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12 Heller Ehrman LLP

13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 In re:

17 HELLER EHRMAN LLP,

18 Post-Confirmation
19 Liquidating Debtor.

CASE NO.: 08-32514
Chapter 11

**THIRD 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]**

20 **TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY
21 JUDGE:**

22 **I. NOTICE OF MOTION AND OPPORTUNITY FOR HEARING**

23 **PLEASE TAKE NOTICE** that pursuant to the confirmed Joint Plan of Liquidation of
24 Heller Ehrman LLP (August 9, 2010) (the “Plan”) and 11 U.S.C. §105(a), the post-confirmation
25 liquidating debtor Heller Ehrman LLP in the above-captioned case (the “Debtor”), by and through
26 its Chapter 11 Plan Administrator, Michael F. Burkart (the “Plan Administrator”) hereby files its
27 third motion (the “Motion”) for entry of an order voiding the claims and scheduled amounts of
28 certain creditors (non-negotiated and returned checks; relinquished claims; creditor out of
business; unable to locate creditor; creditor deceased, or creditor nonresponsive) and for related

1 relief as set forth below. This Motion is based upon the Motion, the Memorandum of Points and
2 Authorities filed concurrently herewith (the “MPA”), the Declaration of Michael F. Burkart filed
3 concurrently herewith (the “Burkart Decl.”), and **Exhibits 1 through 5** attached to the Burkart
4 Declaration filed concurrently herewith.

5 **PLEASE TAKE FURTHER NOTICE** that creditors and parties in interest should
6 carefully review this Motion, the MPA, the Burkart Declaration, and **Exhibits 1 through 5**
7 attached to the Burkart Declaration. **TO VIEW ALL OF THE DOCUMENTS AND**
8 **EXHIBITS FILED IN SUPPORT OF THE MOTION, CREDITORS SHOULD GO TO**
9 **www.hellerehrman.com AND REFER TO THE “THIRD MOTION TO VOID CLAIMS”**
10 **SECTION.** If a creditor or party in interest would prefer either a mail set of all the documents
11 filed in support of this Motion, or emailed pdf’s of said documents, please send a request to
12 sdarms@ffwplaw.com

13 **PLEASE TAKE FURTHER NOTICE** that, in accordance with Article 5.36 of the Plan,
14 any party objecting to the treatment of their claim as detailed in **Exhibits 1 through 5** and/or the
15 relief requested in this Motion **must file written opposition and a request for a hearing on the**
16 **Motion with the United States Bankruptcy Court for the Northern District of California**
17 **and serve upon counsel for the Debtor within fourteen (14) calendar days of the date of this**
18 **notice.**

19 **PLEASE TAKE FURTHER NOTICE** that any objection or request for a hearing must
20 be accompanied by any declarations or memoranda of law the requesting party wishes to present
21 in support of its position. **If no timely opposition is filed to the requested relief or a request**
22 **for hearing, the Court may enter an order granting the relief by default without hearing. In**
23 **the event of timely objection or request for hearing, the Debtor will give at least seven (7)**
24 **days’ written notice of the hearing to the objecting or requesting party.**

25 **PLEASE TAKE FURTHER NOTICE** that unless exempted by the Clerk, all attorneys
26 practicing in the Court, including attorneys admitted pro hac vice, are required to file all
27 documents (excluding documents to be placed under seal) electronically via the Court’s
28 Electronic Case Filing system. Objections filed by non-attorneys must be filed in paper with the

1 Court at the following addresses:

2 If by mail: 450 Golden Gate Avenue, Mail Box 36099, San Francisco, CA 94102.

3 If by hand delivery or overnight delivery: 450 Golden Gate Avenue, 18th Floor, San
4 Francisco, CA 94102.

5 **PLEASE TAKE FURTHER NOTICE** that any opposition to the Motion must be served
6 upon counsel for the Debtor at the address above in the top left-hand corner of the first page of
7 this Notice as well as on the Office of the United States Trustee, Timothy S. Laffredi, Assistant
8 U.S. Trustee, 450 Golden Gate Avenue, 5th Floor, Suite #05-0153, San Francisco, CA 94102, and
9 all other parties who have requested post-confirmation notice in accordance with the Plan
10 requirements (parties requesting post-confirmation notice may be obtained by reviewing the
11 Court's docket).

12 **II. MOTION**

13 Pursuant to 11 U.S.C. § 105(a) and the Joint Plan of Liquidation of Heller Ehrman LLP,
14 the Plan Administrator seeks a court order voiding the claims of certain creditors listed on
15 **Exhibits 1 through 5** attached to the Burkart Declaration and for related relief. The Debtor is
16 currently preparing to make an interim distribution to non-employee general unsecured creditors
17 (the "2021 GUC Distribution"). Following the last distribution, the Debtor identified claims that
18 should be voided because the distribution checks for such claims were not negotiated or were
19 returned, the creditors have relinquished their claims, the creditors are out of business, the Debtor
20 is unable to locate such creditors, such creditors are deceased, and/or such creditors are non-
21 responsive. By this Motion, the Debtor seeks to void each of these claims, and to make the funds
22 from the voided claims available for re-distribution to other holders of allowed claims in the 2021
23 GUC Distribution and any future distributions.

24 **III. REQUESTED RELIEF**

25 By way of this Motion, the Debtor requests the entry of an Order authorizing the Debtor
26 to:

- 27 a. Void the claims of Creditors listed on Exhibits 1 through 5;
- 28

1 b. Exclude such Creditors from the 2021 GUC Distribution and from all future
2 distributions in this Bankruptcy Case;

3 c. Redistribute the funds (that had been reserved for the payment of such Creditors'
4 claims) to other general unsecured creditors with allowed claims in the 2021 GUC Distribution
5 and any future distributions; and

6 d. For such other and further relief as the Court may deem proper.

7 **IV. FACTUAL BACKGROUND**¹

8 **A. Bankruptcy Case and Plan.**

9 Below is a short history of the present case and a description of the prior distribution
10 motions approved in this case. Parties that seek additional information on the history of the case
11 should refer to the confirmed Plan (Docket No. 1431) and approved Disclosure Statement Docket
12 No. 1153) on file in the case.

13 On December 28, 2008, the Debtor filed a voluntary petition for relief under chapter 11 of
14 the Bankruptcy Code. The Debtor, a 118-year-old international law firm, began the process of
15 winding down its business and affairs following the adoption of a Plan of Dissolution by the
16 shareholders of the Debtor's limited partners in September 2008. Burkart Decl. at ¶ 3. On
17 January 5, 2009, the Office of the United States Trustee appointed the Official Committee of
18 Unsecured Creditors. Burkart Decl. at ¶ 4. On August 13, 2010, the Court entered an order
19 confirming the Plan, which order became effective on September 1, 2010 (the "Effective Date").
20 Burkart Decl. at ¶ 5. Michael F. Burkart is the duly appointed administrator under the Plan (the
21 "Plan Administrator") and has been managing the Debtor since the Effective Date. Burkart Decl.
22 at ¶ 6.

23 Under the Plan, the Debtor retained the responsibility for claims review, dispute resolution
24 and distribution. See Plan sections 5.20-5.22 & 5.27. The Plan has specific provisions for the
25 treatment of unclaimed property. See Plan section 5.28.

26
27
28 ¹ The facts herein are drawn from the Declaration of Michael F. Burkart filed herewith, any
exhibit(s) thereto, as well as the pleadings, schedules and other records filed in this case.

1 The Debtor scheduled certain unsecured creditors on its Schedule F (or Amended
2 Schedule F) and/or certain creditors filed proofs of claim in the Bankruptcy Case, as listed on
3 **Exhibits 1 through 5** (collectively, the “Creditors”). Burkart Decl. at ¶ 7.

4 **B. Distributions Under the Plan.**

5 The Debtor made two interim distributions in 2011 to general unsecured creditors on
6 September 29, 2011, and December 22, 2011 (of 30% and 8.5%, respectively, for a total
7 distribution percentage of 38.5%), pursuant to this Court’s Order dated September 24, 2011
8 [Docket No. 2549] approving the *Liquidating Debtor Heller Ehrman LLP’s Motion for Authority*
9 *to Make 2011 Interim Distribution to General Unsecured Creditors Pursuant to 11 U.S.C.*
10 *§ 105(a) and Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010)* (the “First
11 Distribution Motion”) [Docket No. 2321]. Burkart Decl. at ¶ 8.

12 The Debtor made an interim distribution in late 2012 and early 2013 to general unsecured
13 creditors in the amount of 5.5% pursuant to this Court’s Order dated December 27, 2012 [Docket
14 No. 3174] approving the *Liquidating Debtor Heller Ehrman LLP’s Motion for Authority to Make*
15 *Interim Distribution to General Unsecured Creditors Pursuant to 11 U.S.C. § 105(a) and Joint*
16 *Plan of Liquidation of Heller Ehrman LLP (August 9, 2010)* (the “Second Distribution Motion”)
17 [Docket No. 3144], bringing the total distributed to general unsecured creditors pursuant to the
18 First and Second Distribution Motions to 44%. Burkart Decl. at ¶ 9.

19 The Debtor made an interim distribution in 2013 to general unsecured creditors in the
20 amount of 9% pursuant to this Court’s Order dated June 28, 2013 [Docket No. 3320] approving
21 the *Liquidating Debtor Heller Ehrman LLP’s Motion for Authority to Make 2013 Interim*
22 *Distribution to General Unsecured Creditors Pursuant to 11 U.S.C. § 105(a) and Joint Plan of*
23 *Liquidation of Heller Ehrman LLP (August 9, 2010)* (the “Third Distribution Motion”) [Docket
24 No. 3306], bringing the total distributed to general unsecured creditors pursuant to the First,
25 Second and Third Distribution Motions to 53%. Burkart Decl. at ¶ 10.

26 The Debtor made an interim distribution in 2016 to general unsecured creditors in the
27 amount of 7% pursuant to this Court’s Order dated December 22, 2015 [Docket No. 3722]
28 approving the *Liquidating Debtor’s Motion for Authority to Make 2015 Interim Distribution to*

1 *General Unsecured Creditors Pursuant to 11 U.S.C. §105(A) and Joint Plan of Liquidation of*
2 *Heller Ehrman LLP (August 9, 2010)* (the “Fourth Distribution Motion”) [Docket No. 3712],
3 bringing the total distributed to general unsecured creditors pursuant to the First, Second, Third,
4 and Fourth Distribution Motions to 60%. Burkart Decl. at ¶ 11.

5 On August 13, 2020, the Debtor filed its *Post-Confirmation Liquidating Debtor Heller*
6 *Ehrman LLP’s Motion for Authority to Make Final Distribution to the Employee and PBGC*
7 *General Unsecured Creditors Pursuant to 11 U.S.C. § 105(a) and Joint Plan of Liquidation of*
8 *Heller Ehrman LLP (August 9, 2010) and Notice of Opportunity for Hearing* [Docket No. 4287],
9 seeking authority to make a final distribution of 4% to the Debtor’s former employee (“Employee”)
10 and Pension Benefit Guaranty Corporation (“PBGC”) general unsecured claimants (the “2020
11 Employee Distribution”) and for related relief. The Court granted the motion [Docket No. 4305] and
12 the Debtor made the distributions to the Employee and PBGC general unsecured creditors, bringing
13 the total distributed to Employee and PBGC general unsecured creditors pursuant to the First,
14 Second, Third, Fourth, and 2020 Employee Distribution Motions to 64%. Burkart Decl. at ¶ 12.

15 In addition, all Remaining Priority Claims (listed in the “Allowed Claims Distribution
16 Schedule” to the First Distribution Motion) have been previously paid. Burkart Decl. at ¶ 13.

17 All litigation regarding Disputed Claims has been finally resolved, including the claim of
18 Paravue. As this Court is aware, the Debtor had engaged in a lengthy battle with Paravue in
19 connection with its claim in this case, including on appeal. On June 12, 2020, and June 30, 2020,
20 respectively, Paravue filed new appeals with the Bankruptcy Appellate Panel (“BAP”) in
21 connection with orders entered in connection with its claim [BAP Case No. 20-1141 and BAP
22 Case No. 20-1157, respectively]. These appeals were finally resolved by the Ninth Circuit’s
23 Order Dismissing Appeals dated April 20, 2021, which was entered on May 12, 2021 [see Dkt.
24 No. 34 in Case 20-1157]. Burkart Decl. at ¶ 14.

25 The Plan Administrator had intended to make a final distribution to non-employee general
26 unsecured claimants and to close this bankruptcy case once the Paravue claim was resolved.
27 However, the Plan Administrator has recently received funds in the amount of approximately \$2.6
28 million in connection with an unexpected distribution from a Heller investment, specifically, the

1 VLG Investment Fund 2002. In light of these changed circumstances—the receipt of a large
2 amount of funds and the possibility of more funds to be received in the future—the Plan
3 Administrator now believes that it is in the best interests of creditors to keep the bankruptcy case
4 open, and further believes that it would be fair and equitable to make an interim distribution to
5 non-employee general unsecured claimants at this time. The distribution percentage to the non-
6 employee general unsecured claimants will be 4%, which is the same percentage the employee
7 general unsecured claimants received in their 2020 Employee Distribution, and will bring the
8 total distribution to the non-employee general unsecured claimants to 64% (the same as the
9 employee general unsecured claimants). Burkart Decl. at ¶ 15.

10 **C. First Motion to Void.**

11 Following the first two distributions, the Debtor filed its First Motion to Void Claims and
12 Scheduled Amounts of Certain Creditors (Non-Negotiated Checks; Unable to Locate Creditor;
13 Non-Responsive) (the “First Void Motion”). The Court granted the First Void Motion by Order
14 dated December 14, 2012 [Docket No. 3162], and the claims identified therein were voided.
15 Burkart Decl. at ¶ 16.

16 **D. Second Motion to Void.**

17 Following the third and fourth distributions, the Debtor filed its Second Motion to Void
18 Claims and Scheduled Amounts of Certain Creditors (Non-Negotiated and Returned Checks;
19 claims Relinquished; Unable to Locate Creditor or Creditor Nonresponsive) and Notice of
20 Opportunity for Hearing (the “Second Void Motion”). The Court granted the Second Void
21 Motion by Order dated October 9, 2014 [Docket No. 3633] and the claims identified therein were
22 voided. Burkart Decl. at ¶ 17.

23 **E. Current (Third) Motion to Void.**

24 The Debtor is currently preparing to make an interim distribution to non-employee general
25 unsecured creditors. Following the last distribution, the Debtor identified additional claims that
26 should be voided because the distribution checks for such claims were not negotiated or were
27 returned, the creditors have relinquished their claims, the creditors are out of business, the Debtor
28

1 is unable to locate such creditors, such creditors are deceased, and/or such creditors are non-
2 responsive. Burkart Decl. at ¶ 18.

3 **F. Pre-Distribution Letters to Creditors.**

4 In anticipation of the distribution,² in February 2020, the Debtor sent out 118 letters to
5 those creditors who did not cash their distribution check in the last (fifth) distribution, seeking
6 further information. Of the 118 letters that were sent in February, approximately 74 of those
7 letters were returned to the Debtor indicating such problems as “Attempted- Not Known,”
8 “Return to Sender,” “Not Deliverable as Addressed,” “Moved,” or “Unable to Forward,” etc.
9 Burkart Decl. at ¶ 19.

10 In addition, in May 2020, the Debtor sent approximately 1,905 pre-distribution letters to
11 all creditors with Allowed Claims to confirm their addresses for an anticipated distribution.
12 Among other creditors, letters were sent to: (1) creditors who did not cash their distribution check
13 in the last (fifth) distribution (122 creditors); and to (2) creditors whose distribution was
14 anticipated to be de minimus in a final distribution (134 creditors). Of these letters,
15 approximately 370 letters were returned to the Debtor indicating such problems as “Attempted-
16 Not Known,” “Return to Sender,” “Not Deliverable as Addressed,” “Moved,” or “Unable to
17 Forward,” etc. Burkart Decl. at ¶ 20.

18 In addition, in May 2021, the Debtor again sent approximately 1,756 pre-distribution
19 letters to creditors with Allowed Claims to confirm their addresses for this year’s distribution. Of
20 these letters, approximately 320 letters were returned to the Debtor indicating such problems as
21 “Attempted- Not Known,” “Return to Sender,” “Not Deliverable as Addressed,” “Moved,” or
22 “Unable to Forward,” etc. Burkart Decl. at ¶ 21.

23 **G. Claims to Be Voided.**

24 1. With Respect to the Creditors on Exhibit 1- “Two Strikes” (Two Non-Negotiated
25 or Returned Checks):

26 None of the distribution checks sent to these Creditors were negotiated following the
27 fourth and fifth distributions. Many of the checks were returned to the Debtor indicating

28 ² At that time, the Debtor thought the distribution would be a final distribution, and the letters indicated the same.

1 such problems as “Attempted- Not Known,” “Return to Sender,” “Not Deliverable as
2 Addressed,” “Moved,” or “Unable to Forward,” etc. Burkart Decl. at ¶ 22.

3 2. With Respect to the Creditors on Exhibit 2- “One Strike Plus” (One Non-
4 Negotiated or Returned Check Plus No Response to 2020 Letters or Letters
5 Returned):

6 None of the distribution checks sent to these Creditors were negotiated following the
7 fifth distribution and there was no response to the letters mailed to such creditors in
8 February 2020, May 2020 and/or in May 2021, or such letters were returned. Many of the
9 checks and/or letters were returned to the Debtor indicating such problems as “Attempted-
10 Not Known,” “Return to Sender,” “Not Deliverable as Addressed,” “Moved,” or “Unable
11 to Forward,” etc. Burkart Decl. at ¶ 23.

12 3. With Respect to the Creditors on Exhibit 3- Relinquished (No Claim/Claims
13 Relinquished):

14 None of the distribution checks sent to these Creditors were negotiated following the
15 fourth and/or fifth distributions. All of these creditors have returned their distribution
16 checks to the Debtor, indicating that: (1) there is no amount due; and/or (2) the creditor is
17 relinquishing its claim. For example, these Creditors have stated that there is “nothing
18 due,” or they have asked to be “taken off the distribution list,” or they have returned
19 checks with the word “Refused” on the envelope. Burkart Decl. at ¶ 24.

20 4. With Respect to the Creditors on Exhibit 4- Out of Business (Creditor Out of
21 Business):

22 None of the distribution checks sent to these Creditors were negotiated following the
23 fourth and/or fifth distributions. The Debtor has since learned after doing internet
24 searches that the Creditors appear to be no longer in business. Burkart Decl. at ¶ 25.

25 5. With Respect to the Creditors on Exhibit 5- Deceased (Creditor Deceased):

26 Creditors on Exhibit 5 are individuals that the Debtor is informed and believes are
27 deceased. The Plan Administrator has attempted to contact such creditors’ heirs, but such
28 heirs either are unknown or the Plan Administrator has not received a response from
potential heirs. Burkart Decl. at ¶ 26.

1 **H. Debtor's Efforts to Locate and Communicate with Creditors.**

2 The Debtor has sent the February 2020, May 2020, and May 2021 letters discussed above.
3 In addition, the Debtor has made numerous attempts to locate a current address for notices and for
4 reissue of the Creditors' distribution checks, including Internet searches, Secretary of State
5 searches, reviewing the Debtor's financial records, and contacting former Heller clients and
6 vendors, and even former Heller attorneys and staff. When such research produced an alternate
7 address, the Debtor re-mailed notices and change of address forms to such creditors. The Debtor
8 has also attempted to contact Creditors by telephone and e-mail. Burkart Decl. at ¶ 27.

9 Nevertheless, the Debtor has been unable to properly locate the creditors listed on
10 **Exhibits 1 through 5**, and/or their distribution amounts remain unclaimed. The 90-day period
11 for unclaimed property, as set forth in Section 5.28 of the Plan (discussed in the MPA) has long-
12 since expired (based upon the date that the last distribution checks were mailed, January 2016).
13 Burkart Decl. at ¶ 28.

14 **I. Relevant Plan Provisions.**

15 As discussed more fully in the attached MPA, the Plan at Section 5.28 [Unclaimed
16 Property] provides, *inter alia*, that (1) creditors have the obligation to file change of address
17 forms with the Court and to serve such changes of address of the Plan Administrator; (2) if
18 creditors fail for two consecutive times to claim any cash within 90 days from the date of
19 distribution, such creditors are subject to having their claims excluded from future distributions;
20 and that (3) upon such forfeiture, such cash will be made available for redistribution to other
21 creditors with allowed claims.

22 Because the Debtor has been unable to properly locate the creditors listed on **Exhibits 1**
23 **through 5**, and/or their distribution amounts remain unclaimed, the Creditors have relinquished
24 their claims, the Creditors are out of business, and the Creditors are deceased, it is appropriate and
25 in the unsecured creditors' best interest to void the claims of the Creditors listed on **Exhibits 1**
26 **through 5** and to include in the current distribution the funds that had been reserved for these
27 Creditors.

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V. CONCLUSION

Wherefore, based on the Motion, the MPA, the Burkart Declaration, and the Exhibits attached to the Burkart Declaration, the Debtor requests that the Court enter an order granting the relief requested herein.

Dated: September 22, 2021

FELDERSTEIN FITZGERALD
WILLOUGHBY PASCUZZI & RIOS LLP

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