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19 **UNITED STATES BANKRUPTCY COURT**
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

21 In re:

22 HELLER EHRMAN, LLP,
23 Debtor,

24 Case No. 08-32514
25 Chapter 11

26 **ADVERSARY PROCEEDING**
27 **Ad. Pro. Case No. 09-03058**

28 DEBORA K. BIGGERS, CARL GOODMAN,
ANNA SCARPA, and MARJORIE NORRIS,
individually, on behalf of all others similarly
situated,

29 Plaintiffs,

30 vs.

31 HELLER EHRMAN, LLP, a California
32 Limited Liability Partnership; HELLER,
33 EHRMAN, WHITE & McAULIFFE, A
34 PROFESSIONAL CORPORATION, a
35 California professional corporation; HELLER,
36 EHRMAN, WHITE & McAULIFFE
37 (WASHINGTON), P.S., a Washington
38 professional corporation; HELLER,
EHRMAN, WHITE & McAULIFFE
(ALASKA), P.C., an Alaska professional
corporation; HELLER, EHRMAN, WHITE &

39 **FIRST AMENDED COMPLAINT FOR:**

40 **(1) Violation of the WARN Act (29**
41 **U.S.C. § 2101 *et seq.*);**
42 **(2) Violation of the California WARN**
43 **Act (Cal. Labor Code § 1400 *et seq.*);**
44 **(3) Failure to Pay Vacation (Cal. Labor**
45 **Code § 227.3)**
46 **(4) Waiting Time Damages (Cal. Labor**
47 **Code §§ 201 to 203)**
48 **(5) Failure to Pay Wages (Rev. Wash.**
49 **Code § 49.52.050-49.52.070)**
50 **(6) Breach of Contract;**
51 **(7) Promissory Estoppel;**
52 **(8) Failure to Pay Wages (D.C. Code §§**
53 **32-1303 to 32-1308); and**
54 **(9) Failure to Pay Wages (NY CLS § 191-**
55 **198)**

56 **PLAINTIFFS' CLASS ACTION**

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McAULIFFE, A PROFESSIONAL CORPORATION, a New York professional corporation; HELLER EHRMAN (CHINA), P.C., a District of Columbia professional corporation; RICHARD L. CASSIN, P.A., a Florida professional corporation; MATTHEW LARRABEE, individually and on behalf of those similarly situated; ROBERT HUBBLE, individually and on behalf of those similarly situated; STEVEN KOPPLE, individually and on behalf of those similarly situated; MARIE FIALA, individually and on behalf of those similarly situated; MARK WEEKS, individually and on behalf of those similarly situated; LYNN LOACKER, individually and on behalf of those similarly situated; BARRY LEVIN, individually and on behalf of those similarly situated; KENNETH CHERNOFF, individually and on behalf of those similarly situated; LAWRENCE KEESHAN, individually and on behalf of those similarly situated; ROBERT ROSENFELD, individually and on behalf of those similarly situated; PETER BENVENUTTI, individually and on behalf of those similarly situated; PAUL SUGARMAN, individually and on behalf of those similarly situated; and JONATHAN HAYDEN, individually and on behalf of those similarly situated,

Defendants

**DEFENDANTS' CLASS ACTION
DEMAND FOR JURY TRIAL**

1 **PRELIMINARY STATEMENT**

2

3 1. This case arises out of the dissolution and bankruptcy of Heller Ehrman LLP, a
4 nationwide law firm that started doing business in San Francisco in 1890. Plaintiffs and the
5 members of the class they propose to represent were Heller Ehrman employees – associate and
6 other non-equity sharing attorneys, other professionals, and staff – whose employment was
7 terminated as part of, or as a result of, mass layoffs or plant closings ordered by the Defendants.
8 Following those layoffs and closings, the owners of Heller Ehrman refused to pay wages,
9 accrued vacation pay and other benefits to which the employees are entitled. Defendants,
10 moreover, failed to provide the notices of plant closing and termination required by federal and
11 state law.

12

13 2. The Defendants violated both federal and state law by failing to give Plaintiffs
14 and other similarly situated employees the 60 days notice of the closing of operations and
15 related layoffs mandated by applicable statutes. On behalf of a class of terminated employees,
16 Plaintiffs seek 60 days' pay under the Worker Adjustment and Retraining Notification Act, 29
17 U.S.C. § 2101 et seq. (the "WARN Act"), and California Labor Code § 1400 et seq. (the
18 "California WARN Act"). Plaintiffs also seek recovery for themselves and the other employee
19 members of the class additional unpaid compensation and benefits, including unpaid vacation
20 and sabbatical time and waiting time damages.

21

22 3. Plaintiffs seek to recover the amounts owed to them and other employees from a
23 class of Defendants who were the owners of Heller Ehrman LLP (the partner-level attorneys)
24 who, having earned enormous profits from the employees' labor, allowed Heller Ehrman to
25 collapse and have since moved on to other law firms where they have continued their successful
26 legal careers. The organization and operation of Heller Ehrman LLP was an integrated
27 enterprise composed of various sub-entities, including professional corporations set up in
28 various jurisdictions where Heller Ehrman had offices, plus individual shareholder attorneys

1 who owned their shares of the larger Heller Ehrman enterprise through these smaller
2 professional corporations. Defendants used this structure (discussed further below) to direct
3 and shift income from Heller Ehrman to the individual owners of the enterprise. The Heller
4 Ehrman LLP enterprise thus operated as a single employer and each of the participants in the
5 enterprise, including the individual owners of the Professional Corporations, were and are
6 responsible to the employees of the enterprise for the claims made herein. Plaintiffs seek to
7 hold the defendant entities and their legal and equitable owners to the legal obligations they
8 have sought to avoid.

9
10 4. On April 3, 2009, Plaintiffs filed on behalf of themselves and other similarly
11 situated employees of the Defendants an amended proof of claim in the amount of \$32 million.
12 Not less than \$9,427,950 of the claim amount is entitled to a priority under 11 U.S.C.
13 § 507(a)(4) and (5).

14 15 **THE PARTIES**

16 5. Individual and Representative Plaintiff Debora K. Biggers is an individual
17 residing in Redlands, California. She was employed by Defendants from 1988 to October 17,
18 2008 as a Senior Legal Secretary in Defendants' Los Angeles office.

19
20 6. Individual and Representative Plaintiff Carl Goodman is an individual residing in
21 Seattle, Washington. He was employed by Defendants from September 2005 to October 10,
22 2008 as a Senior Manager of Business Development in Defendants' Seattle, Washington office.

23
24 7. Individual and Representative Plaintiff Anna Scarpa is an individual residing in
25 Franklin Square, New York. She was employed by Defendants from approximately October
26 16, 2006 to approximately October 17, 2008 as a Manager of Professional Services in
27 Defendants' New York office.

1 8. Individual and Representative Plaintiff Marjorie Norris is an individual residing
2 in Fairfax, Virginia. She was employed by Defendants from approximately January 21, 2000 to
3 approximately October 10, 2008 as an Administrator in Defendants' Washington, D.C. office.
4

5 9. Defendant HELLER EHRMAN , LLP ("Heller Ehrman ") is a limited liability
6 partnership organized under the laws of the State of California. The partnership maintains
7 offices and conducts business in several states, including the State of California. On December
8 28, 2008, Heller Ehrman filed a voluntary petition for relief under Chapter 11 of Title 11 of the
9 United States Bankruptcy Code and is the Debtor herein.

10
11 10. Defendant HELLER, EHRMAN, WHITE & McAULIFFE, A PROFESSIONAL
12 CORPORATION ("Heller Ehrman California"), is a professional corporation organized and
13 existing under the laws of the State of California. At all times material hereto Heller Ehrman
14 California was a Partner in Heller Ehrman and its predecessor entities.

15
16 11. Defendant HELLER, EHRMAN, WHITE & McAULIFFE (WASHINGTON),
17 P.S. ("Heller Ehrman Washington"), is a professional corporation organized and existing under
18 the laws of the State of Washington. At all times material hereto Heller Ehrman Washington
19 was a Partner in Heller Ehrman and its predecessor entities.

20 12. Defendant HELLER, EHRMAN, WHITE & McAULIFFE (ALASKA), P.C.
21 ("Heller Ehrman Alaska"), is a professional corporation organized and existing under the laws
22 of the State of Alaska. At all times material hereto Heller Ehrman Alaska was a Partner in
23 Heller Ehrman and its predecessor entities.

24
25 13. Defendant EHRMAN, WHITE & McAULIFFE, A PROFESSIONAL
26 CORPORATION, a New York professional corporation ("Heller Ehrman New York"), is a
27 professional corporation organized and existing under the laws of the State of New York. At
28

1 all times material hereto Heller Ehrman New York was a Partner in Heller Ehrman and its
2 predecessor entities.

3
4 14. Defendant HELLER EHRMAN (CHINA), P.C. (“Heller Ehrman China”), is a
5 professional corporation organized and existing under the laws of the District of Columbia. At
6 all times material hereto Heller Ehrman China was a Partner in Heller Ehrman and its
7 predecessor entities.

8
9 15. Defendant RICHARD L. CASSIN, P.A., a Florida professional corporation
10 (“Heller Ehrman Florida”), is a professional corporation organized and existing under the laws
11 of the State of Florida. At all times material hereto Heller Ehrman Florida was a Partner in
12 Heller Ehrman and its predecessor entities.

13
14 16. At all times material hereto, Defendants Heller Ehrman California, Heller Ehrman
15 Washington, Heller Ehrman Alaska, Heller Ehrman New York, Heller Ehrman China and
16 Heller Ehrman Florida (collectively the “Heller Ehrman Professional Corporations”) were the
17 partners of Heller Ehrman.

18
19 17. At all times material hereto, the shareholders in the Heller Ehrman Professional
20 Corporations (the “Heller Ehrman Members”) were individual lawyers whose interests in the
21 Professional Corporations and the income and assets of Heller Ehrman were determined by
22 Heller Ehrman through its Compensation, Policy and Executive Committees.

23
24 18. Individual and Representative Defendant Matthew Larrabee is an individual who
25 resides in California. Plaintiffs are informed and believe, and thereon allege that at the time of
26 the acts alleged herein Larrabee was a Member of one of the Heller Ehrman PCs, the Chair of
27 Heller Ehrman and a member of the Policy, Executive and Compensation Committees of Heller
28 Ehrman.

1 19. Individual and Representative Defendant Robert Hubble is an individual who
2 resides in California. Plaintiffs are informed and believe, and thereon allege that at the time of
3 the acts alleged herein Hubble was a Member of one of the Heller Ehrman PCs, the Managing
4 Shareholder of Heller Ehrman and a member of the Policy and Executive Committees of Heller
5 Ehrman.

6
7 20. Individual and Representative Defendant Steven Kopple is an individual who
8 resides in New York. Plaintiffs are informed and believe, and thereon allege that at the time of
9 the acts alleged herein Kopple was a Member of one of the Heller Ehrman PCs and was a
10 member of the Policy and Executive Committees of Heller Ehrman.

11
12 21. Individual and Representative Defendant Marie Fiala is an individual who resides
13 in California. Plaintiffs are informed and believe, and thereon allege that at the time of the acts
14 alleged herein Fiala was a Member of one of the Heller Ehrman PCs and was a member of the
15 Policy Committee of Heller Ehrman.

16
17 22. Individual and Representative Defendant Mark Weeks is an individual who
18 resides in California. Plaintiffs are informed and believe, and thereon allege that at the time of
19 the acts alleged herein Weeks was a Member of one of the Heller Ehrman PCs and of the
20 Executive Committee of Heller Ehrman.

21 23. Individual and Representative Defendant Lynn Loacker is an individual who
22 resides in New York. Plaintiffs are informed and believe, and thereon allege that at the time of
23 the acts alleged herein Loacker was a Member of one of the Heller Ehrman PCs and of the
24 Policy Committee of Heller Ehrman. Loacker is also a member of the Dissolution Committee
25 of Heller Ehrman.

1 24. Individual and Representative Defendant Barry Levin is an individual who resides
2 in California. Plaintiffs are informed and believe, and thereon allege that at the time of the acts
3 alleged herein Levin was a Member of one of the Heller Ehrman PCs and of the Policy
4 Committee of Heller Ehrman. Levin was the Chair of Heller Ehrman prior to Larrabee
5 becoming Chair in 2004 or 2005.

6
7 25. Individual and Representative Defendant Kenneth Chernoff is an individual who
8 resides in Washington, D.C. Plaintiffs are informed and believe, and thereon allege that at the
9 time of the acts alleged herein Chernoff was a Member of one of the Heller Ehrman PCs and of
10 the Policy Committee of Heller Ehrman.

11
12 26. Individual and Representative Defendant Lawrence Keeshan is an individual who
13 resides in New York or California. Plaintiffs are informed and believe, and thereon allege that
14 at the time of the acts alleged herein Keeshan was a Member of one of the Heller Ehrman PCs
15 and of the Policy Committee of Heller Ehrman.

16
17 27. Individual and Representative Defendant Robert Rosenfeld is an individual who
18 resides in California. Plaintiffs are informed and believe, and thereon allege that at the time of
19 the acts alleged herein Rosenfeld was a Member of one of the Heller Ehrman PCs and of the
20 Policy Committee of Heller Ehrman.

21 28. Individual and Representative Defendant Peter Benvenuti is an individual who
22 resides in California. Plaintiffs are informed and believe, and thereon allege that at the time of
23 the acts alleged herein Benvenuti was a Member of one of the Heller Ehrman PCs and of the
24 Dissolution Committee of Heller Ehrman.

25
26 29. Individual and Representative Defendant Paul Sugarman is an individual who
27 resides in California. Plaintiffs are informed and believe, and thereon allege that at the time of
28

1 the acts alleged herein Sugarman was a Member of one of the Heller Ehrman PCs and of the
2 Dissolution Committee of Heller Ehrman.

3
4 30. Individual and Representative Defendant Jonathan Hayden is an individual who
5 resides in California. Plaintiffs are informed and believe, and thereon allege that at the time of
6 the acts alleged herein Hayden was a Member of one of the Heller Ehrman PCs and of the
7 Dissolution Committee of Heller Ehrman.

8
9 31. At or about the time of the acts alleged herein Heller Ehrman formed a
10 Dissolution Committee for the purpose of providing for the orderly dissolution of Heller
11 Ehrman and to act as the representative of Heller Ehrman, the Heller Ehrman Partners and the
12 Heller Ehrman Members during the dissolution process. Individual and Representative
13 Defendants Loacker, Benvenuti, Sugarman, Hayden and Levin and non-parties Brad Scott and
14 Richard Holdrup were and are the members of the Dissolution Committee.

15
16 32. Plaintiffs are informed and believe, and thereon allege that Defendants maintained
17 offices and facilities across the country that qualified for protection under the WARN Act
18 (collectively the "Facilities").

19
20 **JURISDICTION AND VENUE**

21 33. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal
22 question), 1334 (bankruptcy cases), 1367 (supplemental jurisdiction), and 2201 (declaratory
23 judgments). This case is being brought under the WARN Act, 29 U.S.C. § 2101 *et seq.* Venue
24 is proper in this district pursuant to 28 U.S.C. §1409.

25 34. This Court also has supplemental jurisdiction over the state law claims pursuant
26 to 28 U.S.C. §1367.

1 39. In Section 4.9 of the Partnership Agreement the Heller Ehrman Partners agreed
2 that they would engage in the practice of law in accordance with all of the procedures and
3 policies of the Heller Ehrman Partnership. The Partners also agreed that they would comply
4 with all decisions and determinations by the committees of the Partnership, including those of
5 the Policy, Executive and Compensation Committees. As a consequence, all of the personnel
6 policies of Heller Ehrman and of the Heller Ehrman Professional Corporations emanated from a
7 common source – the management of Heller Ehrman.

8
9 40. The Policy Committee set the policies for Heller Ehrman and the Heller Ehrman
10 Partners and Members on all matters related to the practice of law by the Members and by the
11 lawyer employees of Heller Ehrman. The Policy Committee also set the policies for Heller
12 Ehrman and the Heller Ehrman Partners and Members on all matters regarding the operations
13 of Heller Ehrman and the Heller Ehrman Partners. By the specific terms of the Partnership
14 Agreement neither the Heller Ehrman Partners nor the Heller Ehrman Members had any
15 discretion on any significant policy issue related to either the practice of law or the operation of
16 the business. As a consequence, the operations of Heller Ehrman, the Heller Ehrman PCs and
17 even the Heller Ehrman Members on matters of practice and policy were directed from a
18 common source – the management of Heller Ehrman – and were dependent on the overall
19 operations and successes of Heller Ehrman.

20 41. The Executive Committee was responsible for implementing the decisions of the
21 Policy Committee and for providing day-to-day management direction and oversight of the
22 business and affairs of Heller Ehrman.

23
24 42. The Compensation Committee was responsible for performing the duties related
25 to the Financial Affairs of Heller Ehrman, as described in Section 3 of the Partnership
26 Agreement. In Section 2 of the Shareholders Agreement between each shareholder and each
27 Professional Corporation the shareholder Member specifically agreed that the Member's
28

1 interest in the Professional Corporation would be fixed by the Heller Ehrman Compensation
2 Committee.

3
4 43. The Compensation Committee thus fixed the amount of the draw payable to each
5 Member; the percentage interests of each Member in the profits and losses of Heller Ehrman;
6 the interest of each Member in the Partnership; payments to be made to withdrawing Members
7 and the form those payments would take; and determined the amount that each Member was
8 required to contribute to a Reserve Account established to enable Heller Ehrman to conduct its
9 business. The Compensation Committee also maintained accounts for each Partner and each
10 Member to reflect the interest of the Members in Heller Ehrman. All of the financial affairs of
11 Heller Ehrman, the Heller Ehrman PCs and the Members as related to their compensation and
12 interest in the economic success of Heller Ehrman thus were directed from a central common
13 source and were dependent upon the overall economic performance of Heller Ehrman.

14
15 44. As a consequence of the organization and operation of Heller Ehrman, Heller
16 Ehrman, the Heller Ehrman Professional Corporations and the Heller Ehrman Members
17 constitute an integrated enterprise that is a single employer for purposes of the claims made
18 herein.

19
20 45. On or about September 25, 2008, Heller Ehrman announced that it was dissolving
21 its partnership. On that day it informed some employees that their final day would be
22 November 28, 2008.

23
24 46. On or about October 3, 2008, Heller Ehrman announced that it would not be
25 paying employees for accrued but unused vacation when they ended their employment with
26 Heller Ehrman.

1 47. On October 10, 2008, Defendants terminated the employment of over 100 Heller
2 Ehrman employees nationwide.

3
4 48. On October 17, 2008, Defendants terminated the employment of hundreds of
5 Heller Ehrman employees nationwide.

6
7 49. Heller Ehrman maintains a vacation policy that applies to most of its United
8 States employees. Through that vacation policy, employees accrue vacation as they work for
9 Heller Ehrman.

10
11 50. Heller Ehrman also maintains a sabbatical program which provides additional
12 vacation to employees who have worked 10 years or more.

13
14 51. Heller Ehrman's vacation policy provides: "Employees who terminate or change
15 their status to on-call will receive a vacation payout of all accrued vacation at their hourly rate
16 on their last day of employment with the Firm."

17
18 52. Starting approximately October 3, 2008, Heller Ehrman ceased paying employees
19 for their unused vacation at the time of termination. Plaintiffs are informed and believe, and
20 thereon allege that Heller Ehrman has not paid unused vacation to employees whose
21 employment ended on or after October 3, 2008.

22 53. Plaintiff Biggers had over 80 hours of vacation available to her when her
23 employment ended on October 17, 2008. Heller Ehrman has not paid her for this vacation.

24
25 54. Plaintiff Goodman had approximately 150 hours of vacation available to him
26 when he was involuntarily terminated on October 10, 2008. Heller Ehrman has not paid him
27 for this vacation.

1 62. Pursuant to 29 U.S.C. § 2104(a)(5), Plaintiffs maintain this claim on behalf of
2 themselves and each of the Other Similarly Situated Former Employees.

3
4 63. Each of the Other Similarly Situated Former Employees is similarly situated to
5 Plaintiffs in respect to his or her rights under the WARN Act, in that, *inter alia*:

6
7 a. Plaintiffs and the Other Similarly Situated Former Employees were
8 discharged by Defendants without cause on their part.

9
10 b. Plaintiffs and the Other Similarly Situated Former Employees are
11 "affected employee(s)" within the meaning of the WARN Act, 29 U.S.C. §
12 2101(a)(5).

13
14 c. Defendants were required by the WARN Act to give Plaintiffs and the
15 Other Similarly Situated Former Employees at least sixty (60) days advance
16 written notice of their respective terminations.

17
18 d. Prior to their termination, neither Plaintiffs nor the Other Similarly
19 Situated Former Employees received written notice that complied with the
20 requirements of the WARN Act.

21 e. Defendants failed to pay Plaintiffs and the Other Similarly Situated
22 Former Employees their respective wages, salary, commissions, bonuses, accrued
23 holiday, sabbatical, and vacation pay and other benefits for sixty (60) calendar
24 days following notice of their terminations and failed to make the 401(k)
25 contributions and provide them with health insurance coverage and other
26 employee benefits due to them under the Employee Retirement Income Security
27 Act ("ERISA"), the Consolidated Omnibus Budget Reconciliation Act of 1985
28

1 ("COBRA") or any other related federal statute for sixty (60) calendar days from
2 and after notice of their respective terminations (and all benefits owed).

3
4 **CALIFORNIA WARN ACT ALLEGATIONS**

5 64. Plaintiff Biggers and others similarly situated were employed at Defendants'
6 facilities in California until their employment was ended within 30 days of October 10, 2008, in
7 violation of Cal. Labor Code § 1400 *et seq.*

8
9 65. Plaintiff Biggers and others similarly situated were employees of Defendants, and
10 Defendants were their employer, as those terms are defined in Cal Labor Code § 1400.

11
12 66. Defendants operated facilities in California that were "covered establishment(s),"
13 as that term is defined in Cal. Labor Code § 1400, because they employed 75 or more persons
14 in certain facilities in the 12 months before October 10, 2008.

15
16 67. Plaintiff Biggers and others similarly situated were subjected to a "mass layoff,"
17 "relocation," or "termination," as those terms are defined in Cal. Labor Code § 1400, within 30
18 days of October 10, 2008.

19
20 68. Defendants failed to provide Plaintiff Biggers and others similarly situated with
21 the proper notice required by Cal. Labor Code § 1401 prior to the mass layoff, relocation, or
22 termination.

23
24 69. Defendants failed to provide Plaintiff Biggers and others similarly situated with
25 60 days wages and benefits as required by Cal. Labor Code § 1402.

1 **WARN ACT CLASS ACTION ALLEGATIONS UNDER F.R.B.P. 7023 AND F.R.C.P. 23**

2 70. Plaintiffs sue under Rule 7023 of the Federal Rules of Bankruptcy Procedure, and
3 Rules 23(a), (b)(1) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following
4 proposed WARN Classes:

5
6 WARN Class: All employees who worked at or reported to one of Defendants'
7 Facilities and were terminated without cause in the 30 days starting October 10,
8 2008, or were terminated without cause as the reasonable foreseeable
9 consequence of the mass layoff or plant closing ordered by Defendants on or
10 about October 10, 2008, and who are affected employees, within the meaning of
11 29 U.S.C. § 2101(a)(5).

12
13 California WARN Class: All employees who worked at or reported to one of
14 Defendants' qualifying facilities in California and who were subject to a mass
15 layoff, relocation, or termination ordered by Defendants on or after October 10,
16 2008.

17
18 71. Numerosity: The Proposed Classes are so numerous that joinder of all members
19 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
20 people satisfy the definition of each of the Proposed Classes.

21
22 72. Typicality: The Plaintiffs' claims are typical of the members of the Proposed
23 Classes. Plaintiffs, and proposed class members, were involuntarily terminated by Defendants
24 without proper notice under the WARN Act and under the California WARN Act.

25
26 73. Superiority: A class action is superior to other available methods for the fair
27 and efficient adjudication of the controversy, especially in the context of WARN Act litigation,

1 which necessarily involves a single decision or set of decisions affecting the rights of hundreds
2 of employees.

3
4 74. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
5 Proposed Class, and have retained counsel experienced in representing plaintiffs in complex
6 class litigation and employment litigation and various interests in bankruptcy proceedings.

7
8 75. Commonality: Common questions of law and fact exist to all members of the
9 Proposed Classes and predominate over any questions solely affecting individual members of
10 the Proposed Classes, including but not limited to:

- 11
- 12 a. whether Defendants were a covered employer under the WARN Act
13 and/or the California WARN Act;
 - 14 b. whether all Class members were protected under the WARN Act and/or
15 the California WARN Act;
 - 16 c. whether all Class members' employment locations were covered Facilities
17 under the WARN Act and/or the California WARN Act;
 - 18 d. whether Defendants acted as a single employer in terminating Class
19 Members' employment;
 - 20 e. whether Defendants gave at least 60 days advance written notice to the
21 Class members, as required by the WARN Act and/or the California WARN Act;
 - 22 and
- 23
24
25
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27
28

1 f. whether Defendants failed to pay the Class members wages and to provide
2 other employee benefits for the sixty day period following their respective
3 terminations.

4
5 76. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because
6 prosecution of actions by or against individual members of the class would result in
7 inconsistent or varying adjudications and create the risk of incompatible standards of conduct
8 for Defendants. Further, adjudication of each individual member's claim as a separate action
9 would be dispositive of the interest of other individuals not party to this action, impeding their
10 ability to protect their interests.

11
12 77. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
13 questions of law and fact common to the members of the Proposed Classes predominate over
14 any questions affecting only individual members of the Proposed Classes, and because a class
15 action is superior to other available methods for the fair and efficient adjudication of this
16 litigation. Litigation of these claims in one forum is efficient, especially in the context of
17 WARN Act litigation, which necessarily involves a single decision or set of decisions that
18 affects the rights of hundreds of employees. In addition, class certification is superior because
19 it will obviate the need for unduly duplicative litigation that might result in inconsistent
20 judgments about Defendants' practices.

21 78. Plaintiffs intend to send notice to all members of the Proposed Class to the extent
22 required by Rule 23. The names and address of the Proposed Class are available from
23 Defendants.

1 **VACATION TIME CLASS ACTION ALLEGATIONS**

2 79. Plaintiffs sue under Rule 7023 of the Federal Rules of Bankruptcy Procedure, and
3 Rules 23(a), (b)(1) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following
4 proposed Vacation Classes:

5
6 California Vacation Class: All former employees of Defendants in
7 the State of California whose employment with Defendants ended on
8 or after October 3, 2008, through the trial of this case, and who had
9 accrued but unused vacation or sabbatical at the time of termination,
10 or who were owed severance pay.

11 Washington Vacation Class: All former employees of Defendants
12 in the State of Washington whose employment with Defendants
13 ended on or after October 3, 2008, through the trial of this case, and
14 who had accrued but unused vacation or sabbatical at the time of
15 termination, or who were owed severance pay.

16 New York Vacation Class: All former employees of Defendants in
17 the State of New York whose employment with Defendants ended
18 on or after October 3, 2008, through the trial of this case, and who
19 had accrued but unused vacation or sabbatical at the time of
20 termination, or were owed severance pay.

21 District of Columbia Vacation Class: All former employees of
22 Defendants in the District of Columbia whose employment with
23 Defendants ended on or after October 3, 2008, through the trial of
24 this case, and who had accrued but unused vacation or sabbatical at
25 the time of termination, or were owed severance pay.

1 80. Numerosity: The Proposed Classes are so numerous that joinder of all members
2 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
3 people who satisfy the definition of the Proposed Classes.

4
5 81. Typicality: The Plaintiffs' claims are typical of the members of the Proposed
6 Classes. Plaintiffs are informed and believe that Heller Ehrman uniformly failed to pay accrued
7 vacation to individuals whose employment with Heller Ehrman ended on or after October 3,
8 2008.

9
10 82. Superiority: A class action is superior to other available methods for the fair
11 and efficient adjudication of the controversy here, where Defendants have failed to pay wages
12 to hundreds of employees, and Defendant Heller Ehrman's dissolution may shrink the assets
13 available to pay employees.

14
15 83. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
16 Proposed Class, and have retained counsel experienced in representing plaintiffs in complex
17 class litigation and employment litigation and various interests in bankruptcy proceedings.

18 84. Commonality: Common questions of law and fact exist to all members of the
19 Proposed Class and predominate over any questions solely affecting individual members of the
20 Proposed Class, including but not limited to:

21
22 a. Whether Defendants maintained a policy of providing vacation to Class
23 Members;

24
25 b. Whether Defendants' vacation policy required that Defendants pay Class
26 Members for their unused vacation at the time of termination;

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c. Whether Defendants uniformly and unlawfully failed to pay vacation time to class members;

d. Whether Plaintiffs and Proposed Class Members who worked in California are entitled to waiting time damages pursuant to California Labor Code § 203;

e. Whether Plaintiffs and Proposed Class Members who worked in Washington state are entitled to waiting time damages pursuant to Washington Revised Code § 49.52.070;

f. Whether Plaintiffs and Proposed Class Members who worked in New York are entitled to waiting time damages under New York or District of Columbia law; and

g. The proper measure of damages sustained by each member of each of the Proposed Classes.

85. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants. Further, adjudication of each individual member's claim as a separate action would be dispositive of the interest of other individuals not party to this action, impeding their ability to protect their interests.

86. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Proposed Classes predominate over any questions affecting only individual members of the Proposed Classes, and because a class action is

1 superior to other available methods for the fair and efficient adjudication of this litigation.
2 Upon information and belief, Defendants' vacation policy applied to all Class Members and
3 Defendants uniformly failed to pay unused vacation time to all Class Members. In addition,
4 class certification is superior because it will obviate the need for unduly duplicative litigation
5 that might result in inconsistent judgments about Defendants' practices.

6
7 87. Plaintiffs intend to send notice to all members of the Proposed Class to the extent
8 required by Rule 23. The names and address of the Proposed Class are available from
9 Defendants.

10
11 **DEFENDANT CLASS ACTION ALLEGATIONS UNDER F.R.B.P. 7023 AND F.R.C.P. 23**
12 **AS TO WARN ACT AND VACATION TIME CLAIMS**

13 88. Plaintiffs sue Defendants Matthew Larrabee; Robert Hubble; Steven Kopple;
14 Marie Fiala; Mark Weeks; Lynn Loacker; Barry Levin; Kenneth Chernoff; Lawrence Keeshan;
15 Robert Rosenfeld; Peter Benvenuti; Paul Sugarman; and Jonathan Hayden individually and as
16 representatives of a class of defendants under Rule 7023 of the Federal Rules of Bankruptcy
17 Procedure, and Rules 23(a), (b)(1) and (b)(3) of the Federal Rules of Civil Procedure on behalf
18 of the following proposed Defendant Class:

19 All persons who were shareholders of a Professional Corporation that was a
20 Partner in Heller Ehrman (the "Members") on August 11, 2008

21
22 89. Numerosity: The members of the Proposed Defendant Class are so numerous
23 that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that
24 basis allege, that hundreds of people satisfy the definition of the Proposed Defendant Class.

25
26 90. Typicality: The Plaintiffs' claims against the members of the Proposed
27 Defendant Class are typical as to each member of the Proposed Defendant Class. Each
28

1 Member is responsible for the damages to the Plaintiffs for the damages alleged herein by
2 virtue of the fact that the Members, together with Heller Ehrman and the Heller Ehrman PCs
3 constituted an integrated enterprise or common employer and each member of the Proposed
4 Defendant Class therefore is responsible for the losses suffered by Plaintiffs.

5
6 91. Superiority: A class action is superior to other available methods for the fair
7 and efficient adjudication of the controversy as to the liability of the Members as members of
8 the Proposed Defendant Class, especially in the context of WARN Act litigation, which
9 necessarily involves a single decision or set of decisions that affects claims against hundreds of
10 Members of Heller Ehrman.

11
12 92. Adequacy: The persons sued as representatives of the Proposed Defendant
13 Class are each a member of management of Heller Ehrman or a member of the Dissolution
14 Committee formed by Heller Ehrman specifically to address and coordinate responses to claims
15 against Heller Ehrman. Each is intimately familiar with the operation of Heller Ehrman and
16 will fairly and adequately protect the interests of the members of the Proposed Defendant Class.
17 The representatives of the Proposed Defendant Class are lawyers and have retained or will be
18 able to retain counsel experienced in representing employers in complex class litigation.

19
20 93. Commonality: Common questions of law and fact exist to all members of the
21 Proposed Defendant Class and predominate over any questions solely affecting individual
22 members of the Proposed Defendant Class, including but not limited to:

- 23 a. whether Defendant Heller Ehrman, the Defendant Professional
24 Corporations and the Defendant Heller Ehrman Members constituted and
25 integrated enterprise or a single employer for purposes of assessing liability for
26 the actions that harmed Plaintiffs as alleged herein;

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b. whether all members of the Plaintiff classes were protected under the WARN Act and/or the California WARN Act;

c. whether all Defendant Class members are responsible for the damages to Plaintiffs caused by the closure of each of the employment locations and

d. whether each of the employment locations closed by Defendants was a were covered Facility under the WARN Act and/or the California WARN Act;

d. whether Defendants acted as a single employer in terminating Class Members' employment;

e. whether Defendants gave at least 60 days advance written notice to the Class members, as required by the WARN Act and/or the California WARN Act; and

f. whether Defendants failed to pay the Class members wages and to provide other employee benefits for the sixty day period following their respective terminations.

94. This case is maintainable as a Defendant Class Action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the Defendant Class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants. Further, adjudication of the liability of some of the individual members of the Defendant Class in separate actions or in this action would be dispositive of the interest of other individuals not Defendants in this action, thereby impeding their ability to protect their interests.

1 99. At all relevant times, Defendants together were a single "employer" as that term is
2 defined in 29 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639(a) and continued to operate as a business
3 until determining to order a mass layoff and/or plant closing at the Facilities.

4
5 100. The Defendants constituted a "single employer" of Plaintiffs and WARN Class
6 members under the WARN Act.

7
8 101. On or about October 10, 2008 the Defendants ordered a "mass layoff and/or plant
9 closing of the Facilities," as those terms are defined in 29 U.S.C. § 2101(a)(2).

10
11 102. The mass layoff and/or plant closing at the Facilities resulted in "employment
12 losses," as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty (50) of Defendants'
13 employees as well as 33% of Defendants' workforce at each of the Facilities, excluding part-
14 time employees as that term is defined by 29 U.S.C. § 2101(a)(8).

15
16 103. Plaintiffs and each of the other members of the WARN Class were discharged by
17 Defendants without cause on their part, as part of or as the reasonably foreseeable result of the
18 mass layoff and/or plant closing ordered by Defendants at the Facilities.

19
20 104. Plaintiffs and the other members of the WARN Class are "affected employees" of
21 Defendants within the meaning of 29 U.S.C. § 2101(a)(5).

22
23 105. Defendants failed to give Plaintiffs and other members of the WARN Class
24 written notice that complied with the requirements of the WARN act.

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26 106. Plaintiffs and each of the other members of the WARN Class are "aggrieved
27 employees" of the Defendants as that term is defined in 29 U.S. C. §2104(a)(7).
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107. Defendants failed to pay Plaintiffs and each of the other members of the WARN Class their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days following notice of their terminations and failed to make the pension and 401(k) contributions and provide employee benefits under ERISA, for 60 days following notice of their respective terminations. Defendants are also liable to Plaintiffs for their reasonable attorneys fees under 29 U.S.C. § 2104.

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FIFTH CLAIM FOR RELIEF
FAILURE TO PAY WAGES UNDER REV. CODE WASH. § 49.52.070
(Against All Defendants)

119. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

120. Plaintiff Goodman and the Washington Vacation Class Members have been terminated, or have resigned, from their positions with Defendants. Defendants, however, willfully failed to pay such Class Members all wages owed them, including vacation time. Defendants' conduct violates Rev. Code Wash. § 49.52.050(2).

121. Under Rev. Code Wash. § 49.52.070, Plaintiff Goodman and the Washington Vacation Class Members are entitled to twice the amount of the wages unlawfully withheld, together with costs of suit and a reasonable sum for attorney's fees, for Defendants' willful failure to timely pay all wages owed upon separation of their employment.

SIXTH CLAIM FOR RELIEF
BREACH OF CONTRACT AS TO THE WASHINGTON VACATION CLASS
(Against All Defendants)

122. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

123. A contract, oral and written, express and implied, existed between Members of the Washington Vacation Class (including Plaintiff Goodman) and Defendants.

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TENTH CLAIM FOR RELIEF
PROMISSORY ESTOPPEL AS TO THE NEW YORK VACATION CLASS
(Against All Defendants)

142. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

143. Defendants reasonably expected to induce Plaintiff Scarpa and New York Vacation Class Members, and did induce Plaintiff Scarpa and New York Vacation Class Members, to rely on promises relating to the payment of severance pay and unused vacation and sabbatical time.

144. Plaintiff Scarpa and New York Vacation Class Members reasonably relied to their detriment on promises and representations made to her by Defendants relating to the payment of these amounts.

145. Defendants have refused to honor the promises made to Plaintiff Scarpa and New York Vacation Class Members.

146. As a result, Plaintiff Scarpa and New York Vacation Class Members are entitled to an award in equity in the amount of their unused vacation and sabbatical time, and severance pay, to be determined at trial.

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ELEVENTH CLAIM FOR RELIEF
VIOLATION OF DISTRICT OF COLUMBIA LABOR LAW
(Against All Defendants)

147. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

148. Plaintiff Norris and the District of Columbia Vacation Class Members have been terminated, or have resigned, from their positions with Defendants. Defendants, however, willfully failed to pay such Class Members all wages owed them, including vacation time, sabbatical and severance pay. Defendants' conduct violates District of Columbia Code § 32-1303 which requires that, when employment is terminated, the employer shall pay the wages not later than the working day following such discharge.

149. Under District of Columbia Code § 32-1303(4), Plaintiff Norris and the District of Columbia Vacation Class Members are entitled to twice the amount of wages unlawfully withheld for Defendants' failure to timely pay all wages owed upon separation of their employment.

150. Under District of Columbia Code § 32-1308, an action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any 1 or more employees for and in behalf of herself or themselves and other employees similarly situated.

151. Under District of Columbia Code § 32-1308(b), in addition to any judgment awarded to the plaintiff or plaintiffs, the court may allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendants.

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TWELFTH CLAIM FOR RELIEF
BREACH OF CONTRACT AS TO THE DISTRICT OF COLUMBIA VACATION
CLASS
(Against All Defendants)

152. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

153. A contract, oral and written, express and implied, existed between Members of the District of Columbia Vacation Class (including Plaintiff Norris) and Defendants.

154. By that contract, Defendants were required to pay employees all accrued vacation time, including severance pay and sabbatical leave, at the termination of employment.

155. Defendants violated that contract by failing to pay these amounts to Plaintiff Norris and Members of the District of Columbia Vacation Class.

156. As a result of Defendants' breach of contract, Plaintiff Norris and District of Columbia Vacation Class Members suffered damages in the amount of their accrued but unpaid vacation and sabbatical time and severance pay, to be determined at trial.

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THIRTEENTH CLAIM FOR RELIEF
PROMISSORY ESTOPPEL AS TO THE DISTRICT OF COLUMBIA VACATION
CLASS
(Against All Defendants)

157. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

158. Defendants reasonably expected to induce Plaintiff Norris and District of Columbia Vacation Class Members, and did induce Plaintiff Norris and District of Columbia Vacation Class Members, to rely on promises relating to the payment of severance pay and unused vacation and sabbatical time.

159. Plaintiff Norris and District of Columbia Vacation Class Members reasonably relied to their detriment on promises and representations made to her by Defendants relating to the payment of these amounts.

160. Defendants have refused to honor the promises made to Plaintiff Norris and District of Columbia Vacation Class Members.

161. As a result, Plaintiff Norris and District of Columbia Vacation Class Members are entitled to an award in equity in the amount of their unused vacation and sabbatical time, and severance pay, to be determined at trial.

PRAYER FOR RELIEF

162. WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Proposed Classes, pray for relief as follows:

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A. That the Court determine that this action may be maintained as a class action under Federal Rule of Bankruptcy Procedure 7023 and Federal Rule of Civil Procedure 23, designate the Plaintiffs as class representatives of the plaintiff class, and appoint of the undersigned as class counsel for the plaintiff-class;

B. That the Court designate the Individual and Representatives Defendants as class representatives of the defendant class;

C. That Defendants are found to have violated the provisions of the WARN Act as to Plaintiffs and the Plaintiff Class;

D. That Defendants are found to have violated the provisions of the California WARN Act as to the California Plaintiffs and the California Plaintiff Class;

E. That Defendants are found to have violated Cal. Labor Code § 227.3 requiring payment upon termination as to the California Plaintiffs and the California Plaintiff Class;

F. That Defendants are found to have violated Rev. Wash. Code § 49.52.050 requiring payment upon termination, and in the case of Washington Vacation Class Members, that Defendants under Washington Rev. Code § 49.52.070 must pay twice the amount of wages unlawfully withheld, together with costs of suit and a reasonable sum for attorney fees as to the Washington Plaintiffs and the Washington Plaintiff Class;

G. That Defendants are found to have violated District of Columbia Code § 32-1303 as to the District of Columbia Plaintiffs and the District of Columbia

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Plaintiff Class requiring payment upon termination, and in the case of District of Columbia Vacation Class Members, that Defendants under District of Columbia Code § 32-1303(4) must pay twice the amount of wages unlawfully withheld, together with costs of suit and a reasonable sum for attorney fees;

H. That Defendants are found to have breached a contract with Washington, New York, and District of Columbia Vacation Class Members by failing to pay unused vacation and other pay at the time of termination;

I. For an award, of damages or in equity, in the amount of unpaid vacation, sabbatical and severance owed to members of the California, Washington, District of Columbia and New York Vacation Classes;

J. That Defendants are found to have violated §§ 201, 202, and 203 of the California Labor Code for willful failure to pay all compensation owed at the time of separation to the California Plaintiffs and the members of the California Plaintiff Class;

K. An award to Plaintiffs and the Plaintiff Class for the amount of all unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other ERISA benefits and all other compensation owed (including any benefits that would have been covered and paid under the then-applicable employee benefit plans had that coverage continued for the full 60-day WARN Act period), including interest thereon, and damages subject to proof at trial;

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L. A determination that the first \$10,950 of the Plaintiffs' (and each of the other similarly situated former employees') claims is entitled to priority status pursuant to 11 U.S.C. § 507(a)(4)

M. A determination that the portion of the Plaintiffs' (and each of the other similarly situated former employees') claims that is not entitled to priority status pursuant to 11 U.S.C. § 507(a)(5) is a general unsecured claim;

N. An award of reasonable attorneys' fees and costs pursuant to Cal. Code of Civil Procedure § 1021.5, Cal. Labor Code § 1404, Washington Rev. Code § 49.52.070, District of Columbia Code § 32-1308, 29 U.S.C. § 2104, and/or other applicable law;

O. For leave to amend this complaint to add additional state law claims, including but not limited to claims in the State of Alaska and the State of Wisconsin; and

P. An allowed administrative expense priority claim under 11 U.S.C. 503 for the reasonable attorney fees and the costs and disbursements that the Plaintiffs incur in prosecuting this action, as authorized by 29 U.S.C. § 2104(a)(6) or any other applicable provision of law; and

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Q. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

Dated: April 23, 2009

BLUM | COLLINS LLP
Steven A. Blum
Craig M. Collins
Douglas L. Thorpe

By /s/ Craig M. Collins

Craig M. Collins
Attorneys for Plaintiffs and the putative
class

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment of the United States Constitution, Plaintiffs, individually and on behalf of all others similarly situated, demand a trial by jury.

Dated: April 23, 2009

BLUM | COLLINS LLP
Steven A. Blum
Craig M. Collins
Douglas L. Thorpe

By /s/ Craig M. Collins

Craig M. Collins
Attorneys for Plaintiffs and the putative class