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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: HELLER EHRMAN LLP, Post Confirmation Liquidating Debtor.	Case No.: 08-32514 Chapter 11 **POST CONFIRMATION LIQUIDATING DEBTOR HELLER EHRMAN LLP'S MOTION FOR AUTHORITY TO MAKE FINAL DISTRIBUTION TO THE 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]**

TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE:

I. NOTICE OF MOTION AND OPPORTUNITY FOR HEARING

PLEASE TAKE NOTICE that pursuant to the confirmed Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010) (the "Plan"), 11 U.S.C. §105(a), and Federal Rules of Bankruptcy Procedure 3021, the post-confirmation liquidating debtor Heller Ehrman LLP in the above-captioned case (the "Debtor"), by and through its Chapter 11 Plan Administrator, Michael Burkart (the "Plan Administrator") hereby files a motion (the "Final Distribution Motion") for entry of an order authorizing the Debtor to make a final distribution of approximately 2.5% to 3%

(the "Distribution Percentage")[1] to the holders of allowed general unsecured claims (the "Allowed GUC Claims", and such holders, the "Allowed GUC Claimants") and for related relief as set forth below. The categories of Allowed GUC Claims are as follows: (a) all claims other than Employee Claims (defined below) and PBGC Beneficiaries (defined below) (the "Non-Employee/PBGC Claims") (listed on ***Exhibit 1***); (b) the Debtor's former employees (collectively, the "Employee Claims") (listed on ***Exhibit 2***); and (c) the Pension Benefit Guaranty Corporation Claim (the "PBGC Claim")[2] that is asserted on behalf of the PBGC Beneficiaries (listed on ***Exhibit 3***) (collectively, the "PBGC Beneficiaries").[3] This Motion is based upon the Final Distribution Motion, the Memorandum of Points and Authorities filed concurrently herewith (the "MPA"), the Declaration of Michael Burkart filed concurrently herewith (the "Burkart Decl."), and Exhibits 1 through 4 (collectively the "Exhibits")[4]. Exhibits one through three list by category the original creditor or beneficiary name, the current payee's name, the allowed claim amount, prior payments, the current estimated amount to be paid (using the 3% estimate), and the current address to which checks should be sent (along with other relevant information).[5] The

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[1] If the Distribution Percentage is less than 2.5%, the Debtor, by and through its Plan Administrator, will return to this Court for further approval.

[2] The Pension Benefit Guaranty Corporation has an allowed class 7 general unsecured claim in the amount of $155,000. [ECF No. 1254, 1257, 1361, and 1729; and Claim# 628]. The Pension Benefit Guaranty Corporation asserts the PBGC Claim on behalf of the PBGC Beneficiaries. The other claims filed by the Pension Benefit Guaranty Corporation (Claim# 601, 602, 629, 630, and 631) were withdrawn and expunged. [ECF No. 1729].

[3] The Plan Administrator is in the process of retaining counsel to ensure compliance with the PBGC Settlement Agreement [ECF No. 1257, Ex. A (Agreement) and Order ECF No. 1361] and applicable non-bankruptcy law. If the Plan Administrator determines that such compliance requires: (a) reducing the Distribution Percentage payable to the Allowed GUC Claimants to less than 2.5% or, (b) taking any action that deviates from the relief requested in the Motion, or otherwise exceeds the authority granted by the Court's order approving this Motion, the Plan Administrator shall seek supplemental authority from the Court before implementing such action. *See* Burkart Decl. at ¶17.

[4] Exhibit 4 is described in detail below. As described below, The Plan Administrator intends to file objections, if necessary, to certain proofs of claim identified on Exhibit 4, or to the unliquidated portions thereof, after attempting to contact the holders of such claims. The Plan Administrator will not make the Final Distribution until such objections have been resolved. *See* Exhibit 4. *See* Burkart Decl. at ¶18.

[5] As noted above, the Distribution Percentage to the Allowed GUC Claimants is expected to range between 2.5% and 3%. Exhibits one through three reflect the 3% estimate. If the final

Allowed GUC Claimants are strongly encouraged to review Exhibits 1 through 3, which may be found at www.hellereherman.com (under the "Final Distribution Motion" heading).

PLEASE TAKE FURTHER NOTICE that all creditors and parties in interest that believe they hold an allowed general unsecured claim in the above-referenced case should carefully review the Final Distribution Motion, the MPA, the Burkart Decl., and the Exhibits in order to determine if they agree with the Debtor on the current allowed amount of their claim, the proposed distribution on account of such claim, and the current address to which the distribution shall be made, if applicable.

PLEASE TAKE FURTHER NOTICE that **DUE TO THE VOLUME OF DOCUMENTS, THE EXHIBITS AS WELL AS OTHER DOCUMENTS FILED IN SUPPORT OF THIS FINAL DISTRIBUTION MOTION ARE NOT ATTACHED TO THIS NOTICE. TO VIEW ALL OF THE DOCUMENTS AND EXHIBITS FILED IN SUPPORT OF THIS FINAL DISTRIBUTION MOTION, CREDITORS SHOULD GO TO www.hellerehrman.com AND REFER TO THE "FINAL DISTRIBUTION MOTION" SECTION.**

If a creditor or party in interest would prefer either a mail set of all the documents filed in support of this Final Distribution Motion, or emailed pdf's of said documents, please send a request to akieser@ffwplaw.com.

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

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Distribution Percentage is between 2.5% and 3%, the amounts reflected in Exhibits one through three will be adjusted to correspond with the actual Distribution Percentage used at the time of distribution. However, if the final Distribution Percentage falls below 2.5%, the Debtor will seek further Court approval before proceeding with any distribution.

PLEASE TAKE FURTHER NOTICE that any objection or request for a hearing must be accompanied by any declarations or memoranda of law the requesting party wishes to present in support of its position. If no timely opposition is filed to the requested relief or a request for hearing, the Court may enter an order granting the relief by default without a hearing. In the event of a timely objection or a request for a hearing, the Debtor will give at least seven (7) days written notice of the hearing to the objecting or requesting party.

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

If by mail: 450 Golden Gate Avenue, Mailbox 36099, San Francisco, CA 94102.

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

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

II. REQUESTED RELIEF

By way of this Final Distribution Motion, the Debtor requests the entry of an order authorizing the Debtor, through its Plan Administrator, to:

a. Make the Distribution Percentage to the Allowed GUC Claimants (the "Final Distribution");

b. Make the Final Distribution via checks;

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c. Mail the distribution checks to the addresses that are set forth in Exhibits 1 through 3;

d. Notify the Allowed GUC Claimants that distribution checks must be negotiated within ninety (90) days of the date the check is dated;

e. Provide that notification described in paragraph (d) shall be deemed satisfied by a notation on the distribution check itself;

f. Distribute any funds represented by checks that remain uncashed after such ninety (90) day period, to the Credit Abuse Resistance Education (CARE), San Francisco (hereinafter, "CARE"); provided, however, that any funds represented by uncashed checks payable to the PBGC Beneficiaries shall instead be distributed by the Plan Administrator in accordance with applicable non-bankruptcy law, after consultation with counsel;

g. Comply with the Plan with respect to Disputed Claims, De Minimis Claims, Late Filed Claims, Subordinated/Interest Claims, and Unliquidated Claims[6]; and;

h. Grant such other and further relief as the Court deems just and proper.

III. INTRODUCTION

The Plan Administrator believes that it is in the best interests of creditors to make a Final Distribution to the Allowed GUC Claimants and to close this bankruptcy case by the end of this year. As set forth in Section V in detail below, the Debtor made several prior distributions to the certain holders of allowed general unsecured creditor claims. [*See* ECF Nos. 2549[7], 3174, 3320, 3722, 4305, 4415]. The total distribution percentage to the Allowed GUC Claimants, including this Final Distribution, is anticipated to be between approximately 66.5% and 67%. Prior distributions to the Allowed GUC Claimants totaled approximately 64% and, with the addition of the Distribution Percentage, aggregate distributions to the Allowed GUC Claimants will total

[6] The Plan Administrator intends to file objections, if necessary, to certain proofs of claim identified on Exhibit 4, or to the unliquidated portions thereof, after attempting to contact the holders of such claims. The Plan Administrator will not make the Final Distribution until such objections have been resolved. *See* Exhibit 4; *see also* Burkart Decl. at ¶18.

[7] The Debtor made two interim distributions in 2011 to general unsecured creditors on September 29, 2011, and December 22, 2011 (of 30% and 8.5%, respectively, for a total distribution percentage of 38.5%) pursuant to an Order dated September 24, 2011 [ECF 2549].

between approximately 66.5% and 67%. The Plan Administrator requests Court authority to make this Final Distribution.

IV. <u>PROPOSED FINAL DISTRIBUTION</u>

Exhibit 1 details the allowed Non-Employee GUC claimants, their claim number (if any) and the estimated distribution percentage of 3%[8]. De Minimis claims (i.e., claims whose payment is less than $50) are listed on Exhibit 1 and will not be paid. Disallowed Non-Employee claims are not listed on Exhibit 1 and will not be paid. Burkart Decl. at ¶ 15.

Exhibit 2 details the allowed Employee claimants, their claim number (if any), and the estimated distribution percentage of 3%. De Minimis Employee claims (i.e. claims whose payment is less than $50) are listed on Exhibit 2 and will not be paid. Disallowed Employee claims are also not listed on Exhibit 2 and will not be paid. Burkart Decl. at ¶ 16.

Exhibit 3 details the PBGC Beneficiaries and the estimated distribution percentage of 3%. The Plan Administrator is in the process of retaining counsel to ensure compliance with the PBGC Settlement Agreement and applicable non-bankruptcy law. Burkart Decl. at ¶ 17.

Exhibit 4 details the holders of the unliquidated claims and their claim number (the "<u>Unliquidated Claims</u>", and collectively, the holders thereof, the "<u>Unliquidated Claimants</u>"). The Plan Administrator intends to file objections to the Unliquidated Claims, or to the unliquidated portions thereof, if necessary, after attempting to contact the Unliquidated Claimants. The Plan Administrator will *not* make the Final Distribution until such objections have been resolved. Burkart Decl. at ¶ 18.

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

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[8] As noted above, the Distribution Percentage is expected to range between 2.5% and 3%. Exhibits one through three reflect the 3% estimate. If the final Distribution Percentage is between 2.5% and 3%, the amounts reflected in Exhibits one through three will be adjusted to correspond with the actual Distribution Percentage used at the time of distribution. However, if the final Distribution Percentage falls below 2.5%, the Debtor will seek further Court approval before proceeding with any distribution.

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

V. FACTUAL BACKGROUND

Below is a short history of the present case and a description of the prior distribution motions approved in this case. Parties that seek additional information on the history of this case should refer to the confirmed Plan [ECF No. 1431] and approved Disclosure Statement [ECF No. 1153] on file in this case.

On December 28, 2008, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor, an approximate 118-year-old international law firm, began the process of winding down its business and affairs following the adoption of a Plan of Dissolution. Burkart Decl. at ¶ 3. On January 5, 2009, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors. Burkart Decl. at ¶ 4. On August 13, 2010, the Court entered an order confirming the Plan. Burkart Decl. at ¶ 5. The Plan became effective on September 1, 2010 (the "Effective Date"). Burkart Decl. at ¶ 5. Michael Burkart is the duly appointed administrator under the Plan (the "Plan Administrator") and has been managing the Debtor since the Effective Date. Burkart Decl. at ¶ 6.

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

The Debtor made an interim distribution in late 2012 and early 2013 to general unsecured creditors in the amount of 5.5% pursuant to this Court's Order dated December 27, 2012 [ECF No. 3174] approving the *Liquidating Debtor Heller Ehrman LLP's Motion for Authority to Make Interim Distribution to General Unsecured Creditors Pursuant to 11 U.S.C. § 105(a) and Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010)* (the "Second Distribution Motion")

[ECF No. 3144], bringing the total distributed to general unsecured creditors pursuant to the First and Second Distribution Motions to 44%. Burkart Decl. at ¶ 8.

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

The Debtor made an interim distribution in 2016 to general unsecured creditors in the amount of 7% pursuant to this Court's Order dated December 22, 2015 [ECF No. 3722] approving the *Liquidating Debtor's Motion for Authority to Make 2015 Interim Distribution to General Unsecured Creditors Pursuant to 11 U.S.C. §105(a) and Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010)* (the "Fourth Distribution Motion") [ECF No. 3712], bringing the total distributed to general unsecured creditors pursuant to the First, Second, Third, and Fourth Distribution Motions to 60%. Burkart Decl. at ¶ 10.

On August 13, 2020, the Debtor filed its *Post-Confirmation Liquidating Debtor Heller Ehrman LLP's Motion for Authority to Make Final Distribution to the Employee and PBGC 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* (the "2020 Employee Distribution Motion") [ECF No. 4285] seeking authority to make a final distribution of 4% to the Debtor's former employees ("Employee") and Pension Benefit Guaranty Corporation ("PBGC") general unsecured claimants and for related relief (the "2020 Employee Distribution"). The Court granted the motion [ECF No. 4305] and the Debtor made the distributions to the Employee and PBGC general unsecured creditors, bringing the total distributed to Employee and PBGC general unsecured creditors pursuant to the First, Second, Third, Fourth, and 2020 Employee Distribution Motions to 64%. Burkart Decl. at ¶ 11.

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The Debtor made an interim distribution in 2021 to non-employee general unsecured creditors in the amount of 4% pursuant to this Court's Order dated October 16, 2021 [ECF No. 4415] approving the *Liquidating Debtor's Motion for Authority to Make 2021 Interim Distribution to Non-Employee General Unsecured Creditors Pursuant to 11 U.S.C. Section 105(a) and Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010)* (the "2021 Non-Employee Distribution Motion") [ECF No. 4403], which is the same percentage the employee general unsecured claimants received in their 2020 Employee Distribution, bringing the total distribution to non-employee general unsecured creditors pursuant to the First, Second, Third, Fourth, and the 2021 Non-Employee Distribution Motion to 64% (the same as the employee general unsecured claimants). Burkart Decl. at ¶ 12.

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

The Plan Administrator intends to make a Final Distribution to the Allowed GUC Claimants in the approximate amount of the Distribution Percentage, bringing the total distribution to Allowed GUC Claimants to between approximately 66.5% and 67%. Approving this Final Distribution is in the best interests of creditors because it will facilitate prompt distributions and allow for the efficient and orderly conclusion of this bankruptcy case, thereby avoiding the continued incurrence of administrative expenses and professional fees. Burkart Decl. at ¶ 14. The Plan Administrator is additionally requesting that he may: (1) mail the distributions checks to the addresses that are set forth in Exhibits 1 through 3; (2) notify the Allowed GUC Claimants that distributions checks must be negotiated within ninety days of the date the check is dated; (3) provide that notification described in this paragraph shall be deemed satisfied by a notation on the distribution check itself; and (4) distribute any funds represented by checks that remain uncashed after such ninety day period to CARE; provided, however, that any funds represented by uncashed checks payable to the PBGC Beneficiaries shall instead be distributed by the Plan Administrator in accordance with applicable non-bankruptcy law, after consultation with counsel. Burkart Decl. at ¶ 14. Article 5.26 provides that, "Notwithstanding any other provision of this Plan, at the point when the remaining funds in the Claims Reserve

Account consist of an amount impracticable to distribute, the Liquidating Debtor may donate (or authorize the Plan Administrator to donate) such Cash to a nonprofit organization or organizations in this judicial district that are exempt pursuant to section 501(c) of the Internal Revenue Code (Title 26 of the United States Code)." Because any funds represented by uncashed checks after the final distribution would be uneconomical and impracticable to redistribute, the requested relief is consistent with the Plan and will facilitate the efficient administration of the Estate and closing of the case. *See* Burkart Decl. at ¶ 14; *see also Plan*, Article 5.26.

Article 5.26 of the Plan authorizes the Plan Administrator to refrain from making distributions on account of De Minimis Claims. The Plan further provides that, "[d]istributions that will not be made as of the date of a final distribution shall be treated as unclaimed distributions as provided in Article 5.28 of the Plan." Article 5.28 addresses unclaimed distributions and provides, among other things, that creditors must keep their addresses current and that claimants who fail to claim distributions may be excluded from future distributions. Article 5.28 further provides that, upon forfeiture, the unclaimed funds "shall be made available for re-distribution to other holders of Allowed Claims of like Class." Read together, Articles 5.26 and 5.28 establish that distributions that are not made in this final distribution pursuant to the de minimis provisions of Article 5.26 are to be treated as unclaimed distributions. The Plan does not require the Plan Administrator to first issue such de minimis distributions, wait for them to remain unclaimed, or satisfy the procedures applicable to distributions that were actually made but later went unclaimed. Rather, the Plan expressly provides that distributions that "will not be made" as of the final distribution "shall be treated as unclaimed distributions" under Article 5.28. Accordingly, the funds attributable to the De Minimis claims (with the exception of the PBGC Claim, for which, the treatment of any De Minimis amounts, including whether such amounts are distributed, shall be determined in accordance with the PBGC Settlement Agreement and applicable non-bankruptcy law, after consultation with counsel), are deemed unclaimed distributions under the Plan and will be made available for re-distribution to other holders of Allowed Claims of like Class pursuant to Articles 5.26 and 5.28 of the Plan. *See generally*, Burkart Decl. at ¶¶ 15-16.

Moreover, as discussed in the First, Second, Third, Fourth, 2020 Employee, and 2021 Non-Employee Distribution Motions, or the respective memoranda of points and authorities filed in support thereof, (hereafter collectively referred to as the "Prior Distribution Motions"), and approved in the Orders thereto, and/or consistent with Articles 1.54, 1.58, 4.8, 4.9, 4.10, 5.20, 5.21, 5.22(i), (iv), (vi) & (vii), 5.26, and 5.31 of the Plan, no distribution will be made with respect to the De Minimis Claims, disallowed Disputed Claims, Late-Filed Claims, or Subordinated/Interest Claims (as defined and discussed in Prior Distribution Motions).

VI. NOTICE OF FINAL DISTRIBUTION MOTION

Article 5.36 of the Plan only requires the parties listed on the Post-Confirmation Service List to be served with the Motion but given that all unsecured creditors are impacted by this Final Distribution Motion, this Final Distribution Motion has been served on all the general unsecured creditors listed on the Court's mailing list, which was downloaded from PACER. In addition, the Debtor, through its Plan Administrator, has maintained a set of addresses for each claim. The Debtor has additionally served this Final Distribution Motion on the list it has maintained.

VII. CONCLUSION

WHEREFORE, based upon the Motion, the MPA, the Burkart Decl., and the Exhibits, the Debtor requests that the Court enter an order granting the relief requested herein.

Dated: June 29, 2026

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