

1 THOMAS A. WILLOUGHBY, State Bar No. 137597  
2 FELDERSTEIN FITZGERALD  
3 WILLOUGHBY PASCUZZI & RIOS LLP  
4 500 Capitol Mall, Suite 2250  
5 Sacramento, CA 95814  
6 Telephone: (916) 329-7400  
7 Facsimile: (916) 329-7435  
8 E-mail: twilloughby@ffwplaw.com  
9 Attorneys for the Post-Confirmation Liquidating Debtor  
10 Heller Ehrman LLP

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 **POST-CONFIRMATION LIQUIDATING DEBTOR'S MOTION FOR**  
21 **AUTHORITY TO EMPLOY BG LAW LLP AS SPECIAL COUNSEL**

22 Michael Burkart, the Post-Confirmation Plan Administrator ("Plan Administrator") for the  
23 Liquidating Debtor, Heller Ehrman LLP (the "Liquidating Debtor"), in the above-referenced case  
24 respectfully requests the Court approve, effective as of June 15, 2022, the employment of BG Law,  
25 LLP ("BG Law") as special counsel for the Liquidating Debtor. In support of this Motion, the  
26 Liquidating Debtor respectfully represents the following:

27 **BACKGROUND**

28 1. On December 28, 2008, the Debtor filed a voluntary petition for relief under title 11  
of the United States Code, Bankruptcy Case number 08-32514 (the "Bankruptcy Case"), in the  
United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court").

2. The Official Committee of Unsecured Creditors and the Debtor jointly proposed a  
plan that came on for hearing on August 9, 2010. On August 13, 2010, the Bankruptcy Court entered

1 an order confirming the Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010) [Docket  
2 No. 1431] (the “Plan”). The Plan went effective on September 1, 2010.

3 3. Under the Plan, the Liquidating Debtor retained the responsibility for claims review,  
4 dispute resolution and distribution. See Plan sections 5.20-5.22 & 5.27. Michael Burkart is the duly  
5 appointed administrator under the Plan and has been managing the Liquidating Debtor since the  
6 Plan effective date.

7 4. The law firm of Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP (“FFWPR”  
8 or “General Counsel”) represents the Liquidating Debtor as its general counsel.

9 5. The responsibility of the Plan Administrator also includes the collection and/or  
10 liquidation of all assets and unclaimed funds that are property of the bankruptcy estate. As described  
11 below, the Plan Administrator requires special counsel to further investigate stock and options  
12 received, purchased, retained, sold or otherwise transferred by the Debtor and/or entities or persons  
13 related to the Debtor or Venture Law Group during the course of Debtor’s operations and after it  
14 filed for bankruptcy protection.

15 6. Section 5.34 of the Plan states that: “After the Effective Date, the Plan Administrator  
16 may retain any existing Professionals of the Liquidating Debtor or the Debtor without further  
17 employment agreements or orders. Additionally, after the Effective Date, the Plan Administrator  
18 may hire other professionals without the requirement that such professionals file applications for  
19 payment of post-Effective Date fees and expenses on an interim basis; provided, however, that no  
20 less frequently than every 180 days, such post-confirmation professionals, and the Plan  
21 Administrator shall file Post Confirmation Motions and Opportunity for Hearings seeking final  
22 approval of their respective fees and expenses as previously invoiced or paid on an interim basis,  
23 as the case may be.”

24 7. The Plan Administrator seeks to retain BG Law as his special counsel in the  
25 Bankruptcy Case, and has entered into, subject to Bankruptcy Court approval, the agreement for  
26 legal services with BG Law, which is attached hereto as **Exhibit 1** (the “Retention Agreement”).  
27 Even though the Plan Administrator is not required to obtain Court approval to retain and employ  
28 BG Law as special counsel, the Plan Administrator is doing so out of an abundance of caution.

## JURISDICTION

8. This Motion is made pursuant to Bankruptcy Code sections 328 and 1103, Bankruptcy Rules 2014, 2016 and 5002, and the Guidelines of the Office of the United States Trustee (“UST Guidelines”).

## REASON FOR SELECTION AND PLAN ADMINISTRATOR AUTHORITY

9. The Plan Administrator has requested the services of BG Law as special counsel given that its attorneys have extensive experience in investigating potential claims of bankruptcy estates and in litigation in bankruptcy cases, adversary proceedings and in business and commercial litigation. BG Law has the ability to commit its resources to the investigation, and to the litigation of potential claims to the extent that the estate pursues such claims and retains BG Law to pursue such claims. BG Law is well qualified to represent the Liquidating Debtor as special counsel for this purpose. True and correct copies of BG Law’s biographical information for its professionals and its hourly rates are attached as **Exhibit 2** and **Exhibit 3**, respectively, to the Declaration of Steven T. Gubner (the “Gubner Declaration”) and are incorporated herein by this reference.

10. Section 5.33 of the Plan provides that after the Effective Date, “Plan Administrator . . . may hire other professionals . . . whether on an hourly, contingency or other basis . . . provided however, that no less than every 180 days, such post-confirmation professionals . . . shall file Post Confirmation Motions and Opportunity for Hearings seeking final approval of their respective fees and expenses.” The proposed retention herein is on a fixed/contingency fee basis, with the requirement that the matter be concluded within the “six month” time frame, and that a final fee application be filed after the completion of the project.

## SCOPE OF BG LAW’S EMPLOYMENT

11. BG Law’s services to be provided to the Plan Administrator will include the investigation into the whereabouts of stock and options received, purchased, retained, sold, or otherwise transferred by the Debtor and/or entities or persons related to the Debtor or Venture Law Group during the course of the Debtor’s operations and after it filed for bankruptcy protection (the “Investigation”). The Investigation will include potential bankruptcy claims/causes of action and alternative state law claims/causes of action, including but not limited to any possible actions or

1 derivative actions for breaches of fiduciary duty, breach of contract, unjust enrichment, unfair  
2 business practices, fraud, fraudulent transfers, turnover and/or appointment of a receiver to take  
3 over an entity for cause. The Investigation will include Rule 2004 examinations, document  
4 reviews, and third-party discovery, as well as an investigation regarding unclaimed property held  
5 by the State of California. The Plan Administrator and BG Law anticipate approximately four to  
6 five Rule 2004 examinations, as well as subpoenas on third party banks, financial institutions and/or  
7 custodians of record or agents for certain companies that may have issued stock to the Debtor,  
8 Venture Law Group and/or related entities and persons. BG Law will prepare categories for  
9 designating persons most knowledgeable for any oral Rule 2004 examinations and will prepare  
10 requests for production of documents for any oral Rule 2004 examinations or Rule 2004  
11 examinations requesting the production of documents. BG Law will prepare for and take the oral  
12 Rule 2004 examinations and will review the documents produced. General counsel for the  
13 Liquidating Debtor will prepare, file and serve the motion with the Bankruptcy Court requesting  
14 authority to conduct an examination of any parties in interest under Rule 2004 as provided under  
15 the Federal Rules of Bankruptcy Procedure.

16 12. After or concurrent with the Investigation, BG Law will prepare a substantive and  
17 detailed "White Paper" detailing the results of the Investigation, including but not limited to an  
18 analysis of liability issues, proximate cause, damages, and collectability. The White Paper shall  
19 not be an advocacy document but shall provide a balanced view of the positives and negatives of  
20 any viable causes of action retained in the Investigation. An addendum to the White Paper shall  
21 detail any claims/causes of action to be litigated, and which retention terms, including contingency  
22 proposals will be considered by the Plan Administrator. The White Paper shall be completed within  
23 six months of the date that the Court enters an order approving this Motion. If unanticipated events  
24 prevent the timely completion of the White Paper, BG Law and/or the Liquidating Debtor shall  
25 have the right to file a motion with the Court within the six month period to extend the period for  
26 cause. For such claims/causes of action that BG Law is willing to file and litigate, as detailed in  
27 the White Paper, the Plan Administrator will consider BG Law's proposal, but the Plan  
28 Administrator may select other counsel at his discretion after consultation with the Post-

1 Confirmation Committee of Unsecured Creditors.

2 **COMPENSATION**

3 13. Upon entry of the Order approving this Motion, the Plan Administrator shall cause  
4 the Liquidating Debtor to transmit the sum of One Hundred Thousand Dollars (\$100,000.00) to BG  
5 Law as a retainer to be held in BG Law's client trust account. The Plan Administrator shall remit  
6 monthly payments to BG Law based on a blended rate of Five Hundred Dollars (\$500.00) per hour  
7 during the Investigation period by authorizing BG Law to draw down on the Retainer in an amount  
8 not to exceed Twenty Thousand Dollars (\$20,000.00) per month, pursuant to monthly fee  
9 statements submitted by BG Law. To the extent that over \$20,000 is incurred in a given month,  
10 the remaining balance over \$20,000 may be drawn down in the following month. However, an  
11 amount of \$20,000 of the \$100,000 Retainer shall be retained in the BG Law client trust account  
12 until the Bankruptcy Court enters a final order approving payment of the remaining balance held  
13 on Retainer.

14 14. All expenses to complete the Investigation or prepare the White Paper shall be  
15 submitted in the monthly fee statements, but such expenses shall be included in the \$100,000 total  
16 amount to be paid by the Liquidating Debtor, as described above.

17 15. In addition to the above-described fees and reimbursement of expenses, if the  
18 Investigation and/or White Paper process and/or recovery from unclaimed property held by the  
19 California State Controller leads to the settlement of any claims being investigated before any  
20 litigation is filed, BG Law shall receive a Ten Percent (10%) enhancement (the "10%  
21 Enhancement") payment in the amount of 10% of the gross settlement amount, the gross recovery  
22 by the estate prior to taking into account any fees or costs incurred. BG Law will represent the  
23 Liquidating Debtor in reaching, documenting, and gaining approval for such a settlement before  
24 the initiation of litigation, with the sole compensation for this work being the 10% Enhancement.

25 16. General counsel for the Liquidating Debtor will file and serve a final fee application  
26 with the Bankruptcy Court requesting allowance and payment of the final amount held under the  
27 Retainer that was earned, in addition to a 10% Enhancement calculated on any and all recoveries  
28 received by the Plan Administrator pursuant to the Investigation undertaken by BG Law. BG Law

1 agrees that it will look solely to the Liquidating Debtor for payment under this Agreement, and  
2 Michael Burkart shall have no personal liability of any kind under this Agreement.

### 3 **DISCLOSURES OF BG LAW**

4 16. As set forth in the Gubner Declaration, BG Law's partners and attorneys do not hold  
5 or represent any interest adverse to the Plan Administrator or the Liquidating Debtor, and BG Law  
6 and each of its partners and attorneys is a "disinterested person" within the meaning of sections  
7 101(14) and 327 of the Bankruptcy Code. Except as set forth in the Gubner Declaration, BG Law's  
8 partners and attorneys have no connection with the Plan Administrator or the Liquidating Debtor,  
9 the Liquidating Debtor's other professionals, the judges of the United States Bankruptcy Court for  
10 the Northern District of California, the United States Trustee and the Assistant Trustees and Trial  
11 Attorneys for the Office of the United States Trustee. As also set forth in the Gubner Declaration,  
12 David Seror is an attorney at BG Law and currently serves as a trustee appointed by the Office of  
13 the United States Trustee ("OUST") as part of its private panel, and Susan K. Seflin is an attorney  
14 at BG Law and serves as a Subchapter V trustee appointed by the OUST (when the case is converted  
15 from Subchapter V, Ms. Seflin has also served as a Chapter 7 and/or Chapter 11 Trustee).

16 17. BG Law is familiar with the Bankruptcy Code, the Federal Rules of Bankruptcy  
17 Procedure, the Bankruptcy Local Rules and the "Guide to Application for Professional  
18 Compensation" as promulgated by the Office of the United States Trustee and will comply with  
19 them. Any and all compensation awarded to BG Law is subject to Court approval and shall be  
20 approved by the Court after notice and a hearing as may be required by the Bankruptcy Code, the  
21 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules and the practices and  
22 procedures of this Court.

23 18. The Plan Administrator is satisfied from the Statement of Disinterestedness that the  
24 employment of BG Law as his special counsel is in the best interests of the Estate.

### 25 **NOTICE**

26 19. As evidenced by the proof of service attached to the notice filed concurrently with  
27 this Motion, notice of this Motion is provided pursuant to Section 1.108 of the Plan to all members  
28 of the Committee as of the Effective Date, the Office of the United States Trustee, counsel for

1 Citibank and Bank of America, counsel for the Heller Ehrman PCs, and any other creditor or party  
2 in interest that files a request for post confirmation notice after the Effective Date with the Court  
3 and serves it on the Post Confirmation Service List.

#### 4 CONCLUSION

5 Based on the foregoing, the Liquidating Debtor requests that BG Law be employed as  
6 special counsel to provide the services described herein, effective June 15, 2022.

7 WHEREFORE, based upon the foregoing, the Liquidating Debtor requests that the Court  
8 enter an order authorizing:

9 1. The employment of BG Law as the Liquidating Debtor's litigation counsel on the  
10 terms and conditions set forth above, pursuant to 11 U.S.C. § 328;

11 2. Upon entry of an Order approving the Motion, authorizing the Liquidating Debtor  
12 to pay BG Law a \$100,000.00 Retainer, which amount will be deposited into BG Law's client trust  
13 account to be applied and drawn down upon on a monthly basis as set forth herein; and

14 3. Granting such other and further relief as this Court deems just and proper.

15 DATED: October 7, 2022

16 POST-CONFIRMATION LIQUIDATING  
DEBTOR HELLER EHRMAN, LLP

17 By: /s/ Michael F. Burkart  
18 Michael F. Burkart, solely in his  
19 capacity as Plan Administrator

20 FELDERSTEIN FITZGERALD  
21 WILLOUGHBY PASCUZZI & RIOS LLP

22 By: /s/ Thomas A. Willoughby  
23 THOMAS A. WILLOUGHBY  
24 Attorneys for the Post-Confirmation  
25 Liquidating Debtor Heller Ehrman LLP  
26  
27  
28