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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 In re:

Case No.: 08-32514

12 HELLER EHRMAN LLP,

Chapter 11

13 Post Confirmation
14 Liquidating Debtor.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF POST
CONFIRMATION LIQUIDATING DEBTOR
HELLER EHRMAN LLP'S FOURTH
MOTION TO VOID CLAIMS AND
SCHEDULED AMOUNTS OF CERTAIN
CREDITORS (NON-NEGOTIATED AND
RETURNED CHECKS; RELINQUISHED
CLAIMS; CREDITOR OUT OF BUSINESS;
CREDITOR DECEASED; UNABLE TO
LOCATE CREDITOR OR CREDITOR
NONRESPONSIVE) AND NOTICE OF
OPPORTUNITY FOR HEARING**

**[No hearing will be held unless affected party
responds to this Motion – Bankruptcy Local
Rule 9014-1]**

22 **TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY**
23 **JUDGE:**

24 Pursuant to 11 U.S.C. § 105(a) and the Confirmed Plan in this bankruptcy case, the post-
25 confirmation liquidating debtor Heller Ehrman LLP, by and through its Chapter 11 Plan
26 Administrator, Michael F. Burkart, submits this Memorandum of Points and Authorities (“MPA”)
27 in support of its third motion (the “Motion”) for entry of an order voiding the claims and
28 scheduled amounts of certain creditors (non-negotiated and returned checks; relinquished claims;

1 creditor out of business; unable to locate creditor; creditor deceased; or creditor nonresponsive)
2 and for related relief as set forth in the Motion.¹

3 **I. FACTUAL BACKGROUND**

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

6 **II. LEGAL ARGUMENT**

7 Pursuant to 11 U.S.C. §105(a), “The court may issue any order, process, or judgment that
8 is necessary or appropriate to carry out the provisions of this title...”

9 Section 5.28 of the Plan [Unclaimed Property] provides that:

10 **“Creditors have the obligation to file change of address forms** with the Court and to
11 **serve such changes of address on the Plan Administrator and his counsel. If a Claimant**
12 **fails for the second consecutive time to claim any Cash within 90 days from the date**
13 **upon which a distribution is made, such Claimant shall be subject to having its claim**
14 **excluded from future distributions.** The Plan Administrator shall file an omnibus Post
15 Confirmation Motion and Opportunity for Hearing seeking to exclude such Claimants
16 from future distributions and shall serve such Claimants at the address on Claimants proof
17 of claim, if any, on the address scheduled by the Debtor for such Claimants, on any
18 addresses supplied by Claimants in any and all change of address filings filed with the
19 Court, and if available on any agents for service of process addresses that are available
20 from the California Secretary of State and any other states in which the Debtor did
21 business (but only to the extent that such agents for service of process are available from
22 the Secretary of State’s web sites without charge). **Upon Court approval of the subject**
23 **Claimants’ forfeiture, such Cash (including interest thereon) shall be made available**
24 **for re-distribution to other holders of Allowed Claims of like Class. Entities which**
25 **fail to claim Cash shall forfeit their rights thereto and shall have no claim** whatsoever
26 against the Liquidating Debtor or the Plan Administrator, as applicable, or any holder of
27 an Allowed Claim to whom distributions are made under this Plan, provided, however,
28 that **the Plan Administrator may but is not required to undertake reasonable efforts,**
in his business judgment, to locate creditors whose distributions are returned.”
(Emphasis added).

23 **A. With Respect to the Creditors on Exhibit 1 (“Two Strikes”):** Here, the
24 Creditors on *Exhibit 1* fall squarely within the conditions listed in Section 5.28 of the Plan. They
25 failed to negotiate the checks sent to them in the 6th and either the 7th (to Employees/PBGC) or 8th
26 (other GUCs) distributions, they have not filed a change of address form with the Court, and the

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

Debtor has been unable to find an updated address despite the Debtor's diligent efforts described above. Therefore, these claims should be determined to be void under Section 5.28.

B. With Respect to the Creditors on Exhibit 2 ("One Strike Plus"): The Creditors on *Exhibit 2* failed to negotiate the check sent to them in either the 7th (to Employees/PBGC) or 8th (other GUCs) distributions, they have not filed a change of address form with the Court, they have not responded to the letters sent to them seeking information at various times between June 2020 and July 2025 (or such letters were returned), and the Debtor has been unable to find an updated address despite the Debtor's diligent efforts described above and in the Declaration of Michael Burkart, filed herewith. The failure to respond to (or the return of) the letters sent to these creditors, coupled with the fact that the last distribution check was not negotiated, reasonably indicates that any check sent to these creditors in a final distribution likely would not be negotiated. Rather than engage in further cost and a wasted effort, the Debtor believes it would be appropriate to determine these claims to be void under the purpose and intent of Section 5.28 now, and to allow their distributions to be redistributed to the other claimants in the final distribution.

C. With Respect to the Creditors on Exhibit 3 (Relinquished): All of these creditors have returned their distribution checks to the Debtor, indicating that: (1) there is no amount due; and/or (2) the creditor is relinquishing its claim. For example, these Creditors have stated that there is "nothing due," or they have asked to be "taken off the distribution list," or they have returned checks with the word "Refused" on the envelope.

Burkart Decl. at ¶ 19 and *Exhibit 3*, attached thereto. Rather than engage in further cost and a wasted effort, the Debtor believes it would be appropriate to determine these claims to be void now and allow their distributions to be redistributed to the other claimants in the final distribution.

D. With Respect to the Creditors on Exhibit 4 (Out of Business): None of the distribution checks sent to these creditors were negotiated in either the 7th (to Employees/PBGC) or the 8th (other GUCs) distributions and the Debtor has determined after numerous internet searches that the Creditors on *Exhibit 4* are no longer in business. Rather than engage in further

1 cost and a wasted effort, the Debtor believes it would be appropriate to determine these claims to
2 be void now and allow their distributions to be redistributed to the other claimants in the final
3 distribution.

4 E. **With Respect to the Creditors on Exhibit 5 (Deceased):** The Creditors on
5 ***Exhibit 5*** are individuals that the Debtor is informed and believes are deceased. The Plan
6 Administrator has attempted to contact such creditors' heirs, but such heirs either are unknown or
7 the Plan Administrator has not received a response from potential heirs. Rather than engage in
8 further cost and a wasted effort, the Debtor believes it would be appropriate to determine these
9 claims to be void now and allow their distributions to be redistributed to the other claimants in the
10 final distribution.

11 The Debtor already has made eight distributions to general unsecured creditors in this
12 Bankruptcy Case, and is preparing to make its final distribution. It is in the unsecured creditors'
13 best interest to include in the distribution (and any future distribution) the funds that had been
14 reserved for the Creditors on ***Exhibits 1 through 5***. Such funds were never claimed by those
15 Creditors, or have been relinquished by such Creditors, the Debtor has been unable to locate a
16 current address for such Creditors despite its diligent efforts, the Creditors are out of business,
17 and/or such Creditors are deceased. This Motion gives these Creditors notice of the Debtor's
18 intention to void their claims. If such Creditors fail to timely oppose this Motion, the Court
19 should void their claims and allow the Debtor to re-distribute such funds to other allowed
20 unsecured creditors in the distribution.

21 Therefore, the Debtor requests that such Creditors' claims on ***Exhibits 1 through 5*** be
22 determined void, requests authorization to exclude such Creditors from its final Distribution, and
23 requests authorization to redistribute the funds (that had been reserved for the payment of such
24 Creditors' claims) to other general unsecured creditors with allowed claims in the 2021 GUC
25 Distribution, and any future distributions.

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Dated: October 3, 2025

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