



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Nov-18-2008 11:34 am

Case Number: CGC-08-481991

Filing Date: Nov-18-2008 11:27

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COMPLAINT

DAVID SIMON VS. HELLER EHMAN LLP et al

001C02319508

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Heller Ehrman, LLP; Heller, Ehrman White & McAuliffe LLP; Heller, Ehrman, White & McAuliffe, a Professional Corporation; Heller Ehrman (California), A Professional Corporation

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

David Simon

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister
San Francisco, CA 94102

CASE NUMBER (Número del Caso) **CC-08-48199**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David Simon, 216 Eureka Street, San Francisco, CA 94114
(925) 588-1500; davidjsimonesq@gmail.com

GORDON PARKER
Clerk, by [Signature], Deputy (Adjunto)
(Secretario)

DATE: **NOV 18 2008**
(Fecha)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date): November 18, 2008

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Bar number, and address):
David J. Simon SBN 241501
216 Eureka Street, San Francisco, CA 94114
TELEPHONE NO.: 925-588-1500 FAX NO.:
ATTORNEY FOR (Name): David Simon

FOR COURT USE ONLY
FILED
Superior Court of California
County of San Francisco

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME:

NOV 18 2008
NOV 18 2008
GORDON PARK-LI, Clerk
Deputy Clerk

CASE NAME:
David Simon v. Heller Ehrman, LLP et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CGC-08-481991
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort: Auto (22), Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: Asbestos (04), Product liability (24), Medical malpractice (45), Other PVPD/WD (23)
Non-PI/PD/WD (Other) Tort: Business tort/unfair business practice (07), Civil rights (08), Defamation (13), Fraud (16), Intellectual property (19), Professional negligence (25), Other non-PI/PD/WD tort (35)
Employment: Wrongful termination (36), Other employment (15)
Contract: Breach of contract/warranty (06), Rule 3.740 collections (09), Other collections (09), Insurance coverage (18), Other contract (37)
Real Property: Eminent domain/inverse condemnation (14), Wrongful eviction (33), Other real property (26)
Unlawful Detainer: Commercial (31), Residential (32), Drugs (38)
Judicial Review: Asset forfeiture (05), Petition re: arbitration award (11), Writ of mandate (02), Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): Antitrust/Trade regulation (03), Construction defect (10), Mass tort (40), Securities litigation (28), Environmental/Toxic tort (30), Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment: Enforcement of judgment (20)
Miscellaneous Civil Complaint: RICO (27), Other complaint (not specified above) (42)
Miscellaneous Civil Petition: Partnership and corporate governance (21), Other petition (not specified above) (43)

- 2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. Large number of separately represented parties
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. Substantial amount of documentary evidence
d. Large number of witnesses
e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: 11/18/2008
David Simon
(TYPE OR PRINT NAME)

David J. Simon
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

1 DAVID SIMON (Bar No. 241501)
2 216 Eureka Street
3 San Francisco, CA 94114
4 Telephone: +1 (925) 588-1500
5 davidjsimonesq@gmail.com

6 Plaintiff Appearing Pro Se
7 DAVID SIMON

CASE MANAGEMENT CONFERENCE SE
FILED
Superior Court of California
County of San Francisco
NOV 18 2008 NOV 18 2008
APR 17 2009 - 9:30 AM
BY: GORDON PARK-LI, Clerk
Deputy Clerk
w/

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 SUMMONS ISSUED

11 David Simon,

12 Plaintiff,

13 v.

14 Heller Ehrman LLP;

15 Heller, Ehrman, White & McAuliffe LLP;

16 Heller, Ehrman, White & McAuliffe, a
17 Professional Corporation;

18 Heller Ehrman (California), A Professional
19 Corporation;

20 and Does 1 through 200,

21 Defendants.
22
23

) Case No.: CGC-08-481991

) UNLIMITED JURISDICTION

) COMPLAINT

) 1. BREACH OF CONTRACT

) 2. BREACH OF IMPLIED

) COVENANT OF GOOD FAITH AND
FAIR DEALING

) 3. WAGE AND HOUR VIOLATIONS

) 4. VIOLATION OF CALIFORNIA'S
WARN ACT

24 Plaintiff David Simon ("Plaintiff") complains and alleges as follows:

25 I. PARTIES

- 26 1. Plaintiff is and was, at all relevant times herein, a resident of San Francisco County,
27 State of California.
28

- 1 2. Upon information and belief, Plaintiff alleges that Defendants comprise Heller Ehrman
2 LLP, ("Heller Ehrman") a limited liability partnership operating and conducting
3 business transactions in the State of California.
- 4 3. Upon information and belief, Plaintiff alleges that at all relevant times, Defendants'
5 principal corporate office is located at 333 Bush Street, San Francisco, CA 94104.
- 6 4. Upon information and belief, Plaintiff alleges that at all relevant times, Defendants
7 owned and operated Heller Ehrman LLP, a law firm which practiced major corporate
8 transaction and litigation law in San Francisco, throughout California, and in several
9 other states and countries.
- 10 5. Plaintiff is ignorant of the true names and capacities of the Defendants named herein as
11 Does 1 through 200 inclusive, whether individual, corporate, associate or otherwise, and
12 therefore sues Defendants by such fictitious names pursuant to California Code of Civil
13 Procedure section 474.
- 14 6. Plaintiff is informed and believes and thereon alleges that each of these fictitiously
15 named Defendants is responsible in some manner for the occurrences alleged below and
16 that these Defendants proximately caused Plaintiff's injuries as alleged below.
- 17 7. Plaintiff will amend this Complaint to show such true names and capacities when they
18 have been determined.
- 19 8. Plaintiff is informed and believes and thereon alleges that at all relevant times, each
20 Defendant was the agent of the other Defendants, acting within the course and scope of
21 such agency and with the permission and consent of its co-Defendants.
- 22 9. Plaintiff is informed and believes and thereon alleges that each Defendant ratified or
23 authorized the acts of the other Defendants in California.

24 **II. VENUE AND JURISDICTION**

- 25 10. Plaintiff is informed and believes and thereon alleges that the unlawful actions of which
26 Plaintiff complains occurred within the City and County of San Francisco, California.
- 27 11. Plaintiff is informed and believes and thereon alleges that Defendants reside in San
28 Francisco, California.

1 12. Plaintiff is informed and believes and thereon alleges that venue is therefore proper in
2 this Court.

3 13. This Court has jurisdiction in this matter because this case arises under the laws of the
4 California Labor Code and other state laws.

5 **III. FACTUAL BACKGROUND**

6 **A. Plaintiff's Employment**

7 14. In 2003, Plaintiff was recruited by Defendants to come work as an attorney in Heller
8 Ehrman's San Francisco office after graduating law school and taking the California bar
9 exam.

10 15. Plaintiff accepted the offer to work for Defendants and started work on October 17,
11 2005.

12 16. Plaintiff worked for Defendants and routinely received positive reviews from his
13 supervising attorneys.

14 **B. Defendants' Dissolution**

15 17. In January 2008, Plaintiff was promoted to the status of a 3rd Year Associate, with an
16 annual salary of \$185,000, four weeks of paid vacation, and certain bonus opportunities
17 and benefits.

18 18. On September 26, 2008, Defendants sent an email stating that the Heller Ehrman law
19 firm would shut down substantially all of its operations on November 28, 2008. And "at
20 the time of the shutdown, the employment of The Firm's employees will be permanently
21 terminated." The September 26, 2008 email is attached hereto as Exhibit A.

22 19. The email stated, "The shutdown is being treated as a plant closing under relevant law,
23 and includes the termination of employment of employees employed at 333 Bush Street,
24 San Francisco, California 94104."

25 20. The email also stated, "Until then (November 28, 2008), please be aware that The Firm
26 has work for you and expects you to report to work. Employees will be paid full salary
27 and benefits until the shutdown."
28

1 21. Plaintiff received this email on September 26, 2008, and relied on it and the promises
2 contained within it in good faith.

3 22. On October 16, 2008 Heller Ehrman sent another email stating that Plaintiff would be
4 terminated on October 17, 2008. The October 16, 2008 email is attached hereto as
5 Exhibit B.

6 23. As of October 17, 2008, Plaintiff had accrued 225.03 hours (or six weeks of salary) of
7 accrued vacation.

8 **C. Defendants' Failure to Pay Plaintiff Monies Owed**

9 24. On Plaintiff's last day at Heller Ehrman (Oct. 17, 2008), Defendants failed to pay
10 Plaintiff for the value of his six weeks of accrued vacation.

11 25. On Plaintiff's last day at Heller Ehrman (Oct. 17, 2008), Defendants also failed to pay
12 Plaintiff for the two weeks of salary for work performed from October 4th through
13 October 17th. Defendants subsequently paid Plaintiff \$7,115.38 for these two weeks of
14 salary on October 27, 2008.

15 26. On Plaintiff's last day at Heller Ehrman (Oct. 17, 2008), Defendants also failed to pay
16 Plaintiff for the six weeks of salary that was promised between October 18 and
17 November 28 pursuant to the Warn Act notice. See Exhibit B.

18 **IV. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION:**
20 **BREACH OF CONTRACT**
21 **AGAINST ALL DEFENDANTS**

22 27. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in the
23 preceding paragraphs, as though set forth here in full.

24 28. Plaintiff has performed as required under the employment contract, and no conditions
25 remain for Defendants to perform as required under the employment contract.

26 29. Pursuant to the employment agreement, Defendants are required to pay Plaintiff his
27 salary for the six weeks he earned as accrued vacation prior to termination.
28

1 30. Pursuant to the employment agreement and the September 26, 2008 email (Exhibit A),
2 Defendants are required to pay Plaintiff his salary for the six weeks between his actual
3 termination date (October 17, 2008) and the termination date Defendants had promised
4 in the Warn Act Notice, Exhibit A (November 28, 2008).

5 31. As a proximate result of Defendants' breach of contract, Plaintiff has suffered damages
6 in an amount of at least \$42,692.28.

7 **SECOND CAUSE OF ACTION:**
8 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
9 **AGAINST ALL DEFENDANTS**

10 32. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in the
11 preceding paragraphs, as though set forth here in full.

12 33. Plaintiff's employment agreement with Defendant Heller Ehrman included an implied
13 covenant of good faith and fair dealing which obliged Defendants to cooperate with
14 Plaintiff and to refrain from doing anything which would prevent him from performing
15 under the agreement or from obtaining the benefits of the agreement.

16 34. Plaintiff performed all of the significant obligations that the employment agreement
17 required him to do.

18 35. All conditions required for the Defendants' performance have occurred.

19 36. Defendants unfairly interfered with Plaintiff's right to receive benefits of the contract.

20 37. Defendants' termination of Plaintiff's employment was wrongful, in bad faith, arbitrary
21 and unfair, and done to frustrate his enjoyment of the employment agreement's benefits,
22 in breach of the covenant of good faith and fair dealing in Plaintiff's employment
23 agreements.

24 38. As a proximate result of Defendants' breach of the employment agreement, Plaintiff has
25 suffered damages in an amount according to proof at time of trial.
26
27
28

THIRD CAUSE OF ACTION:
WAGE AND HOUR VIOLATIONS
AGAINST ALL DEFENDANTS

- 1
2
3 39. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in the
4 preceding paragraphs, as though set forth here in full.
5 40. Plaintiff's two last weeks of salary constitute wages under Labor Code section 201 and
6 were paid ten days late.
7 41. Plaintiff's six weeks of accrued vacation constitute wages under Labor Code section 201
8 and, more than thirty days later, have not been paid yet.
9 42. Defendants' actions constitute a failure to pay wages. By doing so, Defendants violated
10 Labor Code Sections 201 and 2926, which require payment of earned wages after an
11 employee is discharged.
12 43. Plaintiff has demanded the earned wages, and Defendants have acknowledged that the
13 wages are due.
14 44. On information and belief, Plaintiff alleges that Defendants' failure to pay wages was
15 willful. Defendants knew the wages were due but failed to pay them.
16 45. As a result, Plaintiff is entitled to penalties under Labor Code Section 203, which
17 provides that an employee's wages shall continue as a penalty until paid for a period of
18 up to thirty (30) days from the time they were due.
19 46. Defendants have failed to pay Plaintiff the wages that were due at the time of
20 termination, and Defendants have failed to pay those sums for thirty (30) days thereafter.
21 Pursuant to the provisions of Labor Code Section 203, Plaintiff is entitled to penalties in
22 the amount of Plaintiff's daily wage multiplied by 30 days.
23 47. As a proximate result of Defendants' failure to pay, Plaintiff has suffered damages an
24 amount of at least \$15,247.24 in late penalties and \$42,692.28 in unpaid wages.
25 48. Plaintiff is also entitled to attorney's fees under Labor Code Section 218.5.
26 49. Plaintiff is also entitled to prejudgment interest.
27
28

FOURTH CAUSE OF ACTION:
VIOLATION OF CALIFORNIA'S WARN ACT
AGAINST ALL DEFENDANTS

1
2
3 50. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in the
4 preceding paragraphs, as though set forth here in full.

5 51. California Labor Code sections 1400 et seq. require 60 days of advance notice if there
6 will be loss of employment for a significant number of employees.

7 52. Pursuant to Labor Code section 1401(a), "An employer may not order a mass layoff,
8 relocation, or termination at a covered establishment unless, 60 days before the order
9 takes effect, the employer gives written notice of the order to . . . the employees of the
10 covered establishment affected by the order" (Labor Code §1401(a)(1)), "the
11 Employment Development Department, the local workforce investment board, and the
12 chief elected official of each city and county government within which the termination,
13 relocation, or mass layoff occurs" (Labor Code §1401(a)(2)).

14 53. On information and belief, Plaintiff alleges that in pursuit of its voluntary dissolution,
15 Defendants laid off hundreds of employees in California without giving 60 days of
16 advance notice in violation of the California Labor Code.

17 54. On information and belief, Plaintiff alleges that the Heller Ehrman law firm was a
18 "covered establishment" because it was a commercial facility that employed 75 or more
19 persons within the preceding 12 months. Labor Code §1400(a).

20 55. On information and belief, Plaintiff alleges that the Heller Ehrman law firm engaged in a
21 "mass layoff" by laying off 50 or more employees at the covered establishment during a
22 30-day period. Labor Code §1400(d).

23 56. On information and belief, Plaintiff alleges that the Heller Ehrman law firm engaged in a
24 "termination" by ceasing all or substantially all of its commercial operations in the
25 covered establishment. Labor Code §1400(f).
26
27
28

1 57. Plaintiff was an "employee" because he was employed by Defendants' law firm for at
2 least 6 months of the 12 months preceding the date on which notice was required. Labor
3 Code §1400(h).

4 58. Defendants' law firm is not voluntarily dissolving as a result of a physical calamity or
5 act of war as contemplated by Labor Code section 1401 (c).

6 59. Pursuant to Labor Code section 1402, because Heller Ehrman failed to give notice as
7 required by Labor Code section 1401(a)(1) before ordering a mass layoff or termination,
8 it is liable to Plaintiff for:

- 9 • Wages at the average regular rate of compensation received by the employee
10 during the last three years of his or her employment, or the employee's final
11 rate of compensation, whichever is higher;
- 12 • The value of the cost of any benefits to which the employee would have been
13 entitled had his or her employment not been lost, including the cost of any
14 medical expenses incurred by the employee that would have been covered
15 under an employee benefit plan.

14 60. Pursuant to Labor Code section 1402(b), "liability under this section is calculated for the
15 period of the employer's violation, up to a maximum of 60 days...."

16 61. On September 26, 2008, Heller Ehrman sent Plaintiff Exhibit A, an email titled
17 "Important Heller Ehrman Communication" and signed by "Heller Ehrman
18 Management." This email stated that Heller Ehrman would shut down substantially all
19 of its operations on 11/28/2008, and "at the time of the shutdown, the employment of
20 The Firm's employees will be permanently terminated. Until then, please be aware that
21 The Firm has work for you and expects you to report to work. Employees will be paid
22 full salary and benefits until the shutdown."

23 62. The email further stated that it "constitutes notice to you pursuant to statute," though it
24 did not indicate which statute. Furthermore, the email stated, "as a terminated
25 employee, you may be entitled to certain benefits, which will be the subject of a separate
26 communication." Heller Ehrman has not yet sent Plaintiff any such communication.
27
28

- 1 63. And lastly, the email stated that, "The shutdown is being treated as a plant closing under
2 relevant law, and includes the termination of employment of employees employed at
3 333 Bush Street, San Francisco, California 94104."
- 4 64. Plaintiff received Exhibit A and relied on it in good faith.
- 5 65. On October 16, 2008, Heller Ehrman sent Plaintiff another email titled "Important
6 Message from the Dissolution Committee (DC)" stating that Plaintiff would be
7 terminated on 10/17/2008. Attached hereto as Exhibit B.
- 8 66. The Labor Code section 1402(b) period should be calculated as from November 28,
9 2008 (the noticed termination date) and October 17, 2008 (the actual termination date),
10 or 42 days.
- 11 67. The remaining California WARN Act wages that are due to Plaintiff for the remaining
12 six weeks are \$21,346.14.
- 13 68. On information and belief, no amounts contemplated under Labor Code section 1402(c)
14 have been paid, and therefore, Heller Ehrman's liability under subdivision (a) should not
15 be reduced by any amount.
- 16 69. Furthermore, pursuant to Labor Code section 1403, Heller Ehrman is subject to a civil
17 penalty of up to \$500 for each day of its violation. Heller Ehrman may avoid the civil
18 penalty if it pays to all applicable employees the amounts for which the employer is
19 liable under Section 1402 within three weeks from the date the employer orders the mass
20 layoff or termination.
- 21 70. Heller Ehrman has failed to pay the WARN Act wages within three weeks of the mass
22 layoff, therefore, it is subject to an additional \$500 penalty for each day of its violation.
- 23 71. On information and belief, and based on conversations and emails with Heller Ehrman's
24 dissolution committee, Heller Ehrman has no intention of paying the amounts for which
25 it is liable under section 1402 of the Labor Code.
- 26 72. Pursuant to Labor Code section 1404, Plaintiff is also entitled to reasonable attorney's
27 fees.
28

1 **V. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
3 as follows:

- 4 1. For six weeks of unpaid accrued wages in the form of vacation pay: \$21,346.14.
- 5 2. For thirty days of late penalty fees for failure to pay accrued vacation on date of
6 termination: \$15,247.24.
- 7 3. For the remainder California WARN Act notice-period: \$21,346.14.
- 8 4. For \$500 each day after October 17, 2008 during which Heller Ehrman failed to pay
9 Plaintiff the balance owed on the California WARN Act notice-period.
- 10 5. For compensatory damages on all applicable causes of action according to proof at
11 time of trial;
- 12 6. For general damages and restitution on all applicable causes of action according to
13 proof at time of trial;
- 14 7. For reasonable attorney's fees and costs pursuant to Labor Code Sections 1404 and
15 2802(c) on all applicable causes of action;
- 16 8. For prejudgment interest on all amounts claimed;
- 17 9. For post-judgment interest on all amounts claimed, and;
- 18 10. Such other and further legal and equitable relief as this Court deems necessary, just,
19 and proper.

20
21 November 17, 2008

Respectfully submitted,

22
23 By 
24 DAVID SIMON

25 Plaintiff
26 DAVID SIMON
27
28

EXHIBIT A

Simon, David J.

From: HellerEhrmanManagement
Sent: Friday, September 26, 2008 11:01 AM
Subject: Important Heller Ehrman Communication

Importance: High
Sensitivity: Private

I regret to inform you that The Firm has adopted a plan of liquidation and will shut down substantially all of its operations on or about November 28, 2008. At the time of the shutdown, the employment of The Firm's employees will be permanently terminated. Until then, please be aware that The Firm has work for you and expects you to report to work. Employees will be paid full salary and benefits until the shutdown. Where applicable, employees with accrued but unused vacation time may be scheduled for vacation prior to November 28.

You do not have displacement or bumping rights for other positions within The Firm. However, in order to conduct an orderly liquidation, The Firm may continue to employ a very limited number of employees after the date of the shutdown. If you wish to be considered for such work, please notify me by email; The Firm will let you know about past November 28 work within the next few days.

This letter constitutes notice to you pursuant to statute. As a terminated employee, you may be entitled to certain benefits, which will be the subject of a separate communication. The shutdown is being treated as a plant closing under relevant law, and includes the termination of employment of employees employed at 333 Bush Street, San Francisco, California 94104.

In the event you require additional information, please feel free to contact your local Human Resources Generalist, Anke Dzikonski, at (415) 772-6111 or email HellerEhrmanMgmt@hellerehrman.com.

Sincerely,

Heller Ehrman Management

HellerEhrmanManagement | HellerEhrman | 333 Bush Street | San Francisco, CA 94104
tel: +1.415.772.6000 | fax: +1.415.772.6288 | email: hellerehrmanmanagement@hellerehrman.com | web:
www.hellerehrman.com

EXHIBIT B

Simon, David J.

From: Dissolution Committee
Sent: Thursday, October 16, 2008 8:24 AM
To: Dissolution Committee
Subject: Important Message from the Dissolution Committee (DC)

Importance: High
Sensitivity: Private

It is with a great deal of regret that we write to inform you that we will not be able to pay you for work performed after tomorrow, Friday, October 17, and, as a result, that your employment with the firm will be terminated on that day. We do expect that we will be able to continue to pay some people for a longer period of time.

Because of the volume of final paychecks we will need to prepare, it may take a few days to get your final paycheck to you. We know this is important to you but please be assured your colleagues in the Payroll Department will be working as hard and as quickly as they can to get you your paycheck. Paralegals, secretaries and other non-exempt employees should promptly submit their timesheets so that they can be paid for any overtime. The final paycheck will be mailed to your home.

These actions have been forced upon us by the banks that control our ability to make any payments. We understand how upsetting this news is. You should continue your activities to serve clients, including, where applicable, to bill your time. Time billing and client service are two of the criteria the banks are examining in our continuing negotiations with them to maintain an orderly transition.

We have now posted on the external Heller Ehrman website (hellerehrman.com) the Career Placement Opportunities listing of job openings and contacts. We encourage you to check the postings frequently and to provide any new opportunities that you hear of to Wendy Kwan in Human Resources (wendy.kwan@hellerehrman.com).

Your health insurance will remain in effect through October 31. The firm is devoting intense effort to negotiate a continuation of benefits, including COBRA coverage, and we will keep former employees informed by postings on the firm's internet site. Alternative individual health coverage arrangements have been described in the Benefits Frequently Asked Questions on the intranet – that document will also be posted to the firm's external internet site.

We want to thank you for your professionalism and forbearance to date and ask you to continue to proceed with the same degree of professionalism you have demonstrated during your valuable service to the firm and to its clients.

The Dissolution Committee