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

16 In re:

CASE NO.: 08-32514

17 HELLER EHRMAN LLP,

Chapter 11

18 Post Confirmation
19 Liquidating Debtor.

**POST CONFIRMATION LIQUIDATING
DEBTOR HELLER EHRMAN LLP'S
MOTION FOR AUTHORITY TO MAKE
2021 INTERIM DISTRIBUTION TO NON-
EMPLOYEE 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]**

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

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

24 **PLEASE TAKE NOTICE** that pursuant to the confirmed Joint Plan of Liquidation of
25 Heller Ehrman LLP (August 9, 2010) (the “Plan”), 11 U.S.C. §105(a) and Federal Rules of
26 Bankruptcy Procedure 3009 & 3021, the post-confirmation liquidating debtor Heller Ehrman LLP
27 in the above-captioned case (the “Debtor”), by and through its Chapter 11 Plan Administrator,
28 Michael F. Burkart (the “Plan Administrator”) hereby files a motion (the “Motion”) for entry of

1 an order authorizing the Debtor to make an interim distribution of 4% to the Debtor's non-
2 employee general unsecured claimants ("Allowed Non-Employee GUC Claimants") and for
3 related relief as set forth below. This Motion is based upon the Motion, the Memorandum of
4 Points and Authorities filed concurrently herewith (the "MPA"), the Declaration of Michael F.
5 Burkart filed concurrently herewith (the "Burkart Decl."), and Exhibit 1 attached to the Burkart
6 Declaration filed concurrently herewith.

7 **PLEASE TAKE FURTHER NOTICE** that all creditors and parties in interest that
8 believe they hold an allowed non-employee general unsecured claim in the above-referenced case
9 should carefully review this Motion, the MPA, the Burkart Declaration, and Exhibit 1 to the
10 Burkart Declaration in order to determine if they agree with the Debtor on the current allowed
11 amount of their claim, the proposed distribution on account of such claim, and the current address
12 to which the distribution shall be made. **DUE TO THE VOLUME OF DOCUMENTS,**
13 **EXHIBIT 1 AND OTHER DOCUMENTS FILED IN SUPPORT OF THIS MOTION ARE**
14 **NOT ATTACHED TO THIS NOTICE. TO VIEW ALL OF THE DOCUMENTS AND**
15 **EXHIBIT FILED IN SUPPORT OF THE MOTION, CREDITORS SHOULD GO TO**
16 **www.hellerehrman.com AND REFER TO THE "2021 DISTRIBUTION FOR NON-**
17 **EMPLOYEE GUC CREDITORS" SECTION.** If a creditor or party in interest would prefer
18 either a mail set of all the documents filed in support of this Motion, or emailed pdf's of said
19 documents, please send a request to sdarms@ffwplaw.com.

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

26 **PLEASE TAKE FURTHER NOTICE** that any objection or request for a hearing must
27 be accompanied by any declarations or memoranda of law the requesting party wishes to present
28 in support of its position. **If no timely opposition is filed to the requested relief or a request**

1 **for hearing, the Court may enter an order granting the relief by default without hearing. In**
2 **the event of timely objection or request for hearing, the Debtor will give at least seven (7)**
3 **days' written notice of the hearing to the objecting or requesting party.**

4 **PLEASE TAKE FURTHER NOTICE** that unless exempted by the Clerk, all attorneys
5 practicing in the Court, including attorneys admitted pro hac vice, are required to file all
6 documents (excluding documents to be placed under seal) electronically via the Court's
7 Electronic Case Filing system. Objections filed by non-attorneys must be filed in paper with the
8 Court at the following addresses:

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

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

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

19 **II. REQUESTED RELIEF**

20 By way of this Motion, the Debtor requests the entry of an Order authorizing the Debtor
21 to:

22 a. Make an interim distribution of 4% to the Debtor's Allowed Non-Employee GUC
23 Claimants (the "2021 GUC Distribution");

24 b. Make the 2021 GUC Distribution via checks;

25 c. Mail the distribution checks to the addresses approved in the Order to the First
26 Distribution Motion (defined below), unless such address has been, or subsequently is, modified
27 by a change of address form duly filed with the Court and mailed to the Debtor and actually
28 received by the Debtor ten (10) business days prior to the date a distribution check is mailed;

1 d. Comply with the Plan with respect to Disputed Claims, De Minimus Claims, Late-
2 Filed Claims, and Unliquidated Claims including but not limited to authorizing the Debtor to
3 redistribute funds once held in reserve accounts relating to such claims (if any) to holders of
4 allowed General Unsecured Claims in the Distribution;

5 e. If an opposition is filed, (i) approving the distribution on claims that are not
6 impacted by the opposition, (ii) severing the portion of the relief requested impacted by the
7 opposition and deem it to be a separate motion, and (iii) setting a briefing schedule for responses
8 to the opposition and a hearing on the same; and

9 f. For such other and further relief as the Court may deem proper.

10 **III. INTRODUCTION**

11 In September of 2020, this Court approved a distribution to employee general unsecured
12 claimants (including PBGC¹ claimants) of 4%, and those distributions were made at that time. It
13 was anticipated that this distribution to employee general unsecured claimants would be a final
14 distribution, and that once the last disputed claim in this case was resolved—the Paravue
15 Corporation (“Paravue”) claim—non-employee general unsecured claimants would likewise
16 receive a final distribution in approximately the same percentage and the bankruptcy case would
17 be closed. The Paravue claim was resolved in May 2021. Nevertheless, the Plan Administrator
18 has recently received funds in the amount of approximately \$2.6 million in connection with an
19 unexpected distribution from a Heller investment, and there appears to be the potential for receipt
20 of further funds. In light of these changed circumstances (the receipt of a large amount of funds
21 and the possibility of more funds to be received in the future) the Plan Administrator now
22 believes that it is in the best interests of creditors to keep the bankruptcy case open, and further
23 believes that it would be fair and equitable to make an interim distribution to non-employee
24 general unsecured claimants at this time. In addition, it is important to make such a distribution
25 before the year’s end in order to mitigate any income tax liability for 2021. The distribution
26 percentage to non-employee general unsecured claimants will be 4%, which is the same
27 percentage that the employee general unsecured claimants received in their 2020 Employee

28 ¹ Pension Benefit Guaranty Corporation.

1 Distribution, and will bring the total percentage distributed to both employee and non-employee
2 general unsecured claimants to 64%. The Plan Administrator requests Court authority to make
3 this distribution.

4 **IV. PROPOSED 2021 GUC DISTRIBUTION**

5 Exhibit 1 details the Allowed Non-Employee GUC Claimants, their claim number (if
6 any), and the proposed distribution amount at 4%. De Minimus claims (i.e., claims whose
7 payment is less than \$50) are not listed on Exhibit 1 and will not be paid. Disallowed claims are
8 also not listed on Exhibit 1 and will not be paid. Burkart Decl. at ¶ 15.

9 **IF ANY CREDITOR OBJECTS TO ITS RESPECTIVE TREATMENT (OR**
10 **OMISSION FROM) THE PROPOSED DISTRIBUTION EXHIBIT, A TIMELY**
11 **OPPOSITION MUST BE FILED CONSISTENT WITH THE PROCEDURES**
12 **DESCRIBED IN SECTION I, ABOVE.**

13 **IF AN OBJECTION IS NOT TIMELY FILED, THE COURT MAY APPROVE**
14 **THE DISTRIBUTION AS REQUESTED.**

15 **V. BACKGROUND FACTS RELATED TO 2021 GUC DISTRIBUTION**

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

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

1 at ¶ 6.

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

9 The Debtor made an interim distribution in late 2012 and early 2013 to general unsecured
10 creditors in the amount of 5.5% pursuant to this Court’s Order dated December 27, 2012 [Docket
11 No. 3174] approving the *Liquidating Debtor Heller Ehrman LLP’s Motion for Authority to Make*
12 *Interim Distribution to General Unsecured Creditors Pursuant to 11 U.S.C. § 105(a) and Joint*
13 *Plan of Liquidation of Heller Ehrman LLP (August 9, 2010)* (the “Second Distribution Motion”) [Docket
14 No. 3144], bringing the total distributed to general unsecured creditors pursuant to the
15 First and Second Distribution Motions to 44%. Burkart Decl. at ¶ 8.

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

23 The Debtor made an interim distribution in 2016 to general unsecured creditors in the
24 amount of 7% pursuant to this Court’s Order dated December 22, 2015 [Docket No. 3722]
25 approving the *Liquidating Debtor’s Motion for Authority to Make 2015 Interim Distribution to*
26 *General Unsecured Creditors Pursuant to 11 U.S.C. §105(A) and Joint Plan of Liquidation of*
27 *Heller Ehrman LLP (August 9, 2010)* (the “Fourth Distribution Motion”) [Docket No. 3712],
28 bringing the total distributed to general unsecured creditors pursuant to the First, Second, Third,

1 and Fourth Distribution Motions to 60%. Burkart Decl. at ¶ 10.

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

12 In addition, all Remaining Priority Claims (listed in the "Allowed Claims Distribution
13 Schedule" to the First Distribution Motion) have been previously paid. Burkart Decl. at ¶ 12.

14 All litigation regarding Disputed Claims has been finally resolved, including the claim of
15 Paravue. As this Court is aware, the Debtor had engaged in a lengthy battle with Paravue in
16 connection with its claim in this case, including on appeal. On June 12, 2020, and June 30, 2020,
17 respectively, Paravue filed new appeals with the Bankruptcy Appellate Panel ("BAP") in
18 connection with orders entered in connection with its claim [BAP Case No. 20-1141 and BAP
19 Case No. 20-1157, respectively]. These appeals were finally resolved by the Ninth Circuit's
20 Order Dismissing Appeals dated April 20, 2021, which was entered on May 12, 2021 [see Dkt.
21 No. 34 in Case 20-1157]. Burkart Decl. at ¶ 13.

22 The Plan Administrator had intended to make a final distribution to non-employee general
23 unsecured claimants and to close this bankruptcy case once the Paravue claim was resolved.
24 However, the Plan Administrator has recently received funds in the amount of approximately \$2.6
25 million in connection with an unexpected distribution from a Heller investment, specifically, the
26 VLG Investment Fund 2002, and there is a possibility of receiving more funds in the future. In
27 light of these changed circumstances—the receipt of a large amount of funds and the possibility
28 of more funds to be received in the future—the Plan Administrator now believes that it is in the

1 best interests of creditors to keep the bankruptcy case open, and further believes that it would be
2 fair and equitable to make an interim distribution to non-employee general unsecured claimants at
3 this time. In addition, it is important to make such a distribution before the year's end in order to
4 mitigate any income tax liability for 2021. The distribution percentage to the non-employee
5 general unsecured claimants will be 4%, which is the same percentage the employee general
6 unsecured claimants received in their 2020 Employee Distribution, and will bring the total
7 distribution to the non-employee general unsecured claimants to 64% (the same as the employee
8 general unsecured claimants). The Plan Administrator requests Court authority to make this
9 distribution. Burkart Decl. at ¶ 14.

10 **VI. NOTICE OF 2021 GUC DISTRIBUTION MOTION**

11 In August 2011, the Debtor served all creditors with the First Distribution Motion which
12 detailed a specific treatment of each claim.

13 Article 1.108 of the Plan only requires the parties listed on the Post-Confirmation Service
14 List to be served with the Motion, but given that all unsecured creditors are impacted by the
15 Motion, the Motion has been served on all the general unsecured creditors listed on the Court's
16 mailing list, which was downloaded from PACER.

17 **VII. CONCLUSION**

18 WHEREFORE, based upon the Motion, the MPA, the Burkart Declaration, and the
19 Exhibit attached to the Burkart Declaration, the Debtor requests that the Court enter an order
20 granting the relief requested herein.

21 Dated: September 22, 2021

22 FELDERSTEIN FITZGERALD
23 WILLOUGHBY PASCUZZI & RIOS LLP

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