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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  
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]**

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

24 Pursuant to 11 U.S.C. § 105(a), Federal Rules of Bankruptcy Procedure 3009 & 3021, and  
25 the Confirmed Plan in this bankruptcy case, the post-confirmation liquidating debtor Heller  
26 Ehrman LLP, by and through its Chapter 11 Plan Administrator, Michael F. Burkart, submits this  
27 Memorandum of Points and Authorities (“MPA”) in support of its Motion for entry of an order  
28 authorizing the Debtor to make an interim distribution of 4% to the Debtor’s Allowed Non-

1 Employee GUC Claimants and for related relief as set forth in the Motion.<sup>1</sup>

2 **I. FACTUAL BACKGROUND**

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

5 **II. LEGAL ARGUMENT**

6 Federal Rule of Bankruptcy Procedure 3021 provides that, “after a plan is confirmed,  
7 distribution shall be made to creditors whose claims have been allowed...” The rule “does not  
8 provide guidance concerning when distribution should occur,” but “[d]istribution is made in  
9 accordance with the terms of the confirmed plan. Thus, the timing of distribution and manner of  
10 distribution may be covered in the plan. Rule 3021 allows **maximum flexibility to the drafter  
11 of the plan in the area of distribution.**” 9 Collier on Bankruptcy ¶ 3021.01 (A. N. Resnick and  
12 H. J. Sommer, eds. 16<sup>th</sup> ed. 2018) (emphasis added).

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

14 “Distributions to holders of Allowed Claims in Classes 7 through 9 **shall be made as  
15 soon as practicable as determined by the business judgment of the Plan  
16 Administrator** based upon the amount of funds to be distributed relative to the  
administrative costs of making a distribution;”

17 and,

18 “Except as otherwise agreed by the holder of a particular Claim...all amounts to be paid  
19 by the Liquidating Debtor under the Plan **shall be distributed in such amounts and at  
20 such times as is reasonably prudent, in the form of interim and/or final distributions,**  
with sufficient reserves established to satisfy the reserve requirements for Disputed  
21 Unsecured Claims, Professional Fees and anticipated Plan Expenses.”

22 Plan at § 5.20 (Emphasis added).

23 Thus, the Plan provides that the Plan Administrator may make “interim and/or final  
24 distributions” at such times and in such amounts that he deems “reasonably prudent” and  
25 according to his “business judgment.”

26 In addition, the Plan provides that the Court has jurisdiction over this matter and shall

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

1 retain jurisdiction, *inter alia*, “To approve interim and/or final distributions to creditors, including  
2 the approval of any publication notices, which the Plan Administrator in his sole discretion  
3 believes should be noticed to creditors.” See Plan, Article IX, Retention of Jurisdiction, at (xiii).

4 11 U.S.C. § 105(a) provides, “The court may issue any order, process, or judgment that is  
5 necessary or appropriate to carry out the provisions of this title. Interim distribution orders are  
6 authorized under section 105(a). *In re Frantz*, 2020 U.S. Dist. LEXIS 51778 at \*38 (citing *In re*  
7 *Bird*, 565 B.R. 382, 400 (Bankr. S.D. Tex. 2017) (“The Code does not bar an interim distribution,  
8 and when it benefits the estate to do so, the Court is authorized to approve any interim  
9 distribution using its authority pursuant to § 105(a). Here, the interim distribution will maximize  
10 distribution to the creditors because it will decrease the amount lost to bank fees. Stated  
11 differently, an interim distribution right now is in the best interests of the estate.”).

12 In addition, although Bankruptcy Rule 3009 provides for payment of dividends to  
13 creditors in a Chapter 7 case, a bankruptcy court, by order, may provide for distributions under  
14 Rule 3009, superseding the rule’s contemplation of a Chapter 7 case. See 9 Collier on  
15 Bankruptcy ¶ 3009.02 (A. N. Resnick and H. J. Sommer, eds. 16<sup>th</sup> ed. 2018) (“Rule 3009 does not  
16 eliminate court participation in the distribution process, and circumstances may require a court  
17 order in connection with distributions (e.g., to approve interim distributions or when the trustee  
18 fails to act.”).

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

1 employee general unsecured claimants at this time. In addition, it is important to make such a  
2 distribution before the year's end in order to mitigate any income tax liability for 2021. The  
3 distribution percentage to non-employee general unsecured claimants will be 4%, which is the  
4 same percentage the employee general unsecured claimants received in their 2020 Employee  
5 Distribution, and will bring the total distribution to the non-employee general unsecured  
6 claimants to 64% (the same as the employee general unsecured claimants). The Plan  
7 Administrator requests Court authority to make this distribution. Burkart Decl. at ¶ 14.

8 As discussed in the First, Second, Third, and Fourth Distribution Motions (hereafter  
9 collectively referred to as the Prior Distribution Motions), and approved in the Orders thereto,  
10 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) &  
11 (vii), 5.26 and 5.31 of the Plan, no distribution will be made with respect to De Minimis Claims,  
12 disallowed Disputed Claims, Unliquidated Claims, Late-Filed Claims, or Subordinated/Interest  
13 Claims (as defined and discussed in Prior Distribution Motions and their exhibits/amended  
14 exhibits). Burkart Decl. at ¶ 16.

15 A reserve account had been established with respect to De Minimus Claims consistent  
16 with the Plan. Claims that are no longer De Minimus as of the 2021 GUC Distribution have been  
17 included on Exhibit 1 and will be paid in this distribution. See Plan, Articles 5.26 & 5.28.  
18 Burkart Decl. at ¶ 17.

19 A thorough review of all scheduled and filed claims has been conducted, and all of the  
20 Debtor's claim objections to Disputed Claims have now been fully resolved. Disputed Claims  
21 that have been allowed, if any, have been included on Exhibit 1 and will be paid in the 2021 GUC  
22 Distribution. For Disputed Claims that have been disallowed, the funds once reserved for those  
23 claims will be redistributed to the holders of allowed general unsecured claims consistent with the  
24 Plan. See Plan, Articles 5.20, 5.21, 5.22(i), (iv), (vi) & (vii). Burkart Decl. at ¶ 18.

25 No reserve account was ever established with respect to Unliquidated Claims, and no  
26 order was ever entered by the Court requiring such a reserve. There will be no distribution on  
27 such claims. See Plan, Articles 1.54, 1.137, & 5.22(iii). Burkart Decl. at ¶ 19.

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**III. CONCLUSION**

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

Dated: September 23, 2021

FELDERSTEIN FITZGERALD  
WILLOUGHBY PASCUZZI & RIOS LLP

By: /s/ Thomas A. Willoughby  
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