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11 UNITED STATES BANKRUPTCY COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA
14
15 SAN FRANCISCO DIVISION

16 In re:

17 HELLER EHRMAN LLP,

18 Post-Confirmation
19 Liquidating Debtor.

CASE NO.: 08-32514
Chapter 11

Date: November 4, 2022
Time: 10:30 a.m.
Place: Courtroom 17
Judge: Honorable Dennis Montali

*All court hearings will be conducted via AT&T
Conference or by Zoom*

20 **DECLARATION OF MICHAEL F. BURKART IN SUPPORT OF POST-
21 CONFIRMATION LIQUIDATING DEBTOR'S MOTION FOR AUTHORITY TO
22 EMPLOY BG LAW LLP AS SPECIAL COUNSEL**

23 I, Michael F. Burkart, declare as follows:

24 1. I am the duly appointed Plan Administrator for Heller Ehrman LLP, the post
25 confirmation liquidating debtor in the above captioned case ("Heller Ehrman"), pursuant to the
26 Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010) (the "Plan"). In such capacity, I
27 am personally familiar with each of the facts stated herein, to which I could competently testify if
28 called upon to do so in a court of law. As to each of the facts stated herein that occurred prior to
my appointment as Plan Administrator, the facts stated are based on Heller Ehrman's books and
records and/or documents turned over or produced by third parties and/or my investigation and
duties as Plan Administrator.

2. I make this Declaration in support of the Motion (the "Motion") for the entry of an

M. BURKART DECLARATION IN
SUPPORT OF MOTION TO
EMPLOY SPECIAL COUNSEL

1 order authorizing the employment of BG Law, LLP (“BG Law”) as special counsel for the
2 Liquidating Debtor, effective as of June 15, 2022. My responsibility as the Plan Administrator
3 includes the collection and/or liquidation of all assets and unclaimed funds that are property of the
4 bankruptcy estate. As described below, I require special counsel to investigate stock and options
5 received, purchased, retained, sold or otherwise transferred by Heller Ehrman and/or entities or
6 persons related to Heller Ehrman or Venture Law Group (“VLG”) during the course of Debtor’s
7 operations and after it filed for bankruptcy protection.

8 **BACKGROUND**

9 3. On or about September 30, 2003, a Silicon Valley-based law firm with about 60
10 attorneys, founded in 1993, VLG, was acquired under a merger with Heller Ehrman White &
11 McAuliffe LLP (“HEWM”).

12 4. Prior to the merger with VLG, HEWM maintained active investment funds under
13 the respective names of HEWM Investors LLC and HEWM Investors II LLC.

14 5. Also prior to the merger, VLG maintained active investment funds under the
15 respective names of VLG Investments 1999 LLC, VLG Investments 2000 LLC, VLG Investments
16 2001, and VLG Investments 2002, in addition to other funds.

17 6. After the merger of HEWM and VLG in September of 2003, the management of the
18 funds occurred outside of HEWM on an isolated computer system and was never integrated with
19 the primary computer system of HEWM.

20 7. Over the years, several original attorney partners of VLG served as Investment
21 Committee Members, who continued overseeing the VLG Investment related funds. I understand
22 that there are still three remaining VLG attorney partners currently involved in 2022 as the three
23 remaining members of the VLG Investment Committee. All three are former VLG attorneys who
24 joined HEWM coincident with the merger of VLG and HEWM in September of 2003.

25 8. After HEWM and VLG consummated the merger on or about September 30, 2003,
26 selected partners began merging all of the private company investment related funds held under all
27 of the various LLC entities.

28 9. On December 28, 2008, Heller Ehrman filed a Voluntary Petition under Chapter

11 in the San Francisco Division of the Northern District of California to liquidate the law firm under a Joint Plan of Liquidation proposed by the Debtor and the Official Committee of Unsecured Creditors.

10. On August 16, 2010, the U.S. Bankruptcy Court for the Northern District of California (the "Court") entered an Order Confirming the Joint Plan of Liquidation of Heller Ehrman and the appointment of Michael Burkart as the Chapter 11 Plan Administrator. The Effective Date of the Court-approved Liquidation Plan is September 1, 2010.

11. Since September 1, 2010, I have been performing the role of Plan Administrator to execute all provisions set forth under the Plan of Liquidation and essentially wind up all the remaining business affairs and pending litigation of the bankruptcy estate for the benefit of creditors under the auspices of the Court.

12. One of the many actions that I undertook as Plan Administrator was researching the various investment funds owned and/or controlled by Heller Ehrman, VLG and related entities in which the bankruptcy estate may have an ownership interest.

13. As the Plan Administrator, I understood that Heller Ehrman was an investor under the following investment funds (this is the subject of continuing investigation):

- VLG Investments LLC (fka HEWM/VLG Investments LLC)
- VLG Investments 1999 LLC
- VLG Investments 2000 LLC
- VLG Investments 2001 LLC
- VLG Investments 2002 LLC
- VLG Investments 2003 LLC
- HEWM Investors LLC
- HEWM Investors II LLC

14. The former Fund Administrator, Mark Royer, typically prepared copies of Annual Reports reflecting the investment portfolio of the following funds as of December 31st of each year:

- VLG Investments 1999 LLC
- VLG Investments 2000 LLC

- VLG Investments 2001 LLC
- VLG Investments 2002 LLC
- VLG Investments 2003 LLC
- HEWM Investors LLC

15. I subsequently received a list of investment holdings that was consolidated with all other VLG Investment related funds.

- VLG Investments LLC , which is purportedly a consolidated report as of December 31, 2019.

16. The Bankruptcy Estate of Heller Ehrman continued to receive a form Schedule K-1 (Form 1065 - US and California) annually for each of the four VLG Investment Funds (fka HEWM/VLG Investment LLC), respectively, under which Heller Ehrman held a vested interest.

- 2006 - Prepared by HEWM/VLG Investments LLC (I.D. No. 94-3316645) - 275 Middlefield Road, Menlo Park, CA.
- 2007 - Prepared by HEWM/VLG Investments LLC (I.D. No. 94-3316645) - 275 Middlefield Road, Menlo Park, CA.
- 2008 - Prepared by VLG Investments LLC (fka HEWM/VLG Investments LLC) - (I.D. No. 94-3316645) - 275 Middlefield Road, Menlo Park, CA.
- 2009 - Prepared by VLG Investments LLC (I.D. No. 94-3316645) - P.O. Box 372, Menlo Park, CA.

17. I have made several inquiries requesting specific financial information and documentation regarding the HEWM/VLG investments. However, I have not been provided specific information about the various investments.

18. I received Annual Reports for year-end of 2016 for each the various VLG Investment funds, but the report was a combined report without enough detail to ascertain the financial status or vesting of the investments held by Heller Ehrman.

19. For the year ending 2017, VLG and Mark Royer no longer provided any annual reports to Heller Ehrman. I made inquiries and was told that Mark Royer had departed his position and that Ms. Drez had taken his place on a part-time basis as the VLG investment fund administrator.

20. On November 2, 2018, I e-mailed an inquiry to Ms. Drez requesting Annual Reports

1 for year-end 2017 for all of the VLG related funds. She replied with a very brief one-page portfolio
2 report of holdings under each VLG related fund and HEWM Investors II.

3 21. On December 29, 2020, Shelley Salinero, the part-time business operations manager
4 for the Heller Ehrman Bankruptcy Estate, received an e-mail solicitation from Cochran Investment
5 Company, Inc. ("Cochran"), with a request for a 10% assignment for recovery of unclaimed
6 property held by the State of California Controller's Office ("Unclaimed Property").

7 22. This was the first I learned of this Unclaimed Property because the owners' names
8 listed were various VLG funds, not the Heller Ehrman Estate. The Unclaimed Property consists of
9 unclaimed cash and securities originally arising out of the VLG funds.

10 23. On December 29, 2020, I conducted a telephone conference with Ms. Drez as she
11 assumed the administration for the VLG and HEWM Investments related entities. She stated that
12 she was also just made aware of the Unclaimed Property held by the California State Controller's
13 Office after the solicitation from Cochran Investments to retrieve some of the Unclaimed Property.
14 Ms. Drez also stated that she would have someone working on recovering this property as the
15 Unclaimed Property apparently relates to the VLG and HEWM investment funds. She told me she
16 did not intend to pay a finder's fee to an unclaimed property hunter like Cochran. I downloaded a
17 list of the Unclaimed Property held by the California State Controller's Office and forwarded a
18 copy to Ms. Drez.

19 24. Having served as a Chapter 7 Panel Trustee in the Eastern District and a specially
20 appointed Chapter 11 Trustee for well over twenty years, I personally researched the history of this
21 Unclaimed Property held by the California State Controller's Office. I attach hereto and incorporate
22 herein by reference as Exhibit "A" a true and accurate summary of my report summarizing the
23 history of the Unclaimed Property retrieved from the State Controller's Office.

24 25. As part of my investigation and research, it does not appear that Heller Ehrman ever
25 conducted any overview and/or audit of the accounting methodology or records of the Heller
26 Ehrman/VLG/HEWM investment funds between the years of 2004 and 2010.

27 26. As Plan Administrator, I brought this matter before the Official Unsecured Creditors
28 Committee, with Thomas Willoughby as legal counsel, as to whether an investigation is warranted.

1 27. The Creditors Committee agreed that we should conduct this investigation
2 surrounding the management of the VLG-related investment funds.

3 28. Therefore, I am requesting the Court to authorize engagement of BG Law as Special
4 Counsel to investigate this matter. BG Law's services to be provided to me as the Plan
5 Administrator will include the investigation of the whereabouts of stock and options received,
6 purchased, retained, sold, or otherwise transferred by Heller Ehrman and/or entities or persons
7 related to Heller Ehrman or VLG during the course of Heller Ehrman's operations and after it filed
8 for bankruptcy protection. The investigation will include potential bankruptcy claims/causes of
9 action and alternative state law claims/causes of action, including but not limited to any possible
10 actions or derivative actions for breaches of fiduciary duty, breach of contract, unjust enrichment,
11 unfair business practices, fraud, fraudulent transfers, turnover and/or appointment of a receiver to
12 take over an entity for cause (the "Investigation"). The Investigation will include Rule 2004
13 examinations, document reviews, and third-party discovery, as well as an investigation regarding
14 unclaimed property held by the State of California. I anticipate approximately four to five Rule
15 2004 examinations, as well as subpoenas on third party banks, financial institutions and/or
16 custodians of record or agents for certain companies that may have issued stock to Heller Ehrman,
17 VLG and/or related entities and persons. BG Law will prepare categories for designating persons
18 most knowledgeable for any oral Rule 2004 examinations and will prepare requests for production
19 of documents for any oral Rule 2004 examinations or Rule 2004 examinations requesting the
20 production of documents. BG Law will prepare for and take the oral Rule 2004 examinations and
21 will review the documents produced.

22 29. After or concurrent with the Investigation, BG Law will prepare a substantive and
23 detailed "White Paper" detailing the results of the Investigation, including but not limited to an
24 analysis of liability issues, proximate cause, damages, and collectability. The White Paper shall
25 not be an advocacy document but shall provide a balanced view of the positives and negatives of
26 any viable causes of action retained in the Investigation. An addendum to the White Paper shall
27 detail any claims/causes of action to be litigated, and which retention terms, including contingency
28 proposals. will be considered by the Liquidating Debtor. The White Paper shall be completed

1 within six months of the date that the Court enters an order approving this Motion. If unanticipated
2 events prevent the timely completion of the White Paper, BG Law and/or the Liquidating Debtor
3 shall have the right to file a motion with the Court within the six month period to extend the period
4 for cause. For such claims/causes of action that BG Law is willing to file and litigate, as detailed
5 in the White Paper, I will consider BG Law's proposal, but may select other counsel at my
6 discretion after consultation with the Post-Confirmation Committee of Unsecured Creditors.

7 I declare under penalty of perjury that the foregoing is true and correct to the best of my
8 knowledge and that this declaration was executed on October 7, 2022, in Sacramento, California.

9 /s/ Michael F. Burkart
10 MICHAEL F. BURKART
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