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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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF POST  
CONFIRMATION LIQUIDATING  
DEBTOR HELLER EHRMAN LLP'S  
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]**

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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.<sup>1</sup>

### 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 Creditors on  
24 **Exhibit 1** fall squarely within the conditions listed in Section 5.28 of the Plan. They failed to  
25 negotiate the checks sent to them in the fourth and fifth distributions, they have not filed a  
26 change of address form with the Court, and the Debtor has been unable to find an updated

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

1 address despite the Debtor's diligent efforts described above. Therefore, these claims should  
2 be determined to be void under Section 5.28.

3 B. With Respect to the Creditors on Exhibit 2 ("One Strike Plus"): The Creditors on  
4 **Exhibit 2** failed to negotiate the check sent to them in the fifth distribution, they have not  
5 filed a change of address form with the Court, they have not responded to the letters sent to  
6 them seeking information in February 2020, May 2020, and/or May 2021 (or such letters were  
7 returned), and the Debtor has been unable to find an updated address despite the Debtor's  
8 diligent efforts described above. The failure to respond to (or the return of) the letters sent to  
9 these creditors, coupled with the fact that the last distribution check was not negotiated,  
10 reasonably indicates that any check sent to these creditors in a final distribution likely would  
11 not be negotiated. Rather than engage in further cost and a wasted effort, the Debtor believes  
12 it would be appropriate to determine these claims to be void under the purpose and intent of  
13 Section 5.28 now, and to allow their distributions to be redistributed to the other claimants in  
14 the final distribution.

15 C. With Respect to the Creditors on Exhibit 3 (Relinquished): The Debtor has reached out  
16 to these Creditors by mail, e-mail and phone calls in an attempt to make payment.  
17 Nevertheless, the Creditors on **Exhibit 3** have each returned their respective distribution  
18 checks and have indicated to the Debtor that either: (1) no amount is due; and/or (2) the  
19 creditor is relinquishing its claim. For example, these Creditors have stated that there is  
20 "nothing due," or they have asked to be "taken off the distribution list," or they have returned  
21 checks with the word "Refused" on the envelope. Rather than engage in further cost and a  
22 wasted effort, the Debtor believes it would be appropriate to determine these claims to be void  
23 now and allow their distributions to be redistributed to the other claimants in the final  
24 distribution.

25 D. With Respect to the Creditors on Exhibit 4 (Out of Business): The Debtor has  
26 determined after numerous internet searches that the Creditors on **Exhibit 4** are no longer in  
27 business. Rather than engage in further cost and a wasted effort, the Debtor believes it would  
28 be appropriate to determine these claims to be void now and allow their distributions to be

1 redistributed to the other claimants in the final distribution.

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

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

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

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**III. CONCLUSION**

WHEREFORE, based upon 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 in the Motion.

Dated: September 22, 2021

FELDERSTEIN FITZGERALD  
WILLOUGHBY PASCUZZI & RIOS LLP

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