Thomas A. Willoughby, State Bar No. 137597
Mikayla E. Kutsuris, State Bar No. 339777
FELDERSTEIN FITZGERALD
WILLOUGHBY PASCUZZI & RIOS LLP
500 Capitol Mall, Suite 2250
Sacramento, CA 95814
Telephone: (916) 329-7400
Facsimile: (916) 329-7435
E-mail: twilloughby@ffwplaw.com
mkutsuris@ffwplaw.com

Attorneys for The Post Confirmation Liquidating Debtor
Heller Ehrman LLP

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: HELLER EHRMAN LLP, Post Confirmation Liquidating Debtor.	Case No.: 08-32514 Chapter 11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF POST CONFIRMATION LIQUIDATING DEBTOR HELLER EHRMAN LLP'S MOTION FOR AUTHORITY TO MAKE FINAL DISTRIBUTION TO THE GENERAL UNSECURED CREDITORS PURSUANT TO 11 U.S.C. §105(a) AND JOINT PLAN OF LIQUIDATION OF HELLER EHRMAN LLP (AUGUST 9, 2010) AND NOTICE OF OPPORTUNITY FOR HEARING** **[No hearing will be held unless affected party responds to this Motion – Bankruptcy Local Rule 9014-1]**

TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE:

Pursuant to 11 U.S.C. § 105(a), Federal Rules of Bankruptcy Procedure 3021 and the confirmed Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010) (the "Plan"), the post-confirmation liquidating debtor Heller Ehrman LLP (the "Debtor"), by and through its Chapter 11 Plan Administrator, Michael Burkart, submits this Memorandum of Points and Authorities ("MPA") in support of its motion (the "Motion") for entry of an order authorizing the

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Debtor to make a final distribution (the "<u>Final Distribution</u>") of approximately 2.5% to 3% (the "<u>Distribution Percentage</u>") to the holders of allowed general unsecured claims (the "<u>Allowed GUC Claims</u>", and such holders, the "<u>Allowed GUC Claimants</u>") and for related relief as set forth in the Motion.[1]

I. FACTUAL BACKGROUND

The Factual Background has been set forth in the accompanying Motion, and those facts are fully incorporated into this MPA.

II. LEGAL ARGUMENT

Federal Rule of Bankruptcy Procedure 3021 provides in part that, "[a]fter confirmation and when any stay under Rule 302(e) expires, payments under the plan must be distributed to: creditors whose claims have been allowed…" Fed. R. Bankr. P. 3021. The rule "does not say when distribution should occur, except that it should be after confirmation." 9A Collier on Bankruptcy P 3021.01. "The timing and manner of distribution typically are set out in the confirmed plan. Rule 3021 gives plan drafters [the] flexibility to arrange [a] distribution in accordance with the needs of the case." *Id.* That flexibility is reinforced by section 105(a) of the Bankruptcy Code, which authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. *See* 11 U.S.C. § 105(a); *see also In re Frantz*, 2020 U.S. Dist. LEXIS 51778 at *38 (D. Idaho Mar. 25, 2020) (recognizing that an interim distribution is authorized under section 105).

Here, the Plan at section 5.20 states, *inter alia*, that:

> "Distributions to holders of Allowed Claims in Classes 7 through 9 **shall be made as soon as practicable as determined by the business judgment of the Plan Administrator** based upon the amount of funds to be distributed relative to the administrative costs of making a distribution;"
>
> and,
>
> "Except as otherwise agreed by the holder of a particular Claim…all amounts to be paid by the Liquidating Debtor under the Plan **shall be distributed in such amounts and at such times as is reasonably prudent, in the form of interim and/or final**

[1] Unless otherwise noted, all capitalized terms shall have the same meaning as set forth in the Motion.

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> **distributions,** with sufficient reserves established to satisfy the reserve requirements for Disputed Unsecured Claims, Professional Fees and anticipated Plan Expenses."

Plan at § 5.20 (Emphasis added).

Thus, the Plan provides that the Plan Administrator may make "interim and/or *final distributions*" at such times and in such amounts that he deems "reasonably prudent" and according to his "business judgment." Plan Art. 5.20 (emphasis added). In addition, the Plan provides that the Court has jurisdiction over this matter and shall retain jurisdiction, *inter alia*, "To approve interim and/or final distributions to creditors, including the approval of any publication notices, which the Plan Administrator in his sole discretion believes should be noticed to creditors." *See* Plan, Article IX, Retention of Jurisdiction, at (xiii).

The Plan Administrator is requesting to make the Distribution Percentage to the Allowed GUC Claimants. Bankruptcy courts have granted similar requests to make an estimated one-time final distribution to employees. *See, e.g.*, Order Authorizing Committee to Make a One Time Distribution to Debtor's Employees (Union and Non-Union), ECF No. 5136 in Tri Valley Growers, a California Cooperative Association, Bankruptcy Case No. 00-44089 in the United States Bankruptcy Court for the Northern District of California. The Plan Administrator believes that approval of the proposed Final Distribution is in the best interests of creditors because it will facilitate prompt distributions and allow for the efficient and orderly conclusion of this bankruptcy case, thereby avoiding the continued incurrence of administrative expenses and professional fees. Moreover, as discussed in the First, Second, Third, Fourth, 2020 Employee, and 2021 Non-Employee Distribution Motions (hereafter collectively referred to as the "Prior Distribution Motions"), and approved in the Orders thereto, and/or consistent with Articles 1.54, 1.58, 1.137, 4.8, 4.9, 4.10, 5.20, 5.21, 5.22(i), (iv), (vi) & (vii), 5.26 and 5.31 of the Plan, no distribution will be made with respect to the De Minimis Claims, disallowed Disputed Claims, Late-Filed Claims, or Subordinated/Interest Claims (as defined and discussed in Prior Distribution Motions and their exhibits/amended exhibits). Burkart Decl. at ¶ 14.

The Plan Administrator is additionally requesting that he may: (1) mail the distributions checks to the addresses that are set forth in the Exhibits; (2) notify the Allowed GUC Claimants that distributions checks must be negotiated within ninety days of the date the check is dated; (3) provide that notification described in this paragraph shall be deemed satisfied by a notation on the distribution check itself; and (4) distribute any funds represented by checks that remain uncashed after such ninety day period to the Credit Abuse Resistance Education (CARE), San Francisco (hereinafter, "CARE"); provided, however, that any funds represented by uncashed checks payable to the PBGC Beneficiaries shall instead be distributed by the Plan Administrator in accordance with applicable non-bankruptcy law, after consultation with counsel. Article 5.26 provides that, "Notwithstanding any other provision of this Plan, at the point when the remaining funds in the Claims Reserve Account consist of an amount impracticable to distribute, the Liquidating Debtor may donate (or authorize the Plan Administrator to donate) such Cash to a nonprofit organization or organizations in this judicial district that are exempt pursuant to section 501(c) of the Internal Revenue Code (Title 26 of the United States Code)." Any funds represented by uncashed checks will constitute a relatively small residual balance. Moreover, redistributing funds represented by those uncashed checks would require the Plan Administrator to incur substantial additional administrative expenses, including calculating supplemental distributions, updating distribution schedules, printing and mailing a new round of checks (the costs of mailing alone would be substantial), and maintaining the estate open for a prolonged period. Because any funds represented by uncashed checks after the final distribution would be uneconomical and impracticable to redistribute, the requested relief is consistent with the Plan and will facilitate the efficient administration and closing of the Estate. *See* Burkart Decl. at ¶ 14.

Claims that are still De Minimis as of the Final Distribution will not receive a distribution (except with respect to the PBGC Claim, for which, the treatment of any De Minimis amounts, including whether such amounts are distributed, shall be determined in accordance with the PBGC Settlement Agreement and applicable non-bankruptcy law, after consultation with counsel). *See* Burkart Decl. at ¶¶ 15-17. Article 5.26 of the Plan authorizes the Plan Administrator to refrain from making distributions on account of De Minimis Claims. The Plan further provides that, "[d]istributions that will not be made as of the date of a final distribution shall be treated as unclaimed distributions as provided in Article 5.28 of the Plan." Article 5.28

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addresses unclaimed distributions and provides, among other things, that creditors must keep their addresses current and that claimants who fail to claim distributions may be excluded from future distributions. Article 5.28 further provides that, upon forfeiture, the unclaimed funds "shall be made available for re-distribution to other holders of Allowed Claims of like Class." Read together, Articles 5.26 and 5.28 establish that distributions as of the final distribution that are not made pursuant to the de minimis provisions of Article 5.26 are to be treated as unclaimed distributions. The Plan does not require the Plan Administrator to first issue such de minimis distributions, wait for them to remain unclaimed, or satisfy the procedures applicable to distributions that were actually made but later went unclaimed. Rather, the Plan expressly provides that distributions that "will not be made" as of the final distribution "shall be treated as unclaimed distributions" under Article 5.28. Accordingly, the funds attributable to the De Minimis claims (with the exception of the PBGC Claim, for which, the treatment of any De Minimis amounts, including whether such amounts are distributed, shall be determined in accordance with the PBGC Settlement Agreement and applicable non-bankruptcy law, after consultation with counsel), are deemed unclaimed distributions under the Plan and will be made available for re-distribution to other holders of Allowed Claims of like Class pursuant to Articles 5.26 and 5.28 of the Plan. *See* Burkart Decl. at ¶¶ 15-17.

III. <u>CONCLUSION</u>

WHEREFORE, based upon the Motion, this MPA., the Burkart Decl., and the Exhibits, the Debtor requests that the Court enter an order granting the relief requested in the Motion.

Dated: June 29, 2026

FELDERSTEIN FITZGERALD
WILLOUGHBY PASCUZZI & RIOS LLP

By: <u>*/s/ Thomas A. Willoughby*</u>
THOMAS A. WILLOUGHBY
Attorneys for The Post-Confirmation Liquidating Debtor Heller Ehrman LLP