a. The Plan's Release Provisions Are Permissible and Should be Approved

15. The release provisions contained in the Plan constitute permitted contents of a chapter 11 plan of reorganization and should be approved.

(i) Releases by the Debtor

16. Pursuant to Section 9.3(a) of the Plan, the Debtor and the Reorganized Debtor, on behalf of themselves and the estate, shall be deemed to release unconditionally the Released Parties[8] from any Claim, obligation, right, cause of action or liability, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, or occurrence taking place on or before the Effective Date in any way relating to the Debtor, the Chapter 11 Case, or the Plan, subject to the provisions of the Plan.

[8] The Released Parties consist of (i) all of the Debtor's and Reorganized Debtor's respective officers, directors, partners, advisors, attorneys, financial advisors, accountants, and other professionals; (ii) KLK, as DIP Lender, ultimate sole interest holder and ultimate parent of the Debtor and Reorganized Debtor; (iii) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of KLK; (iv) KLKOI, as Prepetition Lender; (v) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of KLKOI; (vi) the members of the Creditors' Committee; (vii) the officers, directors, principals, members, employees, partners, subsidiaries, affiliates, advisors, attorneys, financial advisors, accountants, and other professionals of the Creditors' Committee. See Plan, Section 9.3(a).

17. The releases being provided by the Debtor relate to claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action (including claims or causes of action arising under Chapter 5 of the Bankruptcy Code), and liabilities held by the Debtor or that may be asserted on behalf of the Debtor. The Debtor claims are part of the Debtor's estate created pursuant to section 541 of the Bankruptcy Code and, absent extraordinary circumstances, the Debtor has the exclusive authority to pursue or settle such claims. See, e.g., Mitchell v. Mitchell, 734 F.2d 129, 131 (2d Cir. 1984) (holding that derivative actions are property of the bankruptcy estate and enforceable by the trustee). The releases of the Debtor claims are in the best interests of the Debtor's estate and arise from an appropriate exercise of the Debtor's authority under section 1123(b)(3) to include in the Plan "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3). See also In re Pacific Gas & Elec. Co., 304 B.R. 395, 404, 416-418 (Bankr. N.D. Cal. 2004) (court approved release and settlement of debtor's claims pursuant to section 1123(b)(3)); In re Best Products Co., Inc., 168 B.R. 35, 61, 63-64 (Bankr. S.D.N.Y. 1994) (same); In re General Homes Corp., FGMC, Inc., 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991) ("To the extent that the language contained in the plan purports to release any causes of action against the Bank Group which the Debtor could assert, such provision is authorized by § 1123(b)(3)(A), subject to compliance with provisions of the code requiring that the plan be proposed in good faith."); In re Freedom Rings LLC, (Case No. 05-14268) (CSS) (Bankr. D. Del. April 20, 2006) (stating that "[under] In Re: Zenith Electronics Corporation, 241 B[.]R[.] 92 and it[]s progeny, this Court may authorize the release of direct and derivative claims of the Debtor . . ."); In re Zenith Elecs. Corp., 241 B.R. 92, 110-11 (Bankr. D. Del. 1999) (approving plan provision allowing for the releases of debtors' claims); In re Coram Healthcare Corp., 315 B.R. 321, 335 (Bankr. D. Del. 2004) (same).

18. The Debtor does not believe that there are any valid claims by the Debtor against any of its present or former directors, officers, and employees, any of its Professionals, KLK, KLKOI and their respective advisors, or the Creditors' Committee and its advisors. Moreover, the Debtor believes any action brought to enforce a potential Debtor claim would involve significant costs to the Debtor, including legal expenses and the distraction of the Debtor's key personnel from the demands of the Debtor's ongoing businesses. In light of these considerations, and given the contributions made by the recipients of the releases to the Debtor's businesses and reorganization efforts, the Debtor believes the releases of the Debtor claims are appropriate and in the best interests of the Debtor's Estate.

(ii) Releases by Holders of Claims and Interests

19. Pursuant to Section 9.3(b) of the Plan, (i) persons who directly or indirectly, have held, hold, or may hold Claims or Interests who voted to accept the Plan (the "Consensual Release") and (ii) all persons who directly or indirectly, have held, hold, or may hold Claims or Interests, "to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date" (the "Nonconsensual Release"), will be deemed, by virtue of their receipt of distributions and/or other treatment contemplated under the Plan, to have forever released and covenanted with the Reorganized Debtor not to (y) sue or otherwise seek recovery from any of the Reorganized Debtor or any Released Party on account of any Claim, including but not limited to any Claim based upon tort, breach of contract, violations of federal or state securities law or otherwise, based upon any act, occurrence, or failure to act from the beginning of time through the Effective Date in any way related to the Debtor or its business and affairs, or (z) assert against any of the Reorganized Debtor or any Released Party any Claim, obligation, right, cause of action or liability that any holder of a Claim or Interest may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based

in whole or in part on any act or omission, transaction, or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor, the Chapter 11 Case, or the Plan, subject to the provisions of the Plan.

20. Both the Consensual Release and the Nonconsensual Release contained in the Plan comply with the law in this District pertaining to "non-debtor" releases. In this circuit, it is well-settled that "[n]on-debtor releases may . . . be tolerated if the affected creditors consent," provided that adequate disclosure is provided to creditors voting on the Plan. Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136, 142 (2d Cir. 2005); accord In re Adelphia Comm. Corp., 368 B.R. 140, 266, 268 (Bankr. S.D.N.Y. 2007) (noting that "[i]n the Second Circuit, it has long been the law that third party releases are permissible under at least some circumstances" and specifically approving of consensual third-party releases by creditors where such releases were prominently disclosed; observing that "[t]he Seventh Circuit held in Specialty Equipment that consensual releases are permissible, and the Metromedia court did not quarrel with that view . . . . [If] the proposed release is appropriately disclosed, . . . consent can be established by a vote in support of a plan"); In re Spiegel, Inc., No. 03-11540 (BRL), 2006 WL 2577825, at *7 (Bankr. S.D.N.Y. Aug. 16, 2006) (Lifland, J.) (citing Metromedia, 416 F.3d, at 142) (nondebtor releases are consistent with Bankruptcy Code if the creditors consent). Here, the Debtor's Disclosure Statement and other Solicitation Materials prominently disclosed the Plan's release provisions that are applicable to those creditors who have voted to accept the Plan. In addition, the form of ballot furnished to creditors for voting contained the following bolded paragraph:

> IF YOU VOTE TO ACCEPT THE PLAN, YOU ARE SPECIFICALLY CONSENTING TO THE RELEASES CONTAINED IN THE PLAN. SUCH RELEASES INCLUDE, BUT ARE NOT LIMITED TO, THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, WHICH INCLUDE THE RELEASE OF CLAIMS AND CAUSES OF ACTION AGAINST CERTAIN NON-DEBTOR ENTITIES.

Under the governing case law, the Consensual Release is therefore proper and should be approved.

21. The Nonconsensual Release should be approved because the release granted to the Released Parties is an integral part of the Debtor's overall restructuring efforts and, therefore, further consistent with Metromedia. See Metromedia, 416 F.3d at 142 (third-party releases are appropriate where the debtor's estate has received substantial contribution from the release parties); In re Adelphia Comm. Corp., 368 B.R. 140, 266 (Bankr. S.D.N.Y. 2007) (recognizing that Metromedia did not prohibit non-consensual nondebtor releases, but rather limited their uses to unique situations). The holders of Claims will benefit from consideration for such releases, giving rise to truly unique circumstances, consisting of: (a) the services and contributions of the Released Parties to the Debtor's business and reorganization and (b) the Distribution Percentage to holders of Allowed General Unsecured Claims, which holders would not be entitled to receive a Distribution equal to the Distribution Percentage absent the willingness of the Released Parties to (x) forego their Distribution on account of the $13 Million Obligation and the $18 Million Obligation, in favor of holders of Allowed General Unsecured Claims and (y) provide the funds sufficient to enable the Debtor to provide the Distribution Percentage required under the Plan. Furthermore, absent the third-party releases it is unlikely that the Debtor would be able to confirm a Plan, as the prepetition lender's and DIP lender's willingness to fund the Plan and provide for a Distribution to Unsecured Creditors is contingent upon the granting of such releases. Where, as here, releases by and among non-Debtor parties are either consensual or give

rise to truly unique circumstances, the Debtor believes such releases are appropriate and should be approved by the Bankruptcy Court. See, e.g., In re Adelphia Comm. Corp., 368 B.R. 140, 270 (Bankr. S.D.N.Y. 2007) (approving (i) non-consensual release of purchasers of substantially all of the Debtor's assets, which provided all funding for plan of reorganization, as "unique transactions" and (ii) consensual releases of third parties which only apply to claimholders voting in favor of the plan, both of which qualify for approval under Metromedia).

22. The importance of these contributions to the Debtor's reorganization is confirmed by the creditor body's reaction to the Plan. Not only is the Plan affirmatively supported by the Debtor's parent and the Creditors' Committee, but it has been accepted by an overwhelming majority of creditors who voted. Notably, no creditor has objected to the releases contained in the Plan.

23. In addition, the Nonconsensual Release is qualified by the phrase "to the fullest extent permissible under applicable law." See Plan, Section 9.3(b). Thus, any release granted under the Nonconsensual Release provision will only be enforced where such a release complies with the requirements of Metromedia and its progeny. See Rosenberg v. XO Comm., Inc. (In re XO Comm., Inc.), 330 B.R. 394, 441-42 (Bankr. S.D.N.Y. 2005) (applying "fullest extent permissible under applicable law" limitation post-confirmation in determining permissibility of non-consensual, non-debtor release under Metromedia). Thus, the circumstances in this Chapter 11 Case are consistent with the Metromedia decision and should be approved.

B. Section 1129(a)(2) — The Debtor Has Complied With Applicable Provisions of Title 11

24. In contrast to the focus of section 1129(a)(1) on whether the provisions of a chapter 11 plan of reorganization comply with the Bankruptcy Code, section 1129(a)(2) focuses on whether the proponent of such a plan has complied with the Bankruptcy Code. See 11 U.S.C.

§ 1129(a)(2). The legislative history of this provision indicates that its principal purpose is to ensure that the proponent complies with the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code. See S. Rep. No. 95-989, at 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5912 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); H.R. Rep. No. 95-595, at 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also WorldCom, 2003 WL 23861928, at *49 (stating that "[t]he legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code."); Johns-Manville, 68 B.R. at 630 ("Objections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the Bankruptcy Code"). The Debtor has complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and Plan solicitation.

1. Compliance with Section 1125 of the Bankruptcy Code

25. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b). In this case, after a hearing held on November 19, 2009, the Court approved the Debtor's First Amended Disclosure Statement With Respect to the Debtor's First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Disclosure Statement Approval Order", Docket No. 240). In the Disclosure Statement

Approval Order, the Court specifically found, among other things, that the Disclosure Statement contained "adequate information" within the meaning of section 1125 of the Bankruptcy Code.

26. In addition, the Court considered and, in the Disclosure Statement Approval Order, approved, among other things: (i) all materials to be transmitted to creditors entitled to vote on the Plan (collectively, the "Solicitation Materials"), including (a) the Plan and the Disclosure Statement (together with certain exhibits thereto), (b) a notice of the Confirmation Hearing (the "Confirmation Hearing Notice") and (c) an appropriate Ballot; (ii) certain materials to be transmitted to creditors not entitled to vote on the Plan (*i.e.*, a notice of non-voting status and Confirmation Hearing Notice); (iii) the procedures for the solicitation and tabulation of votes to accept or reject the Plan, including approval of (x) the deadline for creditors' submission of Ballots, (y) the rules for tabulating votes to accept or reject the Plan and (z) the proposed record date for Plan voting; and (iv) the proposed date for the Confirmation Hearing and certain related notice procedures. Thereafter, the Debtor (through the Debtor's claims and noticing agent, Epiq Bankruptcy Solutions, LLC ("Epiq")) transmitted the approved Solicitation Materials in accordance with the instructions of the Court in the Disclosure Statement Approval Order. See Affidavit of Solicitation Mailing by Epiq, sworn to on December 8, 2009 (the "Solicitation Affidavit", Docket No. 252). The Solicitation Affidavit demonstrates that the Debtor served the Solicitation Materials, including the Ballots, in accordance with the requirements of the Disclosure Statement Approval Order, and that those materials were accompanied by the Court-approved Disclosure Statement.

2. Compliance with Section 1126 of the Bankruptcy Code

27. Section 1126 of the Bankruptcy Code specifies the requirements for creditor acceptance of a chapter 11 plan of reorganization. Pursuant to section 1126 of the Bankruptcy

Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.

28. As set forth in the Disclosure Statement and the Voting Declaration, in accordance with section 1126 of the Bankruptcy Code, the Debtor solicited acceptances from the holders of all Allowed Claims in each Class of impaired Claims entitled to receive distributions under the Plan. Claims in Classes 3 and 4 are designated as impaired under the Plan, and holders of such Claims are entitled to receive distributions on account of such Claims under the Plan. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, holders of Claims in those Classes were entitled to vote to accept or reject the Plan.[9] Holders of Claims or Interests in Classes 1, 2 and 5 are designated under the Plan as unimpaired. Accordingly, pursuant to section 1126(f) of the Bankruptcy Code, holders of Claims and Interests in those Classes are conclusively presumed to have accepted the Plan.[10]

29. Based upon the foregoing, the Debtor's solicitation of votes with respect to the Plan was undertaken in conformity with sections 1125 and 1126 of the Bankruptcy Code and the Disclosure Statement Approval Order, and the Debtor acted in good faith at all times with respect to the solicitation of votes on the Plan. The Debtor, therefore, has complied with applicable provisions of the Bankruptcy Code and has satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

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[9] Section 1126(a) of the Bankruptcy Code provides that "[t]he holder of a claim or interest allowed under section 502 of this title may accept or reject a plan." 11 U.S.C. § 1126(a).

[10] Section 1126(f) of the Bankruptcy Code provides that "a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required." 11 U.S.C. § 1126(f).

C. Section 1129(a)(3) — The Plan Has Been Proposed in Good Faith

30. Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Second Circuit has indicated that a plan of reorganization is proposed in good faith when "the plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.'" Kane, 843 F.2d at 649 (citing Koelbl v. Glessing (In re Koelbl), 751 F.2d 137, 139 (2d Cir. 1984)); In re Granite Broadcasting Corp., 369 B.R. 120, 128 (Bankr. S.D.N.Y. 2007) (adopting the Kane standard and adding that "the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code") (citation omitted), aff'd, 385 B.R. 41 (S.D.N.Y. 2008); see also In re Leslie Fay Cos., 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) (stating that "a plan is proposed in good faith if there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the Code") (citation and internal quotation marks omitted). "Good faith should be evaluated 'in light of the totality of the circumstances surrounding confirmation.'" In re Oneida Ltd., 351 B.R. 79, 85 (Bankr. S.D.N.Y. 2006) (citing In re Cellular Info Sys., Inc., 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994)); In re Spiegel, Inc., No. 03-11540 (BRL), 2005 WL 1278094, at *6 (Bankr. S.D.N.Y. May 25, 2005) (stating that determination of "good faith" under section 1129(a)(3) of the Bankruptcy Code made after "examin[ing] the totality of the circumstances surrounding the filing of the Chapter 11 Cases and the formulation of the Plan").

31. Good faith for purposes of section 1129(a)(3) of the Bankruptcy Code also may be found where the plan is supported by key creditor constituencies, or was the result of extensive arms length negotiations with creditors. See Leslie Fay, 207 B.R. at 781 ("The fact

that the plan is proposed by the committee as well as the debtors is strong evidence that the plan is proposed in good faith"); In re Eagle-Picher Indus., Inc., 203 B.R. 256, 274 (Bankr. S.D. Ohio 1996) (finding that plan of reorganization was proposed in good faith when, among other things, it was based on extensive arms length negotiations among plan proponents and other parties in interest).

32. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by enabling the Reorganized Debtor to continue to operate as a viable business through means consistent with the objectives and purposes of the Bankruptcy Code. The Plan (i) culminates the "right-sizing" of the Debtor's retail footprint in providing for rejection of various non-residential real property leases and assumption of those leases not previously rejected during the Chapter 11 Case or rejected pursuant to the Plan; (ii) implements the business plan adopted by the Debtor during the Chapter 11 Case; and (iii) provides for the Debtor to obtain up to $26.3 million in Exit Financing.

33. Moreover, the Plan is the result of extensive good faith, arms length negotiations among the Debtor, the Debtor's prepetition lender, the DIP lender, and the Creditors' Committee. The Plan is overwhelmingly supported by the Debtor's general unsecured creditors that voted (*i.e.*, 97.96% in number and 99.61% in amount of Claims in Class 3) and by the holder of the Class Action Settlement Claim. The support for the Plan from each of the Debtor's prepetition lender, the DIP lender and the Creditors' Committee evidences the Debtor's honesty and good faith in proposing the Plan, and the totality of the circumstances surrounding its formulation clearly promotes the rehabilitative objectives and purposes of the Bankruptcy Code.

34. Furthermore, by providing for the successful reorganization of the Debtor, the Plan achieves the fundamental purpose of the chapter 11. The primary goal of chapter 11 is to

promote the restructuring of debt obligations of a debtor to enable the continued existence of a corporate entity that provides, among other things, jobs to its employees, a tax base to the communities in which it operates, goods and services to its customers and the other economic benefits to vendors, suppliers, landlords and other parties engaged in commerce with the debtor. See 7 Collier on Bankruptcy ¶ 1100.01 (Henry J. Sommer & Alan N. Resnick eds. 15th ed. rev. 2007). Congress thus has recognized that the continuation of businesses as viable entities benefits the national economy. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."); Drexel Burnham, 138 B.R. at 760 (same; quoting Bildisco). Accordingly, for the foregoing reasons, the Debtor has satisfied the requirements of section 1129(a)(3) of the Bankruptcy Code.

D. Section 1129(a)(4) — All Payments to Be Made By the Debtor in Connection With This Case Are Subject to the Approval of the Court

35. Section 1129(a)(4) of the Bankruptcy Code requires that all payments made by the debtor, the plan proponent or by a person issuing securities or acquiring property under a plan for services or for costs and expenses incurred in connection with the case or the plan, be approved by the Court as reasonable. 11 U.S.C. § 1129(a)(4). "Section 1129(a)(4) has been construed to require that all payments of professional fees that are made from estate assets be subject to review and approval as to their reasonableness by the Court." WorldCom, 2003 WL 23861928, at *54; see also Johns-Manville, 68 B.R. at 632.

36. Pursuant to this Court's Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals (Docket No. 108), entered on July 29, 2009, this Court has authorized and approved on an interim basis the payment of certain

fees and expenses of professionals retained in this Chapter 11 Case. All such fees and expenses, as well as all other accrued fees and expenses of professionals through the Effective Date, remain subject to final review for reasonableness by the Court. Section 2.1.1 of the Plan provides for the payment only of Allowed Administrative Claims, and pursuant to Section 2.2.2(a), professionals holding Professional Fee Claims are required to file their final fee applications with the Court no later than 45 days after the Effective Date. These applications remain subject to Court approval under the standards established by the Bankruptcy Code, including the requirements of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code, as applicable. In addition, Article X of the Plan provides that the Court will retain jurisdiction after the Effective Date to grant or deny any applications for allowance of compensation of reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date. Finally, the fees and expenses payable to Epiq for its services as the Debtor's claims and noticing agent are set by the parties' contract, which was previously approved by the Court. See Order Authorizing Retention and Appointment of Epiq Bankruptcy Solutions, LLC as Claims Agent for the Clerk of the Bankruptcy Court Under 28 U.S.C. § 156(c) and Granting Related Relief (Docket No. 37).

37. The foregoing procedures for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtor satisfy the objectives of section 1129(a)(4) of the Bankruptcy Code. See WorldCom, 2003 WL 23861928, at *54 (finding the "requirements of section 1129(a)(4) satisfied where plan provided for payment of only 'allowed' administrative expenses") (quoting In re Elsinore Shore Assocs., 91 B.R. 238, 268 (Bankr. D.N.J. 1988)). Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. Section 1129(a)(5) — The Plan Discloses All Required Information Regarding Post-confirmation Management and Insiders

38. Sections 1129(a)(5)(A)(i) and 1129(b) of the Bankruptcy Code provides that a chapter 11 plan of reorganization may be confirmed only if the proponent of such a plan discloses the identity and affiliations of the proposed officers and directors of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor, and the nature of any compensation proposed to be paid to such insider. In addition, under section 1129(a)(5)(A)(ii), the appointment or continuation in office of such officers and directors must be consistent with the interests of creditors, equity security holders and public policy. 11 U.S.C. § 1129(a)(5)(A)(i); see also Texaco, 84 B.R. at 908 (section 1129(a)(5) of the Bankruptcy Code is satisfied when the plan discloses the debtors' existing officers and directors who will continue to serve in office after plan confirmation); Toy & Sports Warehouse, 37 B.R. at 149-50 (continuation of existing, experienced management is consistent with section 1129(a)(5) of the Bankruptcy Code).

39. In compliance with section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the identities of the directors of the Reorganized Debtor.[11] In addition, Section 4.4 of the Plan provides that the initial officers of the Reorganized Debtor will consist of the officers of the Debtor immediately prior to the Effective Date.

40. The continuity of management provided by the appointment of the existing officers of the Debtor as the initial officers of the Reorganized Debtor further facilitates the successful implementation of the Debtor's reorganization, consistent with the interests of creditors and public policy. The current officers of the Debtor are intimately familiar with the

[11] The Debtor has disclosed the identity of the directors of the Reorganized Debtor on Exhibit C to the Plan, consisting of (i) Lee Oi Hian and (ii) Ling Wei Feng Sandra.

Debtor's business and necessary to the maintenance of critical relationships with the Debtor's lenders, vendors, and other parties.

41. Based upon the foregoing, the Debtor has satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval

42. Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). In this case, section 1129(a)(6) of the Bankruptcy Code is not applicable because the Debtor's business does not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after confirmation.

G. Section 1129(a)(7) — The Plan Is In the Best Interests of Creditors

43. Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests under a plan of reorganization, each holder of a claim or interest (i) has accepted the plan or (ii) will receive or retain property of a value, as of the effective date of the plan, not less than what such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on that date. See 11 U.S.C. § 1129(a)(7). Referred to as the "best interests of creditors" test, section 1129(a)(7) of the Bankruptcy Code focuses on individual dissenting creditors rather than classes of claims. See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship, 526 U.S. 434, 442 n.13 (1999) (stating that the "'best interests' test applies to individual creditors holding impaired

claims, even if the class as a whole votes to accept the plan"); ACC Bondholder Group v. Adelphia Comm. Corp. (In re Adelphia Comm. Corp.), 361 B.R. 337, 364 (S.D.N.Y. 2007) (same, quoting LaSalle). Under the best interests test, the court "must find that each [non-accepting] creditor will receive or retain value that is not less than the amount he would receive if the debtor were liquidated." LaSalle, 526 U.S. at 440; United States v. Reorganized CF&I Fabricators, Inc., 518 U.S. 213, 228 (1996); Adelphia, 361 B.R. at 364 (same); Drexel Burnham, 138 B.R. at 761 (same). In considering whether a plan is in the "best interests" of creditors, a court need not consider any alternative to the plan other than the dividend projected in a liquidation of all the debtor's assets under chapter 7 of the Bankruptcy Code. See, e.g., In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 297 (Bankr. S.D.N.Y. 1990).

44. Under the Plan, Classes 3 and 4 are impaired. Accordingly, the "best interests" test is applicable only to non-accepting Claim holders in those Classes. The test requires that each holder of an impaired claim or equity interest either (i) accept the plan or (ii) receive or retain under the plan property of a value, as of the effective date, that is not less than the value such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on the effective date.

45. Under a liquidation scenario, the value of the Debtor's assets would be reduced substantially by, among other things: (i) the increased costs and expenses arising from fees payable to a chapter 7 trustee and professional advisors to the trustee, including investment bankers; (ii) the erosion in value of assets in a chapter 7 case in the context of the rapid liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail; (iii) the adverse effects on the Debtor's business as a result of the likely departure of key employees; (iv) the reduction of value associated with a chapter 7 trustee's operation of the Debtor's business

(including, but not limited to, asset disposition expenses, applicable taxes, litigation costs and Claims arising from the operation of the Debtor during the pendency of the chapter 7 case); (v) the likely delay in distributions to holders of Claims and Interests in a liquidation scenario; (vi) certain priority Claims triggered by the liquidation itself, such as Claims for severance pay and accelerated Priority Tax Claims that otherwise would be paid in the ordinary course of business; (vii) a significant increase in unsecured Claims, such as rejection damage claims relating to approximately 91 retail leases; and (viii) the unique nature of the products produced by the Debtor, which, prior to manufacturing, are worth significantly less than they are post-production.

46. As set forth in the Disclosure Statement (including the Liquidation Analysis attached as Exhibit C thereto (the "Liquidation Analysis")) and as will be demonstrated at the Confirmation Hearing, the "best interests" test is satisfied in this Chapter 11 Case with respect to each non-accepting, impaired Claim. Claims in Class 3 (General Unsecured Claims) would receive no greater recovery in a chapter 7 liquidation of the Debtor's estate. Specifically, as set forth in the Liquidation Analysis, General Unsecured Claims would receive no more than a 17.6% recovery.[12]

47. Based on the foregoing analysis, no dissenting holder of a Claim or Interest in an impaired Class will receive less under the Plan than it would receive in a liquidation of the Debtor's assets. As a result, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

[12] Because the holder of the Class Action Settlement Claim voted to accept the Plan, the best interests test need not be satisfied with respect to the holder of this Claim.

H. Section 1129(a)(8) — The Plan Has Been Accepted By the Requisite Classes of Creditors and Interest Holders

48. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests under a plan has either accepted the plan or is not impaired under the plan. 11 U.S.C. § 1129(a)(8). All unimpaired Classes of Claims under the Plan (*i.e.*, Classes 1, 2 and 5) are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. As set forth in the Voting Declaration, Classes 3 and 4 have accepted the Plan. Accordingly, with respect to the Classes of these Claims, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied.

I. Section 1129(a)(9) — The Plan Provides for the Payment of Priority Claims

49. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments or payment in full on the effective date of a plan, except to the extent that the holder of such a priority claim agrees to different treatment. See 11 U.S.C. § 1129(a)(9). In particular,

- Section 1129(a)(9)(A) of the Bankruptcy Code requires that holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code (*i.e.*, administrative claims allowed under section 503(b) of the Bankruptcy Code) must receive cash equal to the allowed amount of such claims on the effective date of the plan;

- Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) and sections 507(a)(4) through (7) of the Bankruptcy Code — generally, in the context of corporate chapter 11 cases, wage, employee benefit and deposit claims entitled to priority — must receive (i) deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim if the class has accepted the plan; or (ii) cash equal to the allowed amount of such claim on the effective date of the plan if the class has not accepted the plan;

- Section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (*i.e.*, priority tax claims) must receive regular installment payments in cash
    - of a total value, as of the effective date of the plan, equal to the allowed amount of the claim;
    - over a period ending not later than 5 years after the date the order for relief was entered in the chapter 11 case; and
    - in a manner not less favorable than the most favored non-priority unsecured claim provided for by the plan (other than cash payments made to a convenience class under section 1122(b) of the Bankruptcy Code); and
- Section 1129(a)(9)(D) of the Bankruptcy Code provides that, with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code (but for the claim's secured status), the holder of such a claim will receive cash payments in the same manner and over the same period as prescribed in section 1129(a)(9)(C) of the Bankruptcy Code.

50. The Plan satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code. *First*, with respect to claims addressed by section 1129(a)(9)(A) of the Bankruptcy Code, the Plan provides that:

> Except as specified in Sections 2.1.2 through 2.1.3 of the Plan and subject to the bar date provisions contained in Section 2.2, unless otherwise agreed to by the holder of an Administrative Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Administrative Claim shall receive Cash in an amount equal to the Allowed Administrative Claim, in full satisfaction of its Allowed Administrative Claim, on account of such Allowed Claim from the Reorganized Debtor either (i) if the Administrative Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (ii) if the Administrative Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Administrative Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Administrative Claim.

See Plan, Section 2.1.1.

51. *Second*, with respect to Priority Non-Tax Claims addressed by section 1129(a)(9)(B) of the Bankruptcy Code, the Plan provides that each holder of an Allowed Priority Claim against the Debtor will receive Cash in an amount equal to the Allowed Priority Non-Tax Claim, in full satisfaction of its Allowed Priority Non-Tax Claim, unless the holder of such Claim agrees to less favorable treatment. See Plan, Section 3.2.2.

52. *Third*, with respect to Priority Tax Claims addressed by section 1129(a)(9)(C) of the Bankruptcy Code, the Plan provides that:

> unless otherwise agreed by the holder of a Priority Tax Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall receive (i) Cash in an amount equal to the Allowed Priority Tax Claim, in full satisfaction of its Allowed Priority Tax Claim either (A) if the Priority Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (B) if the Priority Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Priority Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Tax Claim; or (ii) if agreed by the Debtor or Reorganized Debtor and the holder of the Priority Tax Claim, payment over a period ending not later than five (5) years after the Petition Date with a total Cash value equal to the Allowed amount of the Priority Tax Claim.

See Plan, Section 2.3.1. Such treatment of Priority Tax Claims is as favorable as the treatment accorded to the most favored non-priority unsecured Claims under the Plan — *i.e.*, General Unsecured Claims and the Class Action Settlement Claim.

53. *Fourth*, all secured tax Claims falling within the ambit of section 1129(a)(9)(D) of the Bankruptcy Code are treated as Secured Claims under the Plan.[13] Such Claims will receive (i) Cash in an amount equal to the Allowed Secured Claim, or (ii) the return of the holder's collateral securing the Allowed Secured Claim, in full satisfaction of its Allowed

[13] The Debtor does not believe there are any such Claims.

Secured Claim, unless the holder of such Claim agrees to less favorable treatment. See Plan, Section 3.1.2.[14]

54. Accordingly, in light of the foregoing, the Plan satisfies the requirements set forth in section 1129(a)(9) of the Bankruptcy Code.

J. Section 1129(a)(10) — The Plan Has Been Accepted By at Least One Impaired, Non-Insider Class

55. Section 1129(a)(10) of the Bankruptcy Code requires that a chapter 11 plan of reorganization be accepted by at least one class of claims that is impaired under such plan, determined without including the acceptance of the plan by any insider. 11 U.S.C. § 1129(a)(10). As set forth in the Voting Declaration, the Debtor has satisfied this requirement because impaired Classes 3 and 4 have voted to accept the Plan, after excluding the votes of any insiders. See Voting Declaration.

K. Section 1129(a)(11) — The Plan Is Feasible

56. Under section 1129(a)(11) of the Bankruptcy Code, a chapter 11 plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). One commentator has stated that this section "requires courts to scrutinize carefully the plan to determine whether it offers a reasonable prospect of success and is workable." 7 Collier on Bankruptcy ¶ 1129.03[11] (Henry J. Sommer & Alan N. Resnick eds. 15th ed. rev. 2007); see also Leslie Fay, 207 B.R. at 788 (same); In re Woodmere Investors L.P., 178 B.R. 346, 361 (Bankr. S.D.N.Y. 1995) (same).

[14] Pursuant to section 1129(a)(9)(D), option (i) is the only valid treatment of secured tax claims.

57. Section 1129(a)(11) of the Bankruptcy Code, however, does not require a guarantee of the plan's success; rather, the proper standard is whether the plan offers a "reasonable prospect" of success. See, e.g., Kane, 843 F.2d at 649 ("As the Bankruptcy Court correctly stated, the feasibility standard is whether the plan offers a reasonable assurance of success . . . . [s]uccess need not be guaranteed."); In re Adelphia Bus. Solutions, Inc., 341 B.R. 415, 421 (Bankr. S.D.N.Y. 2003) (same, citing Kane); Leslie Fay, 207 B.R. at 789 (stating that to establish feasibility, it "is not necessary that success be guaranteed, but only that the plan present a workable scheme of organization and operation from which there may be a reasonable expectation of success."); Drexel Burnham, 138 B.R. at 762 (Bankr. S.D.N.Y. 1992) ("Feasibility does not, nor can it, require the certainty that a reorganized company will succeed."); Texaco, 84 B .R. at 910 (stating that to demonstrate feasibility "[a]ll that is required is that there be reasonable assurance of commercial viability").

58. Courts have identified a number of factors relevant to evaluating the feasibility of a proposed plan of reorganization, including (i) the adequacy of the capital structure; (ii) the earning power of the business; (iii) prevailing macroeconomic conditions; (iv) the ability of management; (v) the probability of the continuation of the same management; (vi) the availability of prospective credit, both capital and trade; (vii) the adequacy of funds for equipment replacements; (viii) the provisions for adequate working capital; and (ix) any other matter bearing on the successful operation of the business to enable performance with the provisions of the plan. See, e.g., Leslie Fay, 207 B.R. at 788; Texaco, 84 B.R. at 910. The foregoing list is neither exhaustive nor exclusive. See Drexel Burnham, 138 B.R. at 763.

59. As described below and in the Disclosure Statement, and as will be demonstrated at the Confirmation Hearing, the Debtor has analyzed its ability to meet its obligations under the

Plan and with respect to future operations. The consolidated financial projections attached as Exhibit D to the Disclosure Statement (collectively, the "Financial Projections") project the Reorganized Debtor's pre-tax results through fiscal year 2012 and balance sheet through calendar year 2010, demonstrating that the Reorganized Debtor will be a financially viable entity on a prospective basis and that the Plan is therefore feasible. See, e.g., In re M&S Assocs., Ltd., 138 B.R. 845, 852 (Bankr. W.D. Tex. 1992) (adopting "time period contemplated by the plan" as the relevant time horizon for feasibility determination); Johns-Manville Corp., 68 B.R. at 636 (same).

60. The Financial Projections indicate that the Reorganized Debtor will have and maintain sufficient liquidity and capital resources to meet its future financial obligations during the projection period. In particular, the Plan is feasible because, upon confirmation of the Plan, the Debtor will be provided with approximately $26 million in liquidity provided under the Exit Facility and approximately $5 million in estimated annual expense savings resulting from the restructuring initiatives implemented during the Chapter 11 Case.

61. In addition, the Reorganized Debtor's ability to implement the Plan will be enhanced by (i) the Reorganized Debtor's ability to focus on its right-sized retail footprint and (ii) the retention of the Debtor's current management team.

62. The Plan's feasibility is underscored by the support of the Creditors' Committee, the members of which have a large financial stake in the successful reorganization of the Debtor and the best familiarity with the Debtor's business.

63. In sum, the Financial Projections, along with the support of the Creditors' Committee, demonstrate that (i) the Plan provides a feasible means of completing a reorganization of the Debtor's business, (ii) there is reasonable assurance that confirmation of the

Plan is not likely to be followed by the liquidation, or need for further financial reorganization of the Reorganized Debtor, and (iii) the Reorganized Debtor will have sufficient assets to satisfy its known and reasonably projected liabilities, as will be demonstrated at the Confirmation Hearing. Accordingly, the Debtor submits that the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

L. Section 1129(a)(12) — The Plan Provides for the Payment of Fees

64. Section 1129(a)(12) of the Bankruptcy Code requires that, as a condition precedent to the confirmation of a plan of reorganization, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). The Plan complies with section 1129(a)(12) by providing that

> On or before the Effective Date, fees payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717, as determined at the Confirmation Hearing by the Bankruptcy Court, shall be paid in Cash in full by the Debtor or Reorganized Debtor. All fees arising after the Effective Date and payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717 shall be paid by the Reorganized Debtor in accordance therewith until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

See Plan, Section 11.2.

M. Section 1129(a)(13) — The Plan Provides for the Debtor's Obligations to Pay Retiree Benefits

65. Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all "retiree benefits" (as such term is defined by section 1114(a) of the Bankruptcy Code) at the level established by agreement or by court order pursuant to subsections (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code at any time prior to confirmation of the plan, for the duration of the period that the debtor has

obligated itself to provide such benefits. 11 U.S.C. § 1129(a)(13). The Plan complies with section 1129(a)(13) by providing for the assumption of any benefit plan subject to section 1114. See Plan, Section 5.7.1.

N. Section 1129(a)(16) — The Plan Does Not Provide for the Transfer of Property by Any Nonprofit Entities Not in Accordance with Applicable Nonbankruptcy Law

66. Section 1129(a)(16) of the Bankruptcy Code provides that applicable non-bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). The legislative history of section 1129(a)(16) of the Bankruptcy Code demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." See H.R. Rep. No. 109-31, 109th Cong. 1st Sess. 145 (2005). Although the Debtor, which is not a nonprofit entity, does not believe that any transfers of property under the Plan will be made by a nonprofit corporation or trust, to the extent that any such transfers are contemplated by the Plan, such transfers will be made in accordance with applicable non-bankruptcy law. Accordingly, the Plan satisfies the requirements of section 1129(a)(16) of the Bankruptcy Code.[15]

II. THE MODIFICATIONS TO THE PLAN ARE NOT MATERIAL AND ARE IN COMPLIANCE WITH SECTION 1127 OF THE BANKRUPTCY CODE

67. In interest of clarifying, and consensually resolving Objections (as defined below) to confirmation of the Plan, the Debtor has made certain non-material modifications to the First Amended Plan (the "Modifications"). These modifications, which are summarized on Exhibit B hereto, are reflected in the Plan and do not materially and adversely affect the way any Claim or

[15] The Debtor respectfully submits that the requirements of section 1129(a)(14) (requiring a debtor to pay domestic support obligations) and section 1129(a)(15) (providing certain protections to an unsecured creditor of an individual debtor with respect to distributions under a plan) are not applicable in this Chapter 11 Case because the Debtor is not an individual debtor.

Interest holder is treated under the version of the Plan circulated to voting creditors with the Disclosure Statement.

68. Section 1127 of the Bankruptcy Code provides:

> The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of the title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan . . .
>
> Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

11 U.S.C. §§ 1127(a), (d).

69. Bankruptcy Rule 3019, designed to implement section 1127(d) of the Bankruptcy Code, in turn, provides in relevant part that:

> In a . . . chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019.

70. Because all creditors in this Chapter 11 Case have notice of the Confirmation Hearing, and will have an opportunity to object to any proposed Modifications at that time, the requirements of section 1127(d) of the Bankruptcy Code have been met. Citicorp Acceptance Co., Inc. v. Ruti-Sweetwater (In re Sweetwater), 57 B.R. 354, 358 (D. Utah 1985) (creditors who

had knowledge of pending confirmation hearing had sufficient opportunity to raise objections to modification of the plan).

71. Section 1127 of the Bankruptcy Code gives a plan proponent the right to modify the plan "at any time" before confirmation. This right would be meaningless if the promulgation of all plan modifications, ministerial or substantive, adverse to certain claimants or not, necessitated the re-solicitation of votes. Accordingly, in keeping with traditional bankruptcy practice, courts have typically allowed a plan proponent to make non-material changes to a plan without any special procedures or vote resolicitation. See, e.g., Am. Solar King Corp., 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988) (stating that "if a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well.") (citation omitted); see also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006) ("[T]he bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated."); In re Mt. Vernon Plaza Cmty. Urban Redevelopment Corp. I, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987) (all creditors were deemed to have accepted plan as modified because "[n]one of the changes negatively affects the repayment of creditors, the length of the [p]lan, or the protected property interests of parties in interest.").

72. Accordingly, because (i) the proposed Modifications (and those that may be made prior to or at the Confirmation Hearing), are (A) non-material and (B) do not materially and adversely affect the treatment of any creditor that has previously accepted the Plan and (ii) the Plan, as modified, continues to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code, resolicitation is not required.

CONSOLIDATED REPLY TO OBJECTIONS

73. Where possible, the Debtor has endeavored to consensually resolve the Objections. As a result of these efforts, no contested Objections remain. Attached hereto as Exhibit C and incorporated herein by reference is a summary of each Objection (the "Objection Response Summary"), the Debtor's responses thereto, and a status update identifying each Objection as being "Resolved," meaning that the objecting party has agreed that its objections are resolved either by modification of the Plan or the Confirmation Order.

CONCLUSION

74. For all of the foregoing reasons, the Debtor submits that (i) the Plan fully satisfies all applicable requirements of the Bankruptcy Code and should be approved and confirmed by the Court, and (ii) the Objections should be overruled.

Dated: January 12, 2010
New York, New York

Respectfully submitted,

By: /s/ Lawrence C. Gottlieb
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EXHIBIT A
CONFIRMATION COMPLIANCE SUMMARY

CONFIRMATION COMPLIANCE SUMMARY

This chart summarizes the requirements for confirmation of the First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code filed on November 17, 2009 (as it may be modified or amended, the "Plan") under section 1129 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and is provided in support of the Plan and the Memorandum of Law of the Debtor in Support of Confirmation of First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code and Consolidated Reply to Certain Objections to Confirmation (the "Confirmation Memorandum") filed with the Bankruptcy Court on January 12, 2010. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan and the Confirmation Memorandum, as applicable.

STATUTORY SECTION	**STATUTORY REQUIREMENT**	**PLAN COMPLIANCE**
11 U.S.C. § 1129(a)(1)	Section 1129(a)(1) — The Plan Must Comply with the Applicable Provisions of Title 11. The substantive provisions that are most relevant in the context of section 1129(a)(1) are sections 1122 (classification requirements) and 1123 (mandatory plan contents) and section 524 (effects of discharge), of the Bankruptcy Code.	
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1122)***	A. Section 1122 of the Bankruptcy Code establishes the requirements for the classification of claims and interests in a plan of reorganization. 1. Section 1122 of the Bankruptcy Code provides that, except in the case of unsecured claims separately classified for administrative convenience, "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class."	A. The Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code. 1. Article III of the Plan classifies Claims and Interests into 5 separate Classes reflecting the differing characteristics of those Claims and Interests and the distinct legal rights of the holders of those Claims and Interests. Moreover, each class of Claims or Interests includes only substantially similar Claims or Interests. a. Specifically, the Plan classifies the following Claims and Interests: i. Secured Claims (Class 1); ii. Priority Non-Tax Claims (Class 2); iii. General Unsecured Claims (Class 3); iv. Class Action Settlement Claim (Class 4); and v. Interests (Class 5); b. Valid business, factual and legal reasons exist for the separate classification of Claims and Interests. i. At a threshold level, the Plan separates Claims from Interests, priority Claims from General Unsecured Claims, and Secured Claims from both priority and General Unsecured Claims. ii. In addition, the Plan separates General Unsecured Claims from the Class Action Settlement Claim, which Claim arises under different circumstances (namely, potential litigation) than the General Unsecured Claims.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a))***	A. Section 1123(a) of the Bankruptcy Code specifies seven requisites for the contents of a plan of reorganization.	A. The Plan contains each of the mandatory plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123 (a)(1))***	1. Section 1123(a)(1) of the Bankruptcy Code requires that a plan of reorganization designate: (a) classes of claims, other than priority claims under section 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code; and (b) classes of interests.	1. Article III of the Plan designates 5 classes of Claims and Interests.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(2))***	2. Section 1123(a)(2) of the Bankruptcy Code requires that a plan specify classes of claims and interests that are unimpaired under the plan.	2. Sections 3.1.1, 3.2.1 and 3.5.1 of the Plan specify that Claims in Classes 1 and 2 and Interests in Class 5 are unimpaired.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(3))***	3. Section 1123(a)(3) of the Bankruptcy Code requires that a plan specify the treatment of any class of claims or interests that is impaired under the plan.	3. Sections 3.3.1 through 3.4.2 of the Plan specify that Claims in Classes 3 and 4 are impaired and describe the treatment of each such Class.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(4))***	4. Section 1123(a)(4) of the Bankruptcy Code requires that a plan provide the same treatment for each claim or interest of a particular class unless the holder consents to less favorable treatment of such claim or interest.	4. Article III of the Plan provides for the equality of treatment within each Class of Claims or Interests, unless the holder of a Claim or Interest agrees to less favorable treatment of its Claim or Interest.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(5))***	5. Section 1123(a)(5) of the Bankruptcy Code requires that a plan provide adequate means for its implementation and lists several examples of the means by which plan implementation may be accomplished.	5. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Article IV ("Means for Implementation of the Plan") of the Plan (as well as various other provisions thereof) provide adequate means for the Plan's implementation. Those provisions relate to, among other things: a. vesting of assets in the Reorganized Debtor; b. consummation of the Restructuring Transactions; c. the appointment of officers and directors of the Reorganized Debtor; d. authority of the Reorganized Debtor to maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification or other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement; and e. obtaining Cash for Distributions and other payments to be made pursuant to the Plan.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(6))***	6. Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in the debtor's charter of a provision prohibiting the issuance of nonvoting equity securities and providing, as to the several classes of securities possessing voting power, an appropriate distribution of voting power among such classes.	6. Pursuant to Section 4.3 of the Plan, the form of certificate of incorporation of the Reorganized Debtor includes provisions prohibiting the issuance of nonvoting equity securities.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(7))***	7. Section 1123(a)(7) of the Bankruptcy Code requires that a plan contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director or trustee under the plan or any successor thereto.	7. Exhibit C to the Plan lists the initial board of directors the Reorganized Debtor. Section 4.4 provides that the initial officers of the Reorganized Debtor will consist of the officers of the Debtor immediately prior to the Effective Date.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b))***	B. Section 1123(b) of the Bankruptcy Code contains various provisions that may be, but are not required to be, included in a plan of reorganization.	B. The Plan contains many discretionary plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(1))***	1. Section 1123(b)(1) of the Bankruptcy Code allows a plan to impair or leave unimpaired any class of claims (secured or unsecured) or interests.	1. Article III of the Plan provides for the impairment or unimpairment of Classes of Claims or Interests.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(2))***	2. Section 1123(b)(2) of the Bankruptcy Code allows a plan, subject to section 365 of the Bankruptcy Code, to provide for the assumption, rejection or assignment of any executory contract or unexpired lease not previously rejected.	2. Article V of the Plan provides for the assumption, assignment, and assignment, or rejection of certain Executory Contracts and Unexpired Leases under section 365 of the Bankruptcy Code.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(3))***	3. Section 1123(b)(3) of the Bankruptcy Code allows a plan to provide for the settlement or adjustment of any claim or interest belonging to a debtor or provide for the retention and enforcement of any claim or interest.	3. Section 4.9 of the Plan provides for the retention and enforcement of certain causes of action not released under the Plan.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(4))***	4. Section 1123(b)(4) of the Bankruptcy Code allows a plan to provide for the sale of all or substantially all of the property of a debtor's estate.	4. Not applicable.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(5))***	5. Section 1123(b)(5) of the Bankruptcy Code allows a plan to modify the rights of holders of claims, with the exception of claims secured only by a security interest in real property that is the debtor's principal residence, or leave unaffected the rights of holders of any class of claims.	5. Article III of the Plan modifies the rights of holders of Claims in impaired Classes and leaves unaffected the rights of holders of other Claims in unimpaired Classes.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(6))***	6. Section 1123(b)(6) of the Bankruptcy Code allows a plan to include any other appropriate provisions not inconsistent with the provisions of title 11.	6. The Plan includes numerous other provisions designed to ensure its implementation that are consistent with the Bankruptcy Code, including: a. entry of the Debtor into the Exit Facility (Plan, Exhibit E) b. governing distributions on account of Allowed Claims (Plan, Article VI) c. establishing procedures for resolving Disputed Claims, and, with respect to Disputed General Unsecured Claims, making distributions on account of such claims from the General Unsecured Claims Reserve (Plan, Article VII) d. establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims from the Disputed Unsecured Claims Reserve once resolved (Plan, Article VII); e. regarding the discharge, release and injunction against the pursuit of certain Claims and termination of Interests (Plan, Article IV.E); and f. regarding the retention of jurisdiction by the Court over certain matters after the Effective Date (Plan, Article IX).
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 524)***	A. Section 524 of the Bankruptcy Code sets forth the effects of a discharge under the Bankruptcy Code.	A. The non-Debtor releases contained in the Plan are consistent with applicable Second Circuit law. See Confirmation Memorandum.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(2)	Section 1129(a)(2) — The Plan Proponent Must Comply with the Applicable Provisions of Title 11.	
11 U.S.C. § 1129(a)(2) ***(11 U.S.C. § 1125)***	A. The primary purpose of section 1129(a)(2) of the Bankruptcy Code is to ensure that the proponent has adhered to the disclosure requirements of sections 1125 and 1126 of the Bankruptcy Code. As a result, the plan proponent's compliance with sections 1125 and 1126 of the Bankruptcy Code forms the basis of the inquiry under section 1129(a)(2) of the Bankruptcy Code. 1. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan from holders of claims or interests unless, at the time of such solicitation, there is or transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved by the court as containing adequate information. 2. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.	A. The requirements of section 1129(a)(2) have been satisfied. 1. The Debtor has adhered to the disclosure requirements of section 1125 of the Bankruptcy Code. a. On November 19, 2009, the Court entered the Disclosure Statement Approval Order approving the Disclosure Statement as containing "adequate information" within the meaning of section 1125 of the Bankruptcy Code. In addition, the Court approved the Solicitation Materials to be transmitted to creditors, including ballots for voting on the Plan to creditors entitled to vote on the Plan. 2. The Debtor has adhered to the solicitation requirements of section 1126 of the Bankruptcy Code. a. The Debtor solicited acceptances from the holders of all Allowed Claims in each Class of impaired Claims entitled to receive distributions under the Plan. Claims in Classes 3 and 4 are designated as impaired under the Plan and holders of such Claims are entitled to receive distributions on account of such Claims under the Plan. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, holders of Claims in those Classes were entitled to vote to accept or reject the Plan. b. Holders of Claims or Interests in Classes 1, 2 and 5 are designated under the Plan as unimpaired. Accordingly, pursuant to section 1126(f) of the Bankruptcy Code, holders of Claims and Interests in those Classes are conclusively presumed to have accepted the Plan.
11 U.S.C. § 1129(a)(3)	Section 1129(a)(3) — The Plan Must Be Proposed in Good Faith and Not by Any Means Forbidden by Law.	
11 U.S.C. § 1129(a)(3)	A. Under the good faith standard, good faith is present if the plan has been proposed with the reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code. Accordingly, a plan proponent simply must demonstrate that the plan is reasonably likely to succeed and that a reorganization is possible, consistent with the goals of chapter 11.	A. The Plan has been proposed by the Debtor in good faith and in the belief that a successful reorganization can be accomplished. The Plan is the result of extensive good faith negotiations with the Debtor's prepetition lender, DIP lender, and the Creditors' Committee over the course of this Chapter 11 Case, and has been overwhelmingly accepted by the Debtor's general unsecured creditors. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by enabling the Reorganized Debtor to continue to operate as a viable business through means consistent with the objectives and purposes of the Bankruptcy Code. The Plan (i) culminates the "right-sizing" of the Debtor's retail footprint in providing for rejections of various non-residential real property leases and assumption of those leases not previously rejected during the Chapter 11 Case or rejected pursuant to the Plan; (ii) implements the business plan adopted by the Debtor during the Chapter 11 Case; and (iii) provides for the Debtor to obtain up to $26.3 million in Exit Financing.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(4)	Section 1129(a)(4) — All Payments to Be Made by the Debtor in Connection with Its Chapter 11 Case Must Be Subject to Court Approval.	
11 U.S.C. § 1129(a)(4)	A. Section 1129(a)(4) of the Bankruptcy Code requires that any payment made by a plan proponent, debtor or person issuing securities or acquiring property under a plan in connection with the plan or the bankruptcy case must have been disclosed and approved by the court, or be subject to the approval of the court, as reasonable.	A. All fees to which parties may be entitled in connection with the Chapter 11 Case are subject to the approval of the Bankruptcy Court. 1. Pursuant to this Court's Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals (Docket No. 108), entered on July 29, 2009, the Court has authorized and approved on an interim basis the payment of certain fees and expenses of professionals retained in this Chapter 11 Case. All such fees and expenses, as well as all other accrued fees and expenses of professionals through the Effective Date, remain subject to final review for reasonableness by the Court. 2. Section 2.1.1 of the Plan provides for the payment of Allowed Administrative Claims, and pursuant to Section 2.2.2(a), professionals holding Professional Fee Claims are required to file their final fee applications with the Court no later than 45 days after the Effective Date. These applications remain subject to Court approval under the standards established by the Bankruptcy Code, including the requirements of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code, as applicable. 3. Article X of the Plan provides that the Court will retain jurisdiction after the Effective Date to grant or deny any applications for allowance of compensation of reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date. Finally, the fees and expenses payable to Epiq for its services as the Debtor's claims and noticing agent are set by the parties' contract, which previously was approved by the Court. See Order Authorizing Retention and Appointment of Epiq Bankruptcy Solutions, LLC as Claims Agent for the Clerk of the Bankruptcy Court Under 28 U.S.C. § 156(c) and Granting Related Relief (Docket No. 37).
11 U.S.C. § 1129(a)(5)	Section 1129(a)(5) — The Plan Must Disclose Information Regarding Postconfirmation Management of the Debtor.	

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(5)	A. Section 1129(a)(5) of the Bankruptcy Code imposes the following two requirements: 1. Section 1129(a)(5) of the Bankruptcy Code requires that a plan may be confirmed only if the proponent discloses the identity of those individuals who will serve as management of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the compensation to be paid to such insider. 2. Section 1129(a)(5) of the Bankruptcy Code requires that the appointment or continuation in office of existing management must be consistent with the interests of creditors, equity security holders and public policy.	A. The Debtor has fully satisfied the requirements imposed by section 1129(a)(5) of the Bankruptcy Code. 1. The Debtor has satisfied the disclosure requirements of section 1129(a)(5) of the Bankruptcy Code. a. The Debtor has disclosed the identities of the officers and directors of the Reorganized Debtor. See Plan, Section 4.4 and Exhibit C. The officers and directors of the Reorganized Debtor are qualified and experienced. b. The appointment of the directors and officers of the Reorganized Debtor under the Plan is consistent with the interests of creditors, equity security holders, and public policy, since they are in the best position to operate the Debtor's business.
11 U.S.C. § 1129(a)(6)	Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval.	
11 U.S.C. § 1129(a)(6)	A. Section 1129(a)(6) of the Bankruptcy Code requires that, after confirmation of a plan, any governmental regulatory commission with jurisdiction over the rates of the debtor has approved any rate change provided for in the plan, or that such rate change is expressly conditioned on such approval. Section 1129(a)(6) is applicable only to debtors subject to governmental regulatory authority.	A. This section is not applicable because the Debtor's business does not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after confirmation.
11 U.S.C. § 1129(a)(7)	Section 1129(a)(7) — The Plan Must Be in the Best Interests of Creditors.	
11 U.S.C. § 1129(a)(7)	A. Section 1129(a)(7) of the Bankruptcy Code codifies the so-called "best interests of creditors" test. The best interests of creditors test requires that, with respect to each impaired class of claims or interests, except for claims where the section 1111(b) election applies, each holder of a claim or interest either has accepted the plan or will receive or retain property of a value, as of the effective date of the plan, that is not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.	A. The Plan satisfies the best interests of creditors test because all nonaccepting holders of impaired Claims have either accepted the Plan or receive or retain under the Plan property having a present value, as of the Effective Date, not less than the amount that such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. 1. By its express terms, the best interests test is applicable only to nonaccepting holders of impaired Claims. Under Article III of the Plan, Classes 3 and 4 are impaired, and each of these Classes has voted to accept the Plan. To the extent that a holder in one of the accepting Classes has not voted to accept the Plan, the Liquidation Analysis shows that the recoveries available to creditors under the Plan are far in excess of a hypothetical distribution under a chapter 7 liquidation. See Exhibit C to the Disclosure Statement.
11 U.S.C. § 1129(a)(8)	Section 1129(a)(8) — The Plan Must Be Accepted by the Requisite Classes of Claims and Interests.	

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(8)	A. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either vote to accept the plan or be unimpaired under the plan. B. Section 1129(a)(8) of the Bankruptcy Code is the only confirmation requirement that is not mandatory. If section 1129(a)(8) of the Bankruptcy Code is not satisfied with respect to certain classes of claims or interests, a plan nevertheless may be confirmed under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code.	A. All of the Classes have (i) voted to accept the Plan, or (ii) are unimpaired under the Plan. 1. Classes 1, 2 and 5 are unimpaired under the Plan and are deemed to have accepted the Plan. See Plan, Article III. 2. Classes 3 and 4 have accepted the Plan by the requisite majorities as follows: a. Class 3 – 97.96% in number; 99.61% in amount. b. Class 4 – 100% in number; 100% in amount. See Voting Declaration.
11 U.S.C. § 1129(a)(9)	Section 1129(a)(9) — The Plan Must Provide for the Payment of Priority Claims.	
11 U.S.C. § 1129(a)(9)	A. Section 1129(a)(9) of the Bankruptcy Code provides for mandatory treatment of certain priority claims under a plan of reorganization. 1. Section 1129(a)(9)(A) of the Bankruptcy Code requires that holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code (*i.e.*, administrative claims allowed under section 503(b) of the Bankruptcy Code) must receive cash equal to the allowed amount of such claims on the effective date of the plan. 2. Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in sections 507(a)(1) and sections 507(a)(4) through (7) of the Bankruptcy Code — generally, in the context of corporate chapter 11 cases, wage, employee benefit and deposit claims entitled to priority — must receive (a) if the class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) if the class has not accepted the plan, cash equal to the allowed amount of such claim on the effective date of the plan. 3. Section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (*i.e.*, priority tax claims) must receive regular installment payments in cash:	A. The Plan meets these requirements regarding the payment of Administrative Claims, Priority Tax Claims and Priority Non-Tax Claims. 1. The Plan provides with respect to Claims addressed by section 1129(a)(9)(A) of the Bankruptcy Code that: a. Except as specified in Sections 2.1.2 through 2.1.3 of the Plan and subject to the bar date provisions contained in Section 2.2, unless otherwise agreed to by the holder of an Administrative Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Administrative Claim shall receive Cash in an amount equal to the Allowed Administrative Claim, in full satisfaction of its Allowed Administrative Claim, on account of such Allowed Claim from the Reorganized Debtor either (i) if the Administrative Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (ii) if the Administrative Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 of the Plan after an order allowing such Administrative Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Administrative Claim. See Plan, Section 2.1.1. 2. With respect to Priority Non-Tax Claims addressed by section 1129(a)(9)(B) of the Bankruptcy Code, the Plan provides that each holder of an Allowed Priority Non-Tax Claim against the Debtor will receive Cash in an amount equal to the Allowed Priority Non-Tax Claim, in full satisfaction of its Allowed Priority Non-Tax Claim, unless the holder of such Claim agrees to less favorable treatment. See Plan, Section 3.2.2. 3. With respect to Priority Tax Claims addressed by section 1129(a)(9)(C) of the

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	a. of a total value, as of the effective date of the plan, equal to the allowed amount of the claim; b. over a period ending not later than 5 years after the date the order for relief was entered in the chapter 11 case; and c. in a manner not less favorable than the most favored non-priority unsecured claim provided for by the plan (other than cash payments made to a convenience class under section 1122(b) of the Bankruptcy Code). 4. Section 1129(a)(9)(D) of the Bankruptcy Code provides that, with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code (but for the claim's secured status), the holder of such a claim will receive cash payments in the same manner and over the same period as prescribed in section 1129(a)(9)(C) of the Bankruptcy Code.	Bankruptcy Code, the Plan provides that: unless otherwise agreed by the holder of a Priority Tax Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall receive (i) Cash in an amount equal to the Allowed Priority Tax Claim, in full satisfaction of its Allowed Priority Tax Claim either (A) if the Priority Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (B) if the Priority Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Priority Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Tax Claim; or (ii) if agreed by the Debtor or Reorganized Debtor and the holder of the Priority Tax Claim, payment over a period ending not later than five (5) years after the Petition Date with a total Cash value equal to the Allowed amount of the Priority Tax Claim. 4. All secured tax Claims falling within the ambit of section 1129(a)(9)(D) of the Bankruptcy Code are treated as Secured Claims under the Plan. Such Claims will receive Cash in an amount equal to the Allowed Secured Claim. See Plan, Section 3.1.2.
11 U.S.C. § 1129(a)(10)	Section 1129(a)(10) — The Plan Must Be Accepted by at Least One Impaired Class of Claims.	
11 U.S.C. § 1129(a)(10)	A.Section 1129(a)(10) of the Bankruptcy Code provides that if a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must accept the plan, determined without including any acceptance of the plan by any insider.	A. As set forth in the Voting Declaration, the Debtor has satisfied this requirement because impaired Classes 3 and 4 have accepted the Plan after excluding the votes of any insiders. See Voting Declaration.
11 U.S.C. § 1129(a)(11)	Section 1129(a)(11) — The Plan Must Be Feasible.	
11 U.S.C. § 1129(a)(11)	A. Section 1129(a)(11) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Simply put, the feasibility test requires the court to determine whether the plan offers the debtor a reasonable assurance of success. Section 1129(a)(11) of the Bankruptcy Code does not, however, require a guarantee of success.	A. The Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code. 1. The financial projections attached as Exhibit D to the Disclosure Statement (the "Financial Projections") project the Reorganized Debtor's pre-tax results through fiscal year 2012 and balance sheet through calendar year 2010, demonstrating that the Reorganized Debtor will be a financially viable entity on a prospective basis and that the Plan is therefore feasible. a. The Financial Projections indicate that, after giving effect to Confirmation and consummating the Restructuring Transactions contemplated by the Plan (and subject to the limitations and assumptions described in the Projections and

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
		elsewhere in the Disclosure Statement), the Reorganized Debtor will have and maintain sufficient liquidity and capital resources to meet its future financial obligations during the projection period. In particular, the Plan is feasible because, upon confirmation of the Plan, the Debtor will be provided with approximately $26 million in liquidity provided under the Exit Facility, and approximately $5 million in estimated annual expense savings resulting from the restructuring initiatives implemented during the Chapter 11 Case. 2. The Plan's feasibility is underscored by the support of the Creditors' Committee, the members of which have a large financial stake in the successful reorganization of the Debtor and the best familiarity with the Debtor's business.
11 U.S.C. § 1129(a)(12)	Section 1129(a)(12) — The Plan Must Provide for the Payment of Fees to the United States Trustee.	
11 U.S.C. § 1129(a)(12)	A. Section 1129(a)(12) of the Bankruptcy Code requires a plan to provide that all fees payable under 28 U.S.C. § 1930 to the United States trustee, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the Plan.	A. The Plan complies with section 1129(a)(12) of the Bankruptcy Code by providing that: 1. On or before the Effective Date, fees payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717, as determined at the Confirmation Hearing by the Bankruptcy Court, shall be paid in Cash in full by the Debtor or Reorganized Debtor. All fees arising after the Effective Date and payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717 shall be paid by the Reorganized Debtor in accordance therewith until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code. See Plan, Section 11.2
11 U.S.C. § 1129(a)(13)	Section 1129(a)(13) — The Plan Must Provide for the Payment of Retiree Benefits.	
11 U.S.C. § 1129(a)(13)	A. Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all "retiree benefits" (as such term is defined by section 1114(a) of the Bankruptcy Code) at the level established by agreement or by court order pursuant to subsections (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code at any time prior to confirmation of the plan, for the duration of the period that the debtor has obligated itself to provide such benefits.	A. The Plan complies with section 1129(a)(13) by providing for the assumption of any benefit plan subject to section 1114. See Plan, Section 5.7.1.
11 U.S.C. § 1129(a)(14)	Section 1129(a)(14) — The Plan Does Not Provide for the Payment of Any Domestic Support Obligations.	
11 U.S.C. § 1129(a)(14)	A. Section 1129(a)(14) of the Bankruptcy Code provides that, if a chapter 11 debtor is subject to a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor must pay all amounts related to any such obligation	A. Section 1129(a)(14) of the Bankruptcy Code is not applicable to this Chapter 11 Case because the Debtor is not required to pay any domestic support obligations pursuant to order or statute.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	accruing postpetition under such order or statute.	
11 U.S.C. § 1129(a)(15)	Section 1129(a)(15) — The Plan Does Not Provide for the Payment of Five Years' Worth of Disposable Income to Unsecured Creditors	
11 U.S.C. § 1129(a)(15)	A. Section 1129(a)(15) of the Bankruptcy Code requires, in chapter 11 cases involving *individual* debtors, either that the individual chapter 11 debtor pay all unsecured claims in full or that the debtor's plan devote an amount equal to five years' worth of the debtor's disposable income to unsecured creditors.	A. Section 1129(a)(15) of the Bankruptcy Code is not applicable because the Debtor is not an individual debtor.
11 U.S.C. § 1129(a)(16)	Section 1129(a)(16) — The Plan Does Not Provide for the Transfer of Property by any Nonprofit Entities Not in Accordance with Applicable Nonbankruptcy Law.	
11 U.S.C. § 1129(a)(16)	A. Section 1129(a)(16) of the Bankruptcy Code provides that applicable non bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). The legislative history of section 1129(a)(16) of the Bankruptcy Code demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." See H.R. Rep. No. 109-31, 109th Cong. 1st Sess. 145 (2005).	A. Although the Debtor, which is not a nonprofit entity, does not believe that any transfers of property under the Plan will be made by a nonprofit corporation or trust, to the extent that any such transfers are contemplated by the Plan, such transfers will be made in accordance with applicable non-bankruptcy law.
11 U.S.C. § 1129(b)	Section 1129(b) — If a Class of Claims or Interests Rejects or Is Deemed to Reject the Plan, the Plan Must Satisfy the Cramdown Requirements of Section 1129(b).	
11 U.S.C. § 1129(b)	A. Section 1129(b) provides that a bankruptcy court is required to confirm a plan over the dissent of one or more classes of impaired claim or interest holders if the plan: 1. meets all requirements for confirmation set forth in section 1129(a) except the requirement of section 1129(a)(8) that all impaired classes accept the plan; 2. does not discriminate unfairly; and 3. is otherwise fair and equitable with respect to each impaired class of claims or interests that has not accepted the plan. B. The unfair discrimination standard prevents creditors and interest holders with similar legal rights from receiving materially different treatment under a proposed plan. Conversely, where classes of claims or interests with dissimilar legal rights have	A. Section 1129(b) does not apply because a Class of Claims or Interests has not rejected the Plan and is not deemed to have rejected the Plan.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	been separately and properly classified under section 1122 of the Bankruptcy Code, the unfair discrimination standard is not applicable, and the plan may treat such classes differently. C. The Plan is otherwise fair and equitable with respect to the rejecting classes. 1. Pursuant to section 1129(b)(2)(C), in order for a plan to be fair and equitable with respect to a dissenting class of impaired equity interests, the plan must provide either provide: (a) that each interest holder in the class will receive or retain property of a value equal to the greatest of any fixed liquidation preference, any fixed redemption price or the value of the holder's interest; or (b) that no holder of an interest that is junior to the interests of that class will receive or retain any property under the plan on account of such junior interest. In addition, a plan that provides for more than full payment to a class will not be fair and equitable with respect to a dissenting impaired junior class.	
11 U.S.C. § 1127	Section 1127 — The Modifications to the Plan May Not Materially and Adversely Affect Any Creditor That Voted to Accept the Plan.	
11 U.S.C. § 1127	A. Section 1127 of the Bankruptcy Code provides: (a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of the title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan .... (d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection. B. Bankruptcy Rule 3019, designed to implement section 1127(d) of the Bankruptcy Code, in turn, provides in relevant part that: In a . . . chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not	A. The Modifications to do not materially and adversely affect the way any Claim or Interest holder is treated under the version of the Plan circulated to voting creditors with the Disclosure Statement. B. Because all creditors in this Chapter 11 Case have notice of the Confirmation Hearing, and will have an opportunity to object to any proposed Modifications at that time, the requirements of section 1127(d) of the Bankruptcy Code have been met. C. Because the Modifications (and those that may be made prior to or at the Confirmation Hearing), are non-material and do not materially and adversely affect the treatment of any creditor that has previously accepted the Plan and the Plan, as modified, continues to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code, resolicitation is not required.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan. Fed. R. Bankr. P. 3019.	

EXHIBIT B
PLAN MODIFICATIONS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

FIRST AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, AS MODIFIED ON JANUARY 12, 2010

COOLEY GODWARD KRONISH LLP
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Attorneys for Debtor and
Debtor in Possession

Dated: ~~November 17, 2009~~ January 12, 2010
New York, New York

1.1.20. "Claims Objection Deadline" means, for all Claims and Interests, the later of (a) ninety (90) days after the Effective Date, (b) such other period as set forth in a Final Order by the Bankruptcy Court for objecting to such Claim or Interest, (c) sixty (60) days after a proof of Claim or request for payment of a Claim is filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules, or (d) such other later date the Bankruptcy Court may establish upon a motion of the Reorganized Debtor upon a showing of cause.

1.1.21. "Class" means a class of Claims or Interests.

1.1.22. "Class Action Settlement Amount" means two hundred and seventy thousand dollars ($270,000.00).

1.1.23. "Class Action Settlement Claim" means the Claim covered by proof of claim number 370 filed on behalf of a purported class of current and former employees of the Debtor.

1.1.24. "Confirmation Date" means the first date as of which the Confirmation Order is signed by the Bankruptcy Court and entered on its docket.

1.1.25. "Confirmation Hearing" means, collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Plan, as such hearing or hearings may be continued from time to time.

1.1.26. "Confirmation Order" means the order of the Bankruptcy Court that confirms the Plan pursuant to section 1129 of the Bankruptcy Code.

1.1.27. "Creditors' Committee" means the Official Committee of Unsecured Creditors of the Debtor appointed by the U.S. Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code and any duly appointed successors, as the same may be amended or reconstituted from time to time.

1.1.28. "Cure Amount Claim" means a Claim based upon the Debtor's defaults pursuant to an Executory Contract or Unexpired Lease at the time such Executory Contract or Unexpired Lease is assumed, or assumed and assigned, by the Debtor under section 365 of the Bankruptcy Code, provided however, that the Cure Amount Claim shall not include claims that accrued prior to the Effective Date of the Plan but which shall not become due and payable until after ~~the Effective Date~~December 21, 2009 of the Plan. For the avoidance of doubt, the Cure Amount Claim set forth in a previous Final Order of the Bankruptcy Court for any Executory Contract or Unexpired Lease that was assumed, or assumed and assigned is and shall be the sole and single satisfaction for any and all Claims arising under such Executory Contract or Unexpired Lease through the date that the Executory Contract or Unexpired Lease was assumed.

1.1.29. "Debtor" has the meaning ascribed to it on the first page of the Plan.

1.1.30. "Deficiency Claim" means a General Unsecured Claim for the difference between (a) the aggregate amount of an Allowed Claim and (b) the value received on account of the portion of such Allowed Claim that is a Secured Claim.

Unsecured Claims, which reserve shall be funded in an amount not less than an amount required to fund the Distribution Percentage for Allowed General Unsecured Claims totaling $8.5 million.

1.1.53. "Initial Distribution Date" means no later than ninety (90) days after Effective Date.

1.1.54. "Insured Claim" means any Claim (other than a Workers' Compensation Claim) arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtor or its business that is subject to the provisions of Section 4.12.1.

1.1.55. "Interest" means an equity security, within the meaning of section 101(16) of the Bankruptcy Code, in the Debtor, including, but not limited to, the shares of stock of the Debtor.

1.1.56. "Interim Distribution Date" means one or more dates designated by the Reorganized Debtor in its sole and reasonable discretion.

1.1.57. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

1.1.58. "IRS" means the Internal Revenue Service of the United States of America.

1.1.59. "KLK" means Kuala Lumpur Kepong Berhad.

1.1.60. "KLKOI" means KLK Overseas Investments ~~Ltd~~Limited.

1.1.61. "Liability" or "Liabilities" means any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place on or prior to the Effective Date.

1.1.62. "Ordinary Course Professionals Order" means the Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Employ Professionals Utilized in the Ordinary Course of Business entered by the Bankruptcy Court on July 29, 2009.

1.1.63. "Outstanding Customer Gift Card Obligations" means any customer gift card obligations arising prior to the Effective Date.

1.1.64. "Parent Debt" means (i) the $13 Million Obligation, and (ii) the $18 Million Obligation.

1.1.65. "Person" means a "person" within the meaning of Bankruptcy Code section 101(41), as well as any governmental or political entity, subdivision or agency.

2.1.2. Ordinary Course Liabilities. Allowed Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its business shall be satisfied by the Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holders of such Administrative Claims or further approval of the Bankruptcy Court.

2.1.3. DIP Claims. On the Effective Date, any Allowed Administrative Claim that is a DIP Claim shall receive Cash in an amount equal to the Allowed DIP Claim in full satisfaction of its Allowed Claim.

2.2. Bar Dates for Administrative Claims

2.2.1. General Bar Date Provisions. Except as otherwise provided in Section 2.2.2, unless previously filed, requests for payment of Administrative Claims (except for Professional Fee Claims, Cure Amount Claims and DIP Claims) for the period of **July 1, 2009 through the Effective Date**, must be filed and served on the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtor, the Reorganized Debtor or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the requesting party, the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, by the Claims Objection Deadline.

2.2.2. Bar Dates for Certain Administrative Claims.

(a) **Professional Compensation.** Professionals or other Entities asserting a Professional Fee Claim for services rendered from the Petition Date to the Effective Date must file with the Bankruptcy Court and serve on the Reorganized Debtor and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than forty-five (45) days after the Effective Date; provided, however, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered from the Petition Date to the Effective Date, without further Bankruptcy Court review or approval, pursuant to the Ordinary Course Professionals Order. A Professional may include any outstanding, non-filed monthly or interim request for payment of a Professional Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be filed with the Bankruptcy Court and served on the requesting party, the Reorganized Debtor, counsel for the Reorganized Debtor, and, prior to the Effective Date, the Creditors' Committee within thirty (30) days after the filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order or any other order with respect to a Final Fee Application shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Professional Fee Claims. Any pending, filed interim requests for a Professional Fee Claim pursuant to the Fee Order shall be resolved in the

Percentage by between approximately 1.9% and 2.2% for every $500,000 of the Allowed Class Action Settlement Claim.

3.5. Class 5 Interests (Interests).

3.5.1. Impairment and Voting. Class 5 is unimpaired by the Plan. Each holder of an Interest is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

3.5.2. Distributions. Interests in the Debtor shall be Reinstated and shall remain in full force and effect on the Effective Date and thereafter.

ARTICLE IV

MEANS FOR IMPLEMENTATION OF THE PLAN

4.1. Corporate Existence and Vesting of Assets in the Reorganized Debtor. Except as otherwise provided herein (and subject to the Restructuring Transaction provisions of Section 4.2), the Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date, with all the powers of a corporation or company under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law. Except as otherwise provided herein, as of the Effective Date, all property of the Estate of the Debtor, and any property acquired by the Debtor or Reorganized Debtor under the Plan, will vest in the Reorganized Debtor, free and clear of all Claims~~,~~ and Encumbrances ~~and Interests~~. On and after the Effective Date, the Reorganized Debtor may operate its businesses and may use, acquire and dispose of property and compromise or settle any Claims without supervision of or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of Final Fee Applications) without application to the Bankruptcy Court.

4.2. Restructuring Transactions

4.2.1. Restructuring Transactions Generally. On or after the Confirmation Date, the Debtor or Reorganized Debtor may enter into Restructuring Transactions and may take such actions as the Debtor or Reorganized Debtor may determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses or simplify the overall corporate structure of the Reorganized Debtor, to the extent not inconsistent with any other terms of the Plan. Such Restructuring Transactions may include one or more mergers, consolidations, restructurings, dispositions, liquidations or dissolutions, as may be determined by the Debtor or the Reorganized Debtor to be necessary or appropriate without further order of the Bankruptcy Court. The actions to effect these transactions may include, but shall not be limited to: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to

Date, any holder of such discharged Claim shall be precluded from asserting against the Debtor, the Reorganized Debtor, or any of their respective assets or properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order. Notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, neither the Parent Debt nor Interests shall be discharged pursuant to the Plan, Disclosure Statement or the Confirmation Order. Notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, the Parent Debt, Interests, and Outstanding Customer Gift Card Obligations shall not be discharged pursuant to the Plan, Disclosure Statement or the Confirmation Order.

9.2. Injunction. Except as otherwise expressly provided in the Plan, the Confirmation Order, or a separate order of the Court, all Persons or Entities who have held, hold, or may hold a Claim or Claims against the Debtor that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against or affecting the Debtor, its Estate or its assets, with respect to any such Claim, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or the Reorganized Debtor on account of any such Claim, (iii) creating, perfecting, or enforcing any Encumbrance of any kind against the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim, (iv) asserting any right of setoff, or subrogation of any kind against any obligation due from the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims ~~or Interests~~ released or settled pursuant to the Plan. Such injunction shall extend to successors of the Debtor (including, without limitation, the Reorganized Debtor) and their respective properties and interests in property. Such injunction shall not apply in respect of Administrative Claims incurred in the ordinary course of the Debtor's business.

9.3. Releases.

(a) **Releases by the Debtor. ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, THE DEBTOR AND THE REORGANIZED DEBTOR, ON BEHALF OF THEMSELVES AND THE ESTATE, SHALL BE DEEMED TO RELEASE UNCONDITIONALLY (I) ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS, (II) KLK, AS DIP LENDER, ULTIMATE SOLE INTEREST HOLDER AND ULTIMATE PARENT OF THE DEBTOR AND REORGANIZED DEBTOR, (III) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLK, (IV) KLKOI, AS PREPETITION LENDER, (V) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLKOI, (VI) THE MEMBERS OF THE CREDITORS' COMMITTEE, (VII) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS,**

EXHIBIT C
OBJECTION RESPONSE SUMMARY

In re Crabtree & Evelyn, Ltd.
Bankr. S.D.N.Y. 09-14267 (BRL)

Summary of Objections to Confirmation of the
First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan")[1]

OBJECTION	STATUS
1. Travis County, City of Austin, Austin Independent School District, Austin Independent School District CED, Eanes Independent School District, Austin Community College and Travis County Hospital District (collectively, "Travis County") (Docket No. 276) – RESOLVED	
Travis County's objections to the Plan are as follows: (i) The Plan does not allow for payment of Travis County's claim as secured along with the payment of 12% interest. Debtor's failure to include Travis County's fully secured claim with 12% interest renders the plan unfair and inequitable under the Bankruptcy Code and also violates the Texas Property Tax Code. Moreover, the treatment of Travis County's claim under the Plan is much less favorable than the statutory treatment of the claim under state law.	The Debtor has resolved this Objection by confirming that to the extent Travis County has an Allowed Secured Claim, the Debtor will include interest in the payment of such claim(s) at the rate under applicable non-bankruptcy law.
2. Westfield, LLC and Various Affiliates (collectively, the "Westfield Landlords") (Docket No. 277) – RESOLVED	
The Westfield Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The Westfield Landlords' objections to the Plan are as follows: (i) The Westfield Landlords have objected to the proposed Cure Amount Claims. Consideration of objections to assumption based on cure amounts is delayed until February 17, 2010. The Debtor has not resolved the Westfield Landlords' objection to cure amounts. (ii) The Debtor should preserve the Westfield Landlords' rights to assert the Unliquidated Claims (as such term is defined in the	(i) The Debtor has resolved this Objection by agreeing to insert the following language (the "Cure Amount Language") into the Confirmation Order: "To the extent a lessor of nonresidential real property timely filed an objection with respect to the Cure Amount Claim that the Debtor asserts is required to be paid in connection with assumption of a nonresidential real property lease, and such objection has not been resolved prior to the Effective Date of the Plan, notwithstanding any language in the Plan, this Confirmation Order or any related documents, the rights of each party with respect to the objection are reserved and nothing herein shall moot, adversely affect or otherwise be determinative of the rights and

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

OBJECTION	STATUS
Westfield Landlords' Objection) under the Westfield Landlords' leases on a post-assumption/post-confirmation basis.	obligations of the parties with respect to any such objection or the underlying cure claim." (ii) The Debtor has resolved this Objection by agreeing to insert the following language (the "Unliquidated Obligations Language") into the Confirmation Order: "Notwithstanding anything to the contrary in the Plan or this Confirmation Order, nothing in the Plan or this Confirmation Order shall release the Debtor from liability for year-end adjustments and true-ups pursuant to the terms of the Unexpired Leases which accrued prior to December 21, 2009 but which did not become due and payable until after December 21, 2009, or from any contractual indemnification obligations which were not known to the counterparty to the Unexpired Leases on or prior to December 21, 2009."
3. Carousel Center Company, L.P., Pyramid Walden Company, L.P., Grove City Factory Shops Limited Partnership, Ohio Factory Shops Limited Partnership, San Marcos Factory Stores, LTD, Williamsburg Outlets, L.L.C., Orlando Outlet Owner, LLC and Prime Outlets at Pleasant Prairie, LLC (collectively, the "Prime and Pyramid Landlords") (Docket No. 280) – RESOLVED	
The Prime and Pyramid Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The Prime and Pyramid Landlords' objections to the Plan are as follows: (i) The Prime and Pyramid Landlords have objected to the proposed Cure Amount Claims. The Debtor has not resolved the Prime and Pyramid Landlords' objection to cure amounts. (ii) Cure amounts should be paid within ten (10) days of entry of an order confirming the Plan. (iii) The Debtor should not be permitted to amend Exhibit D to the Plan by deleting or adding any leases to or from the list after confirmation.	(i) The Debtor has resolved this Objection. (ii) The Debtor has resolved this Objection by agreeing to pay all undisputed Cure Amount Claims of the Prime and Pyramid Landlords within fourteen (14) calendar days of the Effective Date of the Plan. (iii) Because the Debtor has resolved the Prime and Pyramid Landlords' objection to cure amounts, this Objection has also been resolved.

OBJECTION	STATUS
(iv) The Exit Financing cannot include liens against the Prime and Pyramid Landlords' leases.	(iv) The Debtor has resolved this Objection by agreeing to enter into a side letter with the Exit Lender confirming that the Exit Financing does not include liens against the Prime and Pyramid Landlords' leases.
4. General Growth Properties, Inc. and Turnberry Associates (collectively, "GGP and Turnberry Landlords") (Docket No. 282) - RESOLVED	
The GGP and Turnberry Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The GGP and Turnberry Landlords' objections to the Plan are as follows: (i) The GGP and Turnberry Landlords have objected to the proposed Cure Amount Claims. Consideration of objections to assumption based on cure amounts is delayed until February 17, 2010. The Debtor has not resolved the GGP and Turnberry Landlords' objection to cure amounts. (ii) The Debtor must be responsible to satisfy the Adjustment Amounts (as such term is defined in the GGP and Turnberry Landlords' Objection), if any, when due in accordance with the terms of the leases, regardless of when such Adjustment Amounts are billed. (iii) The Debtor should be required to comply with all contractual indemnification obligations and hold the GGP and Turnberry Landlords harmless with regard to events which may have occurred pre-assumption but which were not known to the GGP or Turnberry Landlords as of the date of assumption.	(i) The Debtor has resolved this Objection by agreeing to insert the Cure Amount Language into the Confirmation Order. (ii) and (iii) The Debtor has resolved this Objection by agreeing to insert the Unliquidated Obligations Language into the Confirmation Order.
5. The Related Companies, The Forbes Company, and RREEF Management Company (collectively, the "Related/Forbes/RREEF Landlords") (Docket No. 285) – RESOLVED	
The Related/Forbes/RREEF Landlords are landlords under certain leases that the Debtor seeks to assume in accordance with the Plan. The Related/Forbes/RREEF Landlords' objections to the Plan are as follows:	(i) The Debtor has resolved this Objection by agreeing to insert the Cure Amount Language into the Confirmation Order. (ii) and (iii) The Debtor has resolved this Objection by agreeing to insert the Unliquidated Obligations Language into the

OBJECTION	STATUS
(i) The Related/Forbes/RREEF Landlords have objected to the proposed Cure Amount Claims. Consideration of objections to assumption based on cure amounts is delayed until February 17, 2010. The Debtor has not resolved the Related/Forbes/RREEF Landlords' objection to cure amounts. (ii) The Debtor is responsible for amounts that have not yet been reconciled and/or adjusted from prepetition or post-petition periods. (iii) The Debtor should be required to comply with all contractual indemnification obligations and hold the Related/Forbes/ RREEF Landlords harmless with regard to events which may have occurred pre-assumption but which were not known to the Related/Forbes/RREEF Landlords as of the date of assumption.	Confirmation Order.