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8 Attorneys for Plaintiffs

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10 **UNITED STATES BANKRUPTCY COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 In re:

13 HELLER EHRMAN, LLP,

14 Debtor,

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16 DEBORA K. BIGGERS, CARL GOODMAN,
17 and ANNA SCARPA, individually, on behalf
of all others similarly situated, and on behalf
18 of the general public,

19 Plaintiffs,

20 vs.

21 HELLER EHRMAN, LLP,

22 Debtor,

Case No. 08-32514

Chapter 11

ADVERSARY PROCEEDING

Ad. Pro. Case No.

COMPLAINT FOR:

- (1) Violation of the WARN Act (29 U.S.C. § 2101 *et seq.*);**
(2) Violation of the California WARN Act (Cal. Labor Code § 1400 *et seq.*);
(3) Failure to Pay Vacation (Cal. Labor Code § 227.3)
(4) Waiting Time Penalties (Cal. Labor Code §§ 201 to 203)
(5) Breach of Contract;
(6) Promissory Estoppel; and
(7) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200 *et seq.*)

CLASS ACTION

DEMAND FOR JURY TRIAL

1 **THE PARTIES**

2 5. Individual and Representative Plaintiff Debora K. Biggers is an individual
3 residing in Redlands, California. She was employed by Defendant from 1988 to October 17,
4 2008 as a Senior Legal Secretary in Defendant's Los Angeles office.

5
6 6. Individual and Representative Plaintiff Carl Goodman is an individual residing in
7 Seattle, Washington. He was employed by Defendant from September 2005 to October 10,
8 2008 as a Senior Manager of Business Development in Defendant's Seattle, Washington office.

9
10 7. Individual and Representative Plaintiff Anna Scarpa is an individual residing in
11 Franklin Square, New York. She was employed by Defendant from approximately October 16,
12 2006 to approximately October 17, 2008 as a Manager of Professional Services in Defendant's
13 New York office.

14
15 8. Defendant Heller Ehrman, LLP ("Heller Ehrman ") is a limited liability
16 partnership organized under the laws of the State of California. The partnership maintains
17 offices and conducts business in the State of California, including in San Francisco.

18
19 9. Plaintiffs are further informed, believe, and thereon allege that Defendant
20 maintained and facilities across the country that qualified for protection under the WARN Act
21 (collectively the "Facilities").

22 **JURISDICTION AND VENUE**

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

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

1 12. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (E), (K) and
2 (O).

3
4 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

5 13. On or about September 25, 2008, Heller Ehrman announced that it was dissolving
6 its partnership. On that day it informed some employees that their final day would be
7 November 28, 2008.

8
9 14. On or about October 3, 2008, Heller Ehrman announced that it would not be
10 paying employees for accrued but unused vacation when they ended their employment with
11 Heller Ehrman.

12
13 15. On October 10, 2008, Defendant terminated the employment of over 100 Heller
14 Ehrman employees nationwide.

15
16 16. On October 17, 2008, Defendant terminated the employment of hundreds of
17 Heller Ehrman employees nationwide.

18
19 17. Heller Ehrman maintains a vacation policy that applies to most of its United
20 States employees. Through that vacation policy, employees accrue vacation as they work for
21 Heller Ehrman.

22 18. Heller Ehrman also maintains a sabbatical program which provides additional
23 vacation to employees who have worked 10 years or more.

24
25 19. Heller Ehrman's vacation policy provides: "Employees who terminate or change
26 their status to on-call will receive a vacation payout of all accrued vacation at their hourly rate
27 on their last day of employment with the Firm."
28

1 20. Starting approximately October 3, 2008, Heller Ehrman ceased paying employees
2 for their unused vacation at the time of termination. Upon information and belief, Heller
3 Ehrman has not paid unused vacation to employees whose employment ended on or after
4 October 3, 2008.

5
6 21. Plaintiff Biggers had over 80 hours of vacation available to her when her
7 employment ended on October 17, 2008. Heller Ehrman has not paid her for this vacation.

8
9 22. Plaintiff Goodman had approximately 150 hours of vacation available to him
10 when he was involuntarily terminated on October 10, 2008. Heller Ehrman has not paid him
11 for this vacation.

12
13 23. Plaintiff Scarpa had over 100 hours of vacation available to her when she was
14 involuntarily terminated on October 17, 2008. Heller Ehrman has not paid her for this vacation.

15
16 24. On December 28, 2008, Heller Ehrman LLP filed a voluntary petition for relief
17 under Chapter 11 of Title 11 of the United States Bankruptcy Code.

18 **CLASS ACTION ALLEGATIONS UNDER 29 U.S.C. § 2104 (WARN ACT)**

19 25. Plaintiffs and those they seek to represent herein were discharged without cause
20 on their part on or about October 10, 2008 or within 30 days of that date, as the reasonable
21 foreseeable consequence of the mass layoff or plant closing ordered by Defendant, and are
22 "affected employees" within the meaning of 29 U.S.C. §2101 (a)(5).

23
24 26. Plaintiffs bring this action on their own behalf, pursuant to the WARN Act, and
25 on behalf of all other similarly situated former employees of Defendant who were terminated
26 on or about October 10, 2008 or within 30 days of that date, and thereafter who worked at one
27 of the Facilities until their termination.

1 27. During the 30 days starting October 10, 2008, Defendant terminated Plaintiffs'
2 employment as part of a mass layoff and/or a plant closing as defined by 29 U.S.C. § 2101
3 (a)(2), (3) for which they were entitled to receive sixty (60) days advance written notice under
4 the WARN Act.

5
6 28. Defendant did not give Plaintiffs the statutorily required sixty (60) days notice of
7 the mass layoff or termination in violation of the WARN Act.

8
9 29. Upon information and belief, at or about the time that Plaintiffs were discharged,
10 on or after October 10, 2008, Defendant discharged hundreds of other employees at the
11 Facilities (the "Other Similarly Situated Former Employees").

12
13 30. Pursuant to 29 U.S.C. § 2104(a)(5), Plaintiffs maintain this claim on behalf of
14 themselves and each of the Other Similarly Situated Former Employees.

15
16 31. Each of the Other Similarly Situated Former Employees is similarly situated to
17 Plaintiffs in respect to his or her rights under the WARN Act, in that, *inter alia*:

18 a. Plaintiffs and the Other Similarly Situated Former Employees were
19 discharged by Defendant without cause on their part.

20
21 b. Plaintiffs and the Other Similarly Situated Former Employees are
22 "affected employee(s)" within the meaning of the WARN Act, 29 U.S.C. §
23 2101(a)(5).

24
25 c. Defendant was required by the WARN Act to give Plaintiffs and the Other
26 Similarly Situated Former Employees at least sixty (60) days advance written
27 notice of their respective terminations.

1 d. Prior to their termination, neither Plaintiffs nor the Other Similarly
2 Situated Former Employees received written notice that complied with the
3 requirements of the WARN Act.

4
5 e. Defendant failed to pay Plaintiffs and the Other Similarly Situated Former
6 Employees their respective wages, salary, commissions, bonuses, accrued
7 holiday, sabbatical, and vacation pay and other benefits for sixty (60) calendar
8 days following notice of their terminations and failed to make the 401(k)
9 contributions and provide them with health insurance coverage and other
10 employee benefits under the Employee Retirement Income Security Act
11 ("ERISA") for sixty (60) calendar days from and after notice of their respective
12 terminations (and all benefits owed under the Consolidated Omnibus Budget
13 Reconciliation Act of 1985 ["COBRA"]).

14
15 **CALIFORNIA WARN ACT ALLEGATIONS**

16 32. Plaintiff Biggers and others similarly situated were employed at Defendant's
17 facilities in California until their employment was ended in violation of Cal. Labor Code § 1400
18 *et seq.*, within 30 days of October 10, 2008.

19 33. Plaintiff Biggers and others similarly situated were employees of Defendant, and
20 Defendant was their employer, as those terms are defined in Cal Labor Code § 1400.
21

22 34. Defendant operated facilities in California that were "covered establishment(s),"
23 as that term is defined in Cal. Labor Code § 1400, because it employed 75 or more persons in
24 certain facilities in the 12 months before October 10, 2008.

25
26 35. Plaintiff Biggers and others similarly situated were subjected to a "mass layoff,"
27 "relocation," or "termination," as those terms are defined in Cal. Labor Code § 1400, within 30
28 days of October 10, 2008.

1 36. Defendant failed to provide Plaintiff Biggers and others similarly situated with the
2 proper notice required by Cal. Labor Code § 1401 prior to the mass layoff, relocation, or
3 termination.

4
5 37. Defendant failed to provide Plaintiff Biggers and others similarly situated with 60
6 days wages and benefits as required by Cal. Labor Code § 1402.

7
8 **WARN ACT CLASS ACTION ALLEGATIONS UNDER F.R.B.P. 7023 AND F.R.C.P. 23**

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

12 WARN Class: All employees who worked at or reported to one of Defendant's
13 Facilities and were terminated without cause in the 30 days starting October 10,
14 2008, or were terminated without cause as the reasonable foreseeable
15 consequence of the mass layoff or plant closing ordered by Defendant on or about
16 October 10, 2008, and who are affected employees, within the meaning of 29
17 U.S.C. § 2101(a)(5).

18
19 California WARN Class: All employees who worked at or reported to one of
20 Defendant's qualifying facilities in California and who were subject to a mass
21 layoff, relocation, or termination ordered by Defendant on or after October 10,
22 2008.

23
24 39. Numerosity: The Proposed Classes are so numerous that joinder of all members
25 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
26 people satisfy the definition of the Proposed Classes.

1 40. Typicality: The Plaintiffs' claims are typical of the members of the Proposed
2 Classes. Plaintiffs, and proposed class members, were involuntarily terminated by Defendant
3 without proper notice under the WARN Act.

4
5 41. Superiority: A class action is superior to other available methods for the fair
6 and efficient adjudication of the controversy, especially in the context of WARN Act litigation,
7 which necessarily involves a single decision or set of decisions that affects the rights of
8 hundreds of employees.

9
10 42. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
11 Proposed Class, and have retained counsel experienced in representing employees in complex
12 class litigation.

13
14 43. Commonality: Common questions of law and fact exist to all members of the
15 Proposed Class and predominate over any questions solely affecting individual members of the
16 Proposed Class, including but not limited to:

17 a. whether Defendant was a covered employer under the WARN Act and/or
18 the California WARN Act;

19
20 b. whether all Class members were protected under the WARN Act and/or
21 the California WARN Act;

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23 c. whether all Class members' employment locations were covered Facilities
24 under the WARN Act and/or the California WARN Act;

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26 d. whether Defendant acted as a single employer in terminating Class
27 Members' employment;

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

44. 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 Defendant. 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.

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

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

1 **VACATION TIME CLASS ACTION ALLEGATIONS**

2 47. 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 Defendant in
7 the State of California whose employment with Defendant ended on
8 or after October 3, 2008, through the trial of this case, and who had
9 accrued but unused vacation at the time of termination.

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

14 New York Vacation Class: All former employees of Defendant in
15 the State of New York whose employment with Defendant ended on
16 or after October 3, 2008, through the trial of this case, and who had
17 accrued but unused vacation at the time of termination.

18 48. Additionally and in the alternative, Plaintiffs sue under Cal. Bus. Prof. Code
19 § 17200 *et seq.*, on behalf of the following group of similarly situated individuals:

20
21 17200 Class: All employees nationwide whose employment with
22 Defendant ended on or after October 3, 2008, through the trial of this
23 case, and who had accrued but unused vacation at the time of
24 termination.

25 49. Numerosity: The Proposed Classes are so numerous that joinder of all members
26 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
27 people who satisfy the definition of the Proposed Classes.

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

5
6 51. Superiority: A class action is superior to other available methods for the fair
7 and efficient adjudication of the controversy here, where Defendant has failed to pay wages to
8 hundreds of employees, and Defendant's dissolution may shrink the assets available to pay
9 employees.

10
11 52. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
12 Proposed Class, and have retained counsel experienced in representing employees in complex
13 class litigation.

14
15 53. Commonality: Common questions of law and fact exist to all members of the
16 Proposed Class and predominate over any questions solely affecting individual members of the
17 Proposed Class, including but not limited to:

18 a. Whether Defendant maintained a policy of providing vacation to Class
19 Members;

20
21 b. Whether Defendant's vacation policy required that Defendant pay Class
22 Members for their unused vacation at the time of termination;

23
24 c. Whether Defendant uniformly and unlawfully failed to pay vacation time
25 to class members;

1 d. Whether Plaintiffs and Proposed Class Members who worked in
2 California are entitled to waiting time penalties pursuant to California Labor Code
3 § 203;

4
5 e. Whether Plaintiffs and Proposed Class Members who worked in
6 Washington state are entitled to waiting time penalties pursuant to Washington
7 Revised Code § 49.52.070;

8
9 f. Whether Defendant's conduct violated the California Unfair Practices Act
10 set forth in the Business and Professions Code § 17200 et seq. by violating state
11 and federal law as set forth herein; and

12
13 g. The proper measure of damages sustained by the Proposed Class.

14
15 54. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because
16 prosecution of actions by or against individual members of the class would result in
17 inconsistent or varying adjudications and create the risk of incompatible standards of conduct
18 for Defendant. Further, adjudication of each individual member's claim as a separate action
19 would be dispositive of the interest of other individuals not party to this action, impeding their
20 ability to protect their interests.

21 55. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
22 questions of law and fact common to the Proposed Classes predominate over any questions
23 affecting only individual members of the Proposed Classes, and because a class action is
24 superior to other available methods for the fair and efficient adjudication of this litigation.
25 Upon information and belief, Defendant's vacation policy applied to all Class Members and
26 Defendant uniformly failed to pay unused vacation time to all Class Members. In addition,
27 class certification is superior because it will obviate the need for unduly duplicative litigation
28 that might result in inconsistent judgments about Defendant's practices.

1 **FOURTH CLAIM FOR RELIEF**

2 **WAITING TIME PENALTIES UNDER CAL. LABOR CODE § 203**

3 76. Plaintiffs allege and incorporate by reference the allegations in the preceding
4 paragraphs.

5
6 77. California WARN Class and California Vacation Class Members have been
7 terminated, or have resigned, from their positions with Defendant. Defendant, however,
8 willfully failed to pay such Class Members all wages owed them, including vacation time and
9 their final week's pay, within the time limits set forth in California Labor Code sections 201 and
10 202.

11
12 78. Under Labor Code sections 201, 202, and 203, Class Members are entitled to
13 waiting time penalties for Defendant's willful failure to timely pay all wages owed upon
14 separation of their employment.

15 **FIFTH CLAIM FOR RELIEF**

16 **BREACH OF CONTRACT AS TO THE WASHINGTON VACATION CLASS**

17 79. Plaintiffs allege and incorporate by reference the allegations in the preceding
18 paragraphs.

19
20 80. A contract, oral and written, express and implied, existed between Members of
21 the Washington Vacation Class (including Plaintiff Goodman) and Defendant.

22
23 81. By that contract, Defendant was required to pay employees all accrued vacation
24 time, including sabbatical leave, at the termination of employment.

25
26 82. Defendant violated that contract by failing to pay vacation time to Plaintiff
27 Goodman and Members of the Washington Vacation Class.

1 attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and
2 costs.

3
4 **PRAYER FOR RELIEF**

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

7
8 A. That the Court determine that this action may be maintained as a class
9 action under Federal Rule of Bankruptcy Procedure 7023 and Federal Rule of
10 Civil Procedure 23, designate the Plaintiffs as class representatives, and appoint
11 of the undersigned as class counsel;

12
13 B. That Defendant is found to have violated the provisions of the WARN Act
14 as to Plaintiffs and the Class;

15
16 C. That Defendant is found to have violated the provisions of the California
17 WARN Act as to Plaintiffs and the Class;

18
19 D. That Defendant is found to have violated Cal. Labor Code § 227.3
20 requiring payment of unused vacation upon termination;

21
22 E. That Defendant is found to have breached a contract with Washington and
23 New York Vacation Class Members by failing to pay unused vacation at the time
24 of termination, and in the case of Washington Vacation Class Members, that
25 Defendant is found to have violated Washington Rev. Code § 49.52.050 and
26 therefore under Washington Rev. Code § 49.52.070 must pay twice the amount of
27 wages unlawfully withheld by way of exemplary damages, together with costs of
28 suit and a reasonable sum for attorney fees;

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

G. That Defendant is 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 Plaintiffs and the Class;

H. An award to Plaintiffs and the 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 penalties subject to proof at trial, and 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), a determination that some portion 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)(5), and the remainder is a general unsecured claim;

I. That Defendant be ordered and enjoined to pay restitution to Plaintiffs and the 17200 Class due to Defendant's unlawful activities, pursuant to Business and Professions Code §§ 17200-05;

J. That Defendant further be enjoined to cease and desist from unlawful activities in violation of California Business and Professions Code § 17200;

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K. 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, 29 U.S.C. § 2104, and/or other applicable law;

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

M. 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 the WARN Act, 29 U.S.C. § 2104(a)(6); and

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

Dated: April 3, 2009

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

By /s/ Steven A. Blum

Steven A. Blum
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: March 31, 2009

BLUM | COLLINS LLP

Steven A. Blum
Craig M. Collins
Douglas L. Thorpe
Teresa A. Blasberg

By /s/ Steven A. Blum

Steven A. Blum
Attorneys for Plaintiffs and the putative
class