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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
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**

**[No hearing will be held unless affected party
responds to this Motion – Bankruptcy Local
Rule 9014-1]**

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

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

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

1 an order authorizing the Debtor to make a final (sixth) distribution of 4% to the Debtor's former
2 employee ("Employee") and Pension Benefit Guaranty Corporation ("PBGC") general unsecured
3 claimants (the "Final Employee and PBGC Distribution") and for related relief as set forth below.
4 This Motion is based upon the Motion, the Memorandum of Points and Authorities filed
5 concurrently herewith (the "MPA"), the Declaration of Michael Burkart filed concurrently
6 herewith (the "Burkart Decl."), and Exhibits 1 through 3 attached to the Burkart Declaration and
7 Exhibit 4 to the Request for Judicial Notice also filed concurrently herewith.

8 **PLEASE TAKE FURTHER NOTICE** that the Employee and PBGC creditors holding
9 allowed general unsecured claims (the "Allowed Employee Creditors" and "Allowed PBGC
10 Creditors") should carefully review this Motion, the MPA, the Burkart Declaration, and Exhibits
11 1 & 2 to the Burkart Declaration ("Exhibit 1" and "Exhibit 2") in order to determine if they agree
12 with the Debtor on the current allowed amount of their claim, the proposed distribution on
13 account of such claim, and the current address to which the distribution shall be made. **DUE TO**
14 **THE VOLUME OF DOCUMENTS, EXHIBITS 1 AND 2 AS WELL AS OTHER**
15 **DOCUMENTS FILED IN SUPPORT OF THIS MOTION ARE NOT ATTACHED TO**
16 **THIS NOTICE. TO VIEW ALL OF THE DOCUMENTS AND EXHIBITS FILED IN**
17 **SUPPORT OF THE MOTION, CREDITORS SHOULD GO TO www.hellerehrman.com**
18 **AND REFER TO THE "FINAL DISTRIBUTION FOR EMPLOYEES" SECTION.** If a
19 creditor or party in interest would prefer either a mail set of all the documents filed in support of
20 this Motion, or emailed pdf's of said documents, please send a request to sdarms@ffwplaw.com

21 **PLEASE TAKE FURTHER NOTICE** that, in accordance with Article 5.36 of the Plan,
22 any party objecting to the treatment of their claim as detailed in Exhibit 1 or Exhibit 2 and/or the
23 relief requested in this Motion **must file written opposition and a request for a hearing on the**
24 **Motion with the United States Bankruptcy Court for the Northern District of California**
25 **and serve upon counsel for the Debtor within fourteen (14) calendar days of the date of this**
26 **notice.**

27 **PLEASE TAKE FURTHER NOTICE** that any objection or request for a hearing must
28 be accompanied by any declarations or memoranda of law the requesting party wishes to present

1 in support of its position. **If no timely opposition is filed to the requested relief or a request**
2 **for hearing, the Court may enter an order granting the relief by default without hearing. In**
3 **the event of timely objection or request for hearing, the Debtor will give at least seven (7)**
4 **days' written notice of the hearing to the objecting or requesting party.**

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

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

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

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

20 **II. REQUESTED RELIEF**

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

23 a. Make a sixth and final distribution of 4% (the "Distribution Percentage") on
24 account of the allowed unsecured claims of all of the Debtor's Employees and PBGC claimants
25 (the "Final Employee and PBGC Distribution");

26 b. Make the Final Employee and PBGC Distribution via checks;

27 c. Mail the distribution checks to the addresses approved in the Order to the First
28 Distribution Motion (defined below), unless such address has been, or subsequently is, modified

1 by a change of address form duly filed with the Court and mailed to the Debtor and actually
2 received by the Debtor ten (10) business days prior to the date a distribution check is mailed;

3 d. Comply with the Plan with respect to Disputed Claims, De Minimus Claims, Late-
4 Filed Claims, and Unliquidated Claims; and

5 e. Estimate that the Distribution Percentage equals what is expected to be distributed
6 to all the non-employee general unsecured creditors after the resolution of the one remaining open
7 appeal in this case (the Paravue Appeal) and after an anticipated remnant sale of assets is
8 conducted;

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

10 **III. INTRODUCTION**

11 The Plan Administrator believes that it is in the best interests of creditors to make a final
12 distribution to creditors and to close this bankruptcy case by the end of this year. The Plan
13 Administrator has created a budget (“Budget”- attached to the Burkart Decl. as Exhibit 3)
14 detailing the current funds on hand, estimates of the costs and expenses of closing the bankruptcy
15 case, and funds to be received through an anticipated remnant asset sale. Based upon this Budget,
16 the Plan Administrator anticipates that he will be able to make a final distribution of between 3%-
17 5% to general unsecured creditors, most likely in the area of 4%.

18 As described more fully below, the Plan Administrator has discovered (from prior
19 distributions in this case) that distributions to Employees and PBGC general unsecured claimants
20 are a much more extensive and time-consuming process than for other general unsecured
21 claimants. The process is also quite expensive, as it involves over 900 Employee claimants and
22 200 PBGC claimants, all of which will require the calculation, reporting, and remittance of state
23 and/or federal withholdings (involving at least 16 different states), the escheatment of unclaimed
24 funds to the various states as required by the PBGC, and compliance with other close-out
25 procedures required by the PBGC.

26 Because of this time-consuming and expensive process, the Plan Administrator is
27 requesting to make a final distribution of 4% to the Employee and PBGC claimants now, ahead of
28 the final distribution that soon will be made to other, non-employee general unsecured creditors in

1 this case. As demonstrated by the Budget, the proposed 4% distribution percent roughly
2 approximates the anticipated distribution percentage that will be paid to the other, non-employee
3 general unsecured creditors in the final distribution on their claims, although it is possible that the
4 actual distribution percentage ultimately paid to the non-employee general unsecured creditors
5 may be slightly higher or lower than 4%. Nevertheless, the Plan Administrator believes that the
6 benefits of obtaining authorization for, and making, this final distribution to the Employee and
7 PBGC claimants now outweighs the risk of any potential discrepancy that may occur. If the Plan
8 Administrator cannot begin the process of making these distributions now, it will be impossible to
9 close the case by the end of the year. Approving this final distribution will not only allow the
10 Debtor to close the case by year's end, but it will avoid the need to make a second distribution to
11 Employees and PBGC claimants should the actual final distribution percentage differ, which will
12 result in the avoidance of substantial additional costs and expenses to the estate. Therefore, the
13 Plan Administrator believes that approval of the proposed Final Employee and PBGC
14 Distribution is in the best interests of creditors.

15 **IV. PROPOSED FINAL EMPLOYEE AND PBGC DISTRIBUTION**

16 Exhibit 1 details the allowed Employee claimants, their claim number (if any), and the
17 proposed distribution amount. De Minimus Employee claims (i.e. claims whose payment is less
18 than \$50) are not listed on Exhibit 1 and will not be paid. Disallowed Employee claims are also
19 not listed on Exhibit 1 and will not be paid. Burkart Decl. at ¶ 23.

20 Exhibit 2 details the allowed PBGC claimants, the claim number (if any), and the
21 proposed distribution amount. Pursuant to the Settlement Agreement with PBGC, De Minimus
22 claims (if any) will be paid and are listed on Exhibit 2. Burkart Decl. at ¶ 24.

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

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

1
2 **V. BACKGROUND FACTS RELATED TO FINAL EMPLOYEE AND PBGC**
3 **DISTRIBUTION**

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

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

18 The Debtor made two interim distributions in 2011 to general unsecured creditors on
19 September 29, 2011, and December 22, 2011 (of 30% and 8.5%, respectively, for a total
20 distribution percentage of 38.5%), pursuant to this Court's Order dated September 24, 2011
21 [Docket No. 2549] approving the *Liquidating Debtor Heller Ehrman LLP's Motion for Authority*
22 *to Make 2011 Interim Distribution to General Unsecured Creditors Pursuant to 11 U.S.C.*
23 *§ 105(a) and Joint Plan of Liquidation of Heller Ehrman LLP (August 9, 2010)* (the "First
24 Distribution Motion") [Docket No. 2321]. Burkart Decl. at ¶ 7.

25 The Debtor made an interim distribution in late 2012 and early 2013 to general unsecured
26 creditors in the amount of 5.5% pursuant to this Court's Order dated December 27, 2012 [Docket
27 No. 3174] approving the *Liquidating Debtor Heller Ehrman LLP's Motion for Authority to Make*
28 *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")

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

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

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

17 In addition, all Remaining Priority Claims (listed in the "Allowed Claims Distribution
18 Schedule" to the First Distribution Motion) have been previously paid. Burkart Decl. at ¶ 11.

19 All litigation regarding Disputed Claims has been finally resolved except for the claim of
20 Paravue Corporation ("Paravue"). As this Court is aware, the Debtor has engaged in a lengthy
21 battle with Paravue in connection with its claim in this case, including on appeal. On June 12,
22 2020, and June 30, 2020, respectively, Paravue filed new appeals with the Bankruptcy Appellate
23 Panel ("BAP") in connection with orders entered in connection with its claim [BAP Case No. 20-
24 1141 and BAP Case No. 20-1157, respectively]. The two appeals appear to be duplicates of one
25 another. Paravue filed the appeals without an attorney, however, and has been given several
26 notices and opportunities to find counsel. Recently, the BAP has entered Orders Re: Prosecution
27 of Appeal (Final Warning Before Dismissal) in the two BAP cases, ordering that Paravue must
28 file a notice of appearance with respect to the two BAP appeals no later than Monday, August 24,

1 2020, or the appeals will be dismissed without further notice to the parties. See Dkt. No. 5 in
2 BAP Case No. 20-1157 and Dkt. No. 9 in BAP Case No. 20-1141. Assuming these appeals are
3 dismissed immediately after the BAP-imposed deadline of August 24, 2020, the Debtor intends to
4 file a motion to approve a remnant asset sale and to authorize a final distribution to all non-
5 employee general unsecured claims. Burkart Decl. at ¶ 12.

6 The Plan Administrator intends to make the final distribution to all general unsecured
7 creditors and to close this bankruptcy case by the end of this year. The exact timing will depend
8 on whether the Paravue Appeals are dismissed immediately after the BAP-imposed deadline of
9 August 24, 2020, or if more time is allowed for Paravue to continue. The Plan Administrator has
10 created a Budget detailing the current funds on hand, estimates of the costs and expenses of
11 closing the bankruptcy case, and funds to be received through an anticipated remnant asset sale.
12 Based upon this Budget, the Plan Administrator anticipates that he will be able to make a final
13 distribution of between 3%-5% to general unsecured creditors, most likely in the area of 4%. The
14 Plan Administrator's Budget, created while planning for a Final Distribution to the general
15 unsecured creditors, as well as winding down all of the business affairs of the bankruptcy estate,
16 contains two additional columns reflecting high and low estimates for various line items that are
17 somewhat difficult to determine at this time. For example, the line item labeled as contingency is
18 specifically related to anticipated legal costs attendant to two pending appeals filed by Paravue
19 Corporation. Although there is insurance coverage still available to cover the subject claim, there
20 remains a self-insured retention for which Heller Ehrman must maintain a reserve. In addition, if
21 the closing of this case is delayed for another year, additional administrative expenses will also be
22 incurred in 2021 and perhaps beyond. Therefore, it is incumbent upon the Plan Administrator to
23 ensure that there will be sufficient reserves to cover any extraordinary expenditures incurred
24 accordingly. Burkart Decl. at ¶ 13.

25 Because of the time-consuming and expensive process involved (discussed below), the
26 Plan Administrator is requesting to make a final distribution of 4% to the Employee and PBGC
27 claimants now, ahead of the final distribution that soon will be made to non-employee general
28 unsecured creditors in this case. The proposed 4% distribution percent roughly approximates the

1 anticipated distribution percentage that will be paid to the other, non-employee general unsecured
2 creditors in the final distribution on their claims, although it is possible that the actual distribution
3 percentage ultimately paid to the non-employee general unsecured creditors may be slightly
4 higher or lower than 4%. Burkart Decl. at ¶ 14.

5 Nevertheless, the Plan Administrator believes that the benefits of obtaining authorization
6 for, and making, this final distribution to the Employee and PBGC claimants now outweighs the
7 risk of any potential discrepancy that may occur. Approving this final distribution will not only
8 allow the Debtor to close the case by year's end, but it will avoid the need to make a second
9 distribution to Employees and PBGC claimants should the actual final distribution percentage
10 differ, which will result in the avoidance of substantial additional costs and expenses to the estate.
11 Therefore, the Plan Administrator believes that approval of the proposed Final Employee and
12 PBGC Distribution is in the best interests of creditors. Burkart Decl. at ¶ 15.

13 **A. EMPLOYEE CLAIMS**

14 There are over 900 allowed Employee claimants that will require a final distribution in
15 this case on account of their general unsecured claims. Burkart Decl. at ¶ 16.

16 Due to the number of Employee claimants, the multiple state home addresses of the
17 Employee claimants, and other factors, the Plan Administrator has found that the distribution to
18 the Employee claimants is a much more extensive and time-consuming process than for other
19 general unsecured claimants. The payments must be run as a payroll, including calculating and
20 withholding various amounts owed to state and federal entities that must be reported and remitted
21 according to state and federal law. In addition, in order to remit the payments, the Plan
22 Administrator must go through the process of reopening previously-closed accounts with each
23 state (which have been closed due to inactivity). There are at least 16 different states in which
24 this process must be completed. The Plan Administrator anticipates that this will be a very
25 expensive and time-consuming process. Burkart Decl. at ¶ 17.

26 Because of this time-consuming and expensive process, the Debtor seeks authorization to
27 begin the process of making the final distribution on the Employee claims now. The amount
28 anticipated to be distributed if this Motion is granted is approximately \$374,695.78, representing

1 a 4% distribution. Burkart Decl. at ¶ 18.

2 **B. PBGC CLAIM**

3 PBGC filed three estimated, contingent proofs of claim against the Debtor in this case for
4 the unfunded benefit liabilities of the Heller Ehrman LLP Floor Pension Plan (“Floor Plan”) under 29 U.S.C. § 1362(b); the statutorily required minimum funding contributions due to the
5 Floor Plan under 26 U.S.C. §§ 412(c)(11) and 430 and 29 U.S.C. § 1082(c)(11); and the
6 insurance premiums with respect to the Floor Plan under 29 U.S.C. § 1306(a)(3) and (a)(7)
7 [Claim Nos. 601-1, 628-1, and 630-1]. The beneficiaries of the Floor Plan are former employees
8 of the Debtor. There are 200 beneficiaries requiring distributions in connection with this claim.
9 Burkart Decl. at ¶ 19.

10
11 On July 22, 2010, this Court entered an order approving a compromise and settlement
12 with respect to the three PBGC Claims, resulting in the allowance of a single allowed Class 7
13 Claim in the amount of \$155,000 [Dkt. No. 1361]. The settlement agreement provided, *inter alia*,
14 that, “The Plan Administrator...shall distribute any funds payable on account of PBGC’s Allowed
15 Class 7 Claim in the manner described in 29 U.S.C. § 1341(b)(3), as if those funds were assets of
16 the Floor Plan.” 29 U.S.C. § 1341(b)(3) sets forth the methods of final distribution of assets upon
17 termination of a single-employer plan, and provides that the plan administrator “shall distribute
18 the assets in accordance with section 1344 of this title.” Section 1344 sets forth the order of
19 priority of participants and beneficiaries of the plan, and the allocation of plan assets. Burkart
20 Decl. at ¶ 20.

21 Due to the terms of the settlement with PBGC, the Debtor will not make a single final
22 distribution to PBGC in connection with its claim; rather, the Debtor will need to make
23 distributions to all of the Floor Plan participants and beneficiaries under the procedures outlined
24 in 29 U.S.C. §§ 1341(b)(3) and 1344. This will be a complicated and time-consuming process.
25 Federal tax withholding must be calculated, reported, and remitted for the 200 beneficiaries. In
26 addition, following the initial distribution, if there are any returned checks, the Debtor will have
27 to go through a Federal search process to attempt to locate those beneficiaries. If they cannot be
28 found, the funds from the returned checks will need to be escheated to either the state of the

1 beneficiaries' last known addresses (and the Plan Administrator will need to comply with each
2 state's reporting requirements) or to the PBGC. When that process is completed, the Floor Plan
3 will need to be closed consistent with PBGC procedures. The Plan Administrator anticipates that
4 this will be a very expensive and time-consuming process. Burkart Decl. at ¶ 21.

5 Because of this time-consuming and expensive process, the Debtor seeks authorization to
6 begin the process of making the final distribution on the PBGC claim now. The amount
7 anticipated to be distributed if this Motion is granted is approximately \$33,049.09, representing a
8 4% distribution. Burkart Decl. at ¶ 22.

9 **VI. NOTICE OF FINAL EMPLOYEE AND PBGC DISTRIBUTION MOTION**

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

12 Article 1.108 of the Plan only requires the parties listed on the Post-Confirmation Service
13 List to be served with the Motion, but given that all unsecured creditors are potentially impacted
14 by making an early distribution to the Employee and PBGC general unsecured creditors
15 (depending on the accuracy of the estimated amount of this distribution, the Employee and PBGC
16 general unsecured creditors may receive a higher or lower distribution percentage than the non-
17 employee general unsecured creditors who will receive a final distribution at a later date) the
18 present Motion has been served on all the general unsecured creditors listed on the Court's
19 mailing list, which was downloaded from PACER.

20 **VIII. CONCLUSION**

21 WHEREFORE, based upon the Motion, the MPA, the Burkart Declaration, and the
22 Exhibits attached to the Burkart Declaration, the Debtor requests that the Court enter an order
23 granting the relief requested herein.

24 Dated: August 13, 2020

25 FELDERSTEIN FITZGERALD
26 WILLOUGHBY PASCUZZI & RIOS LLP

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