

1 John D. Fiero (CA Bar No. 136557)  
Kenneth H. Brown (CA Bar No. 100396)  
2 Miriam P. Khatiblou (CA Bar No. 178584)  
Teddy M. Kapur (CA Bar No. 242486)  
3 PACHULSKI STANG ZIEHL & JONES LLP  
150 California Street, 15th Floor  
4 San Francisco, California 94111-4500  
Telephone: 415/263-7000  
5 Facsimile: 415/263-7010

6 E-mail: jfiero@pszjlaw.com  
kbrown@pszjlaw.com  
7 mkhatiblou@pszjlaw.com  
tkapur@pszjlaw.com

8 Attorneys for Heller Ehrman LLP,  
9 Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 In re:  
14 Heller Ehrman LLP,  
15 Debtor

Case No.: 08-32514

Chapter 11

**MOTION FOR ORDER  
ESTABLISHING INTERIM FEE AND  
EXPENSE REIMBURSEMENT  
PROCEDURE**

Date: April 24, 2009

Time: 10:00 a.m.

Place: United States Bankruptcy Court  
235 Pine Street, 22nd Floor  
San Francisco, CA

Judge: The Honorable Dennis Montali

21 Heller Ehrman LLP, the debtor in the above-captioned Chapter 11 case (the "Debtor"),  
22 hereby moves the Court (the "Motion") for an order authorizing procedures for Professionals (as  
23 defined herein) that are both currently employed and to be employed by order of the Court to (i) file  
24 and serve monthly notices in order to receive interim compensation and reimbursement of expenses  
25 and (ii) file and serve periodic applications for approval of interim compensation and reimbursement  
26 of expenses incurred pursuant to section 331 of title 11 of the United States Code (the "Bankruptcy  
27 Code").

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1 The Motion is based on the supporting Memorandum of Points and Authorities, the  
2 statements, arguments and representations of counsel who appear at the hearing on the Motion,  
3 sections 102, 105, 330 and 331 of the Bankruptcy Code, rules 2002, 2016 and 9006 of the Federal  
4 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and any other evidence properly before the  
5 Court prior to or at the hearing on the Motion.

6 In connection with the administration of the Debtor’s Chapter 11 case and pursuant to orders  
7 entered or to be entered by this Court, the Debtor has employed and may continue to employ  
8 attorneys, accountants and other professionals that will be subject to the Bankruptcy Code’s  
9 provisions relating to the employment and compensation of professionals (collectively, the “Debtor’s  
10 Professionals”). In addition, the Official Committee of Unsecured Creditors (the “Committee”) has  
11 employed and may seek to employ additional counsel and financial advisors (collectively, the  
12 “Committee’s Professionals”). In this Motion, the Debtor’s Professionals and the Committee’s  
13 Professionals shall be collectively referred to as the “Professionals.” Section 331 of the Bankruptcy  
14 Code authorizes applications for interim compensation once every 120 days, unless the court orders  
15 otherwise.

16 The Debtor believes that in a case of this scope, it is both necessary and appropriate to  
17 establish a procedure for paying and monitoring the interim compensation due from the estate on a  
18 monthly basis. By reviewing the amounts requested on a monthly basis, rather than every 120 days,  
19 the Debtor, the Committee, the U.S. Trustee and other parties in interest will be in a better position  
20 to monitor and control the costs and fees of these Professionals on a current and regular basis.

21 Additionally, the various Professionals have already devoted and will be required to devote  
22 substantial time, effort and expense to the Debtor’s case. The absence of a procedure for awarding  
23 interim compensation on a current basis would cause undue financial burdens on the Professionals,  
24 and unfairly compel the retained Professionals to finance this chapter 11 case.

25 Therefore, the Debtor requests that the Court adopt the procedures for awarding interim  
26 compensation and reimbursement of expenses to all Professionals as set forth in the supporting  
27 Memorandum of Points and Authorities.

28 ///

1           **WHEREFORE**, the Debtor respectfully requests that the Court enter an order establishing  
2 an interim fee notice and expense reimbursement procedure described in below, and granting such  
3 other and further relief as this Court deems just:

4           1.       Commencing for the month ending March 31, 2009, and continuing each  
5 month thereafter, each Professional seeking the payment of interim compensation concerning  
6 the previous calendar month shall file with the Court and serve on the U.S. Trustee, the  
7 Debtor and the Committee (collectively, the “Notice Parties”) an abbreviated notice of  
8 interim compensation and reimbursement of expenses (the “Cover Sheet Application”). The  
9 Cover Sheet Application shall be filed and served no later than thirty (30) days after the end  
10 of the month for which compensation is sought.

11           2.       The Cover Sheet Application shall (1) relate to services rendered and  
12 expenses incurred during the prior month; (2) seek payment of interim compensation in an  
13 amount equal to eighty percent (80%) of the fees sought and one hundred percent (100%) of  
14 the expenses incurred during the prior month and (3) indicate the amount requested, the total  
15 time expended, the names of the Professionals who performed the services and the hourly  
16 billing rate for each timekeeper. The Cover Sheet Application shall be accompanied by a  
17 detailed listing of the time expended by each timekeeper that performed the services, and the  
18 costs incurred by category during the month for the period set forth on the Cover Sheet  
19 Application. The Cover Sheet Application shall also comply with the requirements of the  
20 Guidelines. A proposed form for the Cover Sheet Application is annexed hereto as **Exhibit**  
21 **A**.

22           3.       Each Professional electing to file a Cover Sheet Application shall serve: (1) a  
23 copy of such Cover Sheet Application on the Notice Parties and (2) a notice<sup>1</sup> of said Cover  
24 Sheet Application, substantially in the form of notice annexed hereto as **Exhibit B** (the  
25 “Notice”) on the Notice Parties and any party who has requested special notice in the  
26 Debtor’s Chapter 11 case.

27 \_\_\_\_\_  
28 <sup>1</sup> The Debtor may elect to serve an Omnibus Notice of Cover Sheet Applications (an “Omnibus Notice”) in lieu of each Professional sending an individual Notice. If the Debtor elects to do so, the Omnibus Notice will be in substantially the same form as is attached as **Exhibit B**.

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4. Any objection to the payment of fees or reimbursement of expenses in a Cover Sheet Application must be filed with the Court and served on the Debtor, the Professional whose Cover Sheet Application is the subject of the objection, counsel for the Debtor and counsel for the Committee, within ten (10) calendar days of the date that the Notice was mailed. If no objection is timely filed and served, the Cover Sheet Application shall be deemed approved on an interim basis, and the Debtor shall be authorized and directed to make payment as requested therein within ten (10) calendar days following the expiration of the objection period without this Court holding a hearing or entering any further order thereon. If an objection is timely filed and served, then the Debtor shall be authorized to make payment ten (10) calendar days following the expiration of the period in which to file objections, as requested in the Cover Sheet Application only for those amounts that are not in dispute pursuant to the Cover Sheet Application. The disputed amounts in the Cover Sheet Application shall be heard and resolved by the Court at the next hearing to be held pursuant to the procedures set forth below, or at such other time as may be noticed by the affected Professional.

5. Notwithstanding the monthly fee request and payment thereof pursuant to Cover Sheet Applications, within thirty (30) days after the end of each four-month period, commencing with the period that ends April 30, 2009, each Professional who has elected to file a Cover Sheet Application, or is otherwise seeking interim compensation, shall file with the Court and serve on the Notice Parties an interim fee application with a summary of the activities of the Professional (the "Interim Application"), in accordance with Bankruptcy Code section 331 and rules 2016 and 2002(a)(6) of the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules"). The Interim Applications shall seek approval of one hundred percent (100%) (including the twenty percent (20%) held back from monthly payments) of the requested interim compensation and reimbursement of expenses, including any compensation and reimbursement made pursuant to Cover Sheet Applications, during the prior four-month period.

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6. Within seven (7) calendar days following the last day for filing Interim Applications with respect to a particular four-month period, counsel for Debtor shall file with the Court and serve on the Notice Parties and those parties who have requested special notice in the Debtor' case, a notice of the hearing on the Interim Applications that lists all of the Interim Applications filed with respect to that four-month period and sets forth the total amount of compensation for services rendered and reimbursement of expenses sought in each such Interim Application. The Debtor shall be required to give fifteen (15) days notice by mail of the hearing on the Interim Applications. Any party in interest who has timely filed a written objection to a Professional's Interim Application or Cover Sheet Application shall be entitled to be heard upon such objection at the hearing to consider approval of the Interim Applications, as shall the Professional whose fees or expenses are the subject of any objection. If an objection is sustained, or the Court otherwise so orders, such Professional shall disgorge to the Debtor any payments it may have received for fees or costs with respect to which such objection is sustained, pending final allowance at the conclusion of such Professional's final fee application. If an objection is not sustained and the fees or expenses approved, any unpaid amount shall be paid promptly by the Debtor to the Professional.

7. Nothing in this Motion shall relieve any Professional from the obligation to file a final application for allowance of Fees pursuant to section 330 of the Bankruptcy Code.

Dated: April 4, 2009

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ John D. Fiero  
John D. Fiero (CA Bar No. 136557)  
Kenneth H. Brown (CA Bar No. 100396)  
Miriam P. Khatiblou (CA Bar No. 178584)  
Teddy M. Kapur (CA Bar No. 242486)  
Attorneys for Heller Ehrman LLP,  
Debtor and Debtor in Possession

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**EXHIBIT A**

**FORM OF COVER SHEET APPLICATION**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:  
  
Heller Ehrman LLP,  
  
Debtor.

Case No.: 08-32514  
  
Chapter 11

**[NAME OF PROFESSIONAL]’S COVER SHEET APPLICATION FOR ALLOWANCE AND PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE MONTH OF**

\_\_\_\_\_  
[NO HEARING REQUIRED]

[Name of Professional] (the “Firm”) hereby submits its Cover Sheet Application (the “Application”) for Allowance and Payment of Interim Compensation and Reimbursement of Expenses for the Month of \_\_\_\_\_ (the “Application Period”) in accordance with the United States Bankruptcy Court Northern District of California Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees (the “Guidelines”) and the *Order Establishing Interim Fee Application And Expense Reimbursement Procedures* entered by the Court on \_\_\_\_\_, 2009 (the “Order Establishing Interim Fee Procedures”).

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1 In support of the Application, the Firm respectfully represents as follows:

2 A. The Firm is \_\_\_\_\_ to/for Heller Ehrman, LLP, the debtor in the above  
3 captioned case ( the "Debtor"). The Firm hereby applies to the Court for allowance and payment of  
4 interim compensation for services rendered and reimbursement of expenses incurred during the  
5 Application Period.

6 B. The Firm billed a total of \$\_\_\_\_\_ in fees and expenses during the  
7 Application Period. The total fees represent \_\_\_\_\_ hours expended during the period  
8 covered by this Application. These fees and expenses break down as follows:

9

Period	Fees	Expenses	Total
	\$	\$	\$

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11 C. Accordingly, the Firm seeks allowance of interim compensation in the amount of  
12 \$\_\_\_\_\_ at this time. This total is comprised as follows: \$\_\_\_\_\_ (80% of the fees  
13 for services rendered) plus \$\_\_\_\_\_ (100% of the expenses incurred).

14 D. Attached as **Exhibit "A"** hereto is a schedule showing the name of each professional  
15 who performed services in connection with this case during the Application Period, the hours billed,  
16 and the hourly rate charged, together with a description of the expenses incurred in the Application  
17 Period, broken down by category.

18 E. Pursuant to the Order Establishing Interim Fee Procedures, the Debtor is authorized  
19 to make the payment requested herein without a further hearing or order of this Court unless an  
20 objection to this Application is filed with the Court and served within ten (10) calendar days after the  
21 date of mailing of the notice of this Application. If such an objection is filed, the Debtor is  
22 authorized to pay the appropriate percentage of only those amounts not subject to the objection. The  
23 Firm is informed and believes that notice was mailed by first class mail, postage prepaid, on or about  
24 \_\_\_\_\_, 2009.

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**WHEREFORE**, the Firm respectfully requests that the Debtor compensate the Firm as requested herein pursuant to and in accordance with the terms of the Order Establishing Interim Fee Procedures.

Dated: \_\_\_\_\_, 2009

FIRM NAME

By       /s/        
Individual

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**EXHIBIT B**  
**FORM OF NOTICE**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:  
  
Heller Ehrman LLP,  
  
Debtor.

Case No.: 08-32514  
  
Chapter 11

**NOTICE OF [NAME OF PROFESSIONAL]'S COVER SHEET APPLICATION FOR ALLOWANCE AND PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD \_\_\_\_\_ - \_\_\_\_\_**

[No Hearing Required]

**TO THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTORS, COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND ALL OTHER :**

**PLEASE TAKE NOTICE** that the professional(s) listed on **Exhibit A** hereto (the "Professional(s)") has applied to the United States Bankruptcy Court for the Northern District of California for allowance and payment of interim compensation for services rendered and reimbursement of expenses incurred during the period commencing \_\_\_\_\_ and ending \_\_\_\_\_ (the "Application Period"). As detailed on **Exhibit A**, the Professional(s) seek

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1 allowance and payment of interim compensation for 80% of the fees for services rendered, plus  
2 100% of the interim expenses incurred during the Application Period.

3 Pursuant to the *Order Establishing Interim Fee Application And Expense Reimbursement*  
4 *Procedures* entered by the Court on \_\_\_\_\_, 2009, any party objecting to the allowance and  
5 payment of interim compensation and reimbursement of expenses as requested must file a written  
6 objection with the Court and serve a copy of that objection within ten (10) calendar days after the  
7 date of mailing of this notice on the Office of the United States Trustee, the Debtor, and the Official  
8 Committee of Unsecured Creditors appointed herein.

9 If an objection is timely filed and served, the Debtor will pay the Professional(s) whose  
10 application is the subject of an objection only those amounts not in dispute, until the Court hears and  
11 resolves such disputes.

12 DATE OF MAILING: \_\_\_\_\_, 2009

13 Dated: \_\_\_\_\_, 2009

FIRM NAME

14  
15 By  /s/ \_\_\_\_\_  
16 Individual

1 John D. Fiero (CA Bar No. 136557)  
Kenneth H. Brown (CA Bar No. 100396)  
2 Miriam P. Khatiblou (CA Bar No. 178584)  
Teddy M. Kapur (CA Bar No. 242486)  
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5 Facsimile: 415/263-7010  
6 E-mail: jfiero@pszjlaw.com  
kbrown@pszjlaw.com  
7 mkhatiblou@pszjlaw.com  
tkapur@pszjlaw.com  
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9 Attorneys for Heller Ehrman LLP,  
Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 In re:  
14 Heller Ehrman LLP,  
15 Debtor

Case No.: 08-32514

Chapter 11

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ORDER  
ESTABLISHING INTERIM FEE  
APPLICATION AND EXPENSE  
REIMBURSEMENT PROCEDURE**

Date: April 24, 2009

Time: 10:00 a.m.

Place: United States Bankruptcy Court  
235 Pine Street, 22nd Floor  
San Francisco, CA

Judge: The Honorable Dennis Montali

22 Heller Ehrman LLP, the debtor in the above-captioned Chapter 11 case (the "Debtor"),  
23 hereby submits this Memorandum of Points and Authorities in support of its motion (the "Motion")  
24 for an order authorizing procedures for Professionals (as defined herein) that are both currently  
25 employed and to be employed by order of the Court to (i) file and serve monthly notices in order to  
26 receive monthly interim compensation and reimbursement of expenses and (ii) file and serve  
27 periodic applications for approval of interim compensation and reimbursement of expenses incurred  
28 pursuant to section 331 of title 11 of the United States Code (the "Bankruptcy Code").

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I.

**STATEMENT OF FACTS**

**A. Description of the Debtor**

The Debtor is a law firm with San Francisco roots that date back to 1890. In the many years following its inception, the Debtor expanded its practice by adding attorneys and multiple office locations both domestically and abroad. Ultimately, the Debtor grew to more than 730 attorneys in offices all across the United States and in Europe and Asia, including offices in New York City, Los Angeles, Washington, D.C., London, Hong Kong, Beijing and Singapore. On December 28, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued in possession of its property and is operating and managing its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On January 5, 2009, the United States Trustee for this district (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”). Both the Debtor and the Committee have retained professionals.

**B. The Debtor’s Current Operations.**

The Debtor currently is winding down its business and affairs following the adoption of a Plan of Dissolution by the shareholders of the Debtor’s limited partners in September 2008. The Debtor is no longer engaged in the practice of law, but a substantial number of tasks remain unperformed that relate to winding down the business, maximizing the value of the Debtor’s assets for the benefit of its creditors and equity interest holders, and discharging the Debtor’s obligations to its former clients.

II.

**JURISDICTION**

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

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**III.**

**RELIEF REQUESTED**

In connection with the administration of the Debtor’s Chapter 11 case and pursuant to orders entered or to be entered by this Court, the Debtor and the Committee have employed and may continue to employ attorneys, accountants and other professionals that will be subject to the Bankruptcy Code’s provisions relating to the employment and compensation of professionals (collectively, the “Professionals”), as well as the “Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees” promulgated by this Court pursuant to Local Bankruptcy Rule 9029-1 (the “Guidelines”). Section 331 of the Bankruptcy Code authorizes applications for interim compensation once every 120 days, unless the Court orders otherwise.

The Debtor believes that in a case of this size, it is both necessary and appropriate to establish a procedure for paying and monitoring the interim compensation due from this estate on a monthly basis. By reviewing the amounts requested on a monthly basis, rather than every 120 days, the Debtor, the Committee, the U.S. Trustee and other parties in interest will be in a better position to monitor and control the costs and fees of the Professionals on a current and regular basis.

Additionally, the various Professionals have already devoted and will be required to devote substantial time, effort and expense to the Debtor’s case. The absence of a procedure for awarding interim compensation on a current basis would cause undue financial burdens on the Professionals, unfairly compelling the retained Professionals to finance the chapter 11 case. Therefore, the Debtor requests that the Court adopt the following procedures for awarding interim compensation and reimbursement of expenses to all Professionals.

**IV.**

**PROPOSED PROCEDURE**

1. Commencing for the month ending March 31, 2009, and continuing each month thereafter, each Professional seeking the payment of interim compensation concerning the previous calendar month shall file with the Court and serve on the U.S. Trustee, the Debtor and the Committee (collectively, the “Notice Parties”) an abbreviated notice of interim compensation and reimbursement of expenses (the “Cover Sheet Application”). The Cover Sheet Application shall be

1 filed and served no later than thirty (30) days after the end of the month for which compensation is  
2 sought.

3 2. The Cover Sheet Application shall (1) relate to services rendered and expenses  
4 incurred during the prior month; (2) seek payment of interim compensation in an amount equal to  
5 eighty percent (80%) of the fees sought and one hundred percent (100%) of the expenses incurred  
6 during the prior month and (3) indicate the amount requested, the total time expended, the names of  
7 the Professionals who performed the services and the hourly billing rate for each timekeeper. The  
8 Cover Sheet Application shall be accompanied by a detailed listing of the time expended by each  
9 timekeeper that performed the services, and the costs incurred by category during the month for the  
10 period set forth on the Cover Sheet Application. The Cover Sheet Application shall also comply  
11 with the requirements of the Guidelines.

12 3. Each Professional electing to file a Cover Sheet Application shall serve: (1) a copy of  
13 such Cover Sheet Application on the Notice Parties and (2) a notice<sup>1</sup> of said Cover Sheet  
14 Application, (the “Notice”) on the Notice Parties and any party who has requested special notice in  
15 the Debtor’s Chapter 11 case.

16 4. Any objection to the payment of fees or reimbursement of expenses in a Cover Sheet  
17 Application must be filed with the Court and served on the Debtor, the Professional whose Cover  
18 Sheet Application is the subject of the objection, counsel for the Debtor and counsel for the  
19 Committee, within ten (10) calendar days of the date that the Notice was mailed. If no objection is  
20 timely filed and served, the Cover Sheet Application shall be deemed approved on an interim basis,  
21 and the Debtor shall be authorized and directed to make payment as requested therein within ten (10)  
22 calendar days following the expiration of the objection period without this Court holding a hearing  
23 or entering any further order thereon. If an objection is timely filed and served, then the Debtor shall  
24 be authorized to make payment ten (10) calendar days following the expiration of the period in  
25 which to file objections, as requested in the Cover Sheet Application only for those amounts that are  
26 not in dispute pursuant to the Cover Sheet Application. The disputed amounts in the Cover Sheet  
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28 <sup>1</sup> The Debtor may elect to serve an Omnibus Notice of Cover Sheet Applications (an “Omnibus Notice”) in lieu of each Professional sending an individual Notice.

1 Application shall be heard and resolved by the Court at the next hearing to be held pursuant to the  
2 procedures set forth below, or at such other time as may be noticed by the affected Professional.

3 5. Notwithstanding the monthly fee request and payment thereof pursuant to Cover  
4 Sheet Applications, within thirty (30) days after the end of each four-month period, commencing  
5 with the period that ends April 30, 2009, each Professional who has elected to file a Cover Sheet  
6 Application, or is otherwise seeking interim compensation, shall file with the Court and serve on the  
7 Notice Parties an interim fee application with a summary of the activities of the Professional (the  
8 “Interim Application”), in accordance with Bankruptcy Code section 331 and rules 2016 and  
9 2002(a)(6) of the Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”). The Interim  
10 Applications shall seek approval of one hundred percent (100%) (including the twenty percent  
11 (20%) held back from monthly payments) of the requested interim compensation and reimbursement  
12 of expenses, including any compensation and reimbursement made pursuant to Cover Sheet  
13 Applications, during the prior four-month period.

14 6. Within seven (7) calendar days following the last day for filing Interim Applications  
15 with respect to a particular four-month period, counsel for Debtor shall file with the Court and serve  
16 on the Notice Parties and those parties who have requested special notice in the Debtor’ case, a  
17 notice of the hearing on the Interim Applications that lists all of the Interim Applications filed with  
18 respect to that four-month period and sets forth the total amount of compensation for services  
19 rendered and reimbursement of expenses sought in each such Interim Application. The Debtor shall  
20 be required to give fifteen (15) days notice by mail of the hearing on the Interim Applications. Any  
21 party in interest who has timely filed a written objection to a Professional’s Interim Application or  
22 Cover Sheet Application shall be entitled to be heard upon such objection at the hearing to consider  
23 approval of the Interim Applications, as shall the Professional whose fees or expenses are the subject  
24 of any objection. If an objection is sustained, or the Court otherwise orders, such Professional shall  
25 disgorge to the Debtor any payments it may have received for fees or costs with respect to which  
26 such objection is sustained, pending final allowance at the conclusion of such Professional’s final fee  
27 application. If an objection is not sustained and the fees or expenses approved, any unpaid amount  
28 shall be paid promptly by the Debtor to the Professional.

V.

**THE PROPOSED PROCEDURES ARE APPROPRIATE**

The Debtor believes that the adoption of the interim fee and expense reimbursement procedure set forth herein is fair and reasonable and in the best interests of the Debtor's estate. Moreover, pursuant to the Court's authority under Bankruptcy Code section 102(1), compliance with the interim fee procedures set forth herein will be deemed to satisfy the Guidelines, Bankruptcy Rule 2016 and sections 330 and 331 of the Bankruptcy Code.

Bankruptcy Code section 331 provides for the payment of interim compensation for professionals retained by debtors in possession and creditors' committees:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

11 U.S.C. § 331.

In enacting the professional compensation provisions of the Bankruptcy Code, Congress adopted the principle that "[p]rofessionals in bankruptcy cases are entitled to be paid on a comparable basis to other privately retained counsel, both in terms of timeliness and amount of payment." In re Commercial Consortium of California, 135 B.R. 120, 123 (Bankr. C.D. Cal. 1991) (citing Burgess v. Klenske (In re Manoa Finance Co., Inc.), 853 F. 2d 687, 690 (9th Cir. 1988)); In re Nucorp Energy, Inc., 764 F. 2d 655, 658-59 (9th Cir. 1985); First National Bank of Chicago v. Committee of Creditors Holding Unsecured Claims (In re Powerine Oil Co.), 71 B.R. 767, 770 (B.A.P. 9th Cir. 1986).

Congress' intent in enacting Bankruptcy Code section 331 is expressed unequivocally in the House and Senate Reports accompanying enactment of the Bankruptcy Code:

The court may permit more frequent applications if the circumstances warrant, such as in very large cases where the legal work is extensive and merits more frequent payments. The court is authorized to allow

1 and order disbursement to the applicant of compensation and  
2 reimbursement that is otherwise allowable under section 330.

3 H.R. Rep. No. 595, 95th Cong., 1st Sess. 330 (1977); S. Rep. No. 989, 95th Cong., 2d Sess.  
4 41-42 (1978).

5 The Bankruptcy Appellate Panel for the Ninth Circuit (the “BAP”) made clear that interim  
6 payments for professionals on a monthly basis are entirely appropriate in large cases such as the  
7 Debtor’s case. See United States Trustee v. Knudsen Corp. (In re Knudsen Corp.), 84 B.R. 668 (9th  
8 Cir. BAP 1988) (footnote omitted). In Knudsen, the BAP observed that

9 the problem, arising especially in large cases, is that when counsel  
10 must wait an extended period for payment, counsel is essentially  
11 compelled to finance the reorganization. This result is improper and  
12 may discourage qualified practitioners from participating in  
13 bankruptcy cases; a result that is clearly contrary to Congressional  
14 intent.

15 Id. at 672. Knudsen holds that, at least in large cases such as this one, monthly payments to  
16 professionals are appropriate without prior approval of the Court so long as made pursuant to a  
17 procedure that provides the opportunity for subsequent review by the Court. Knudsen, 84 B.R. at  
18 671-72. The procedures proposed herein provide ample opportunity for such review.

19 The Bankruptcy Court in the Central District of California also addressed the issue of  
20 monthly compensation of professionals in In re California Consortium, 135 B.R. 120, 123 (Bankr.  
21 C.D. Cal. 1991). In analyzing Bankruptcy Code section 331, Judge Fenning held that “[t]he  
22 essential purpose of this section is to relieve counsel and other professionals of the burden of  
23 financing lengthy bankruptcy proceedings.” 135 B.R. at 123. Judge Fenning noted, however, that  
24 even payments once every 120 days are no longer sufficient to keep bankruptcy counsel on par with  
25 other lawyers:

26 In 1978, when the Code was enacted, attorneys customarily billed their  
27 clients on a quarterly basis. Times have changed. Lawyers now run  
28 their practices in a more business-like fashion. Computerization has  
simplified and speeded the billing process. As widely documented in  
the legal press, the billing cycle has shifted to monthly statements.  
The 120-day provision of Section 331, intended to be a help to lawyers  
in 1978, has become a straight-jacket for the lawyers of the ‘90s.  
Thus, even payments every 120 days no longer compensate

1 bankruptcy attorneys on a fully equivalent basis with their non-  
2 bankruptcy colleagues.

3 Id. at 123-24. Because of the significant problems caused by permitting payments to professionals  
4 only once every 120 days, Judge Fenning recognized that more frequent payments are “commonly  
5 authorized in large cases involving extensive legal work” so as “to help avoid undue delays in  
6 payment.” Id. at 124, 127 (citing Knudsen, 84 B.R. at 672).

7 The proposed fee procedures are consistent with both Bankruptcy Code section 331, which  
8 provides that professionals may be paid after “notice and a hearing,” and the Court’s statement in In  
9 Re Pacific Forest Indus., Inc., 95 B.R. 740, 745 (Bankr. C.D. Cal. 1989), that “it is only after notice  
10 and hearing that the Court may allow and disburse . . . compensation to the applicant.”

11 The interim fee procedures outlined herein alleviate the financial burden on the Professionals  
12 employed in the Debtor’s case, comply with the requirements of Bankruptcy Code section 331, and  
13 accord with the procedure that the United States Trustee recommended in the Knudsen case -- a  
14 procedure that the BAP found “would undoubtedly be appropriate....” Id., 84 B.R. at 672 n.7.

15 Courts in this district have established interim fee procedures such as the ones proposed  
16 herein in connection with a number of cases. By way of example, in the matter of In re Prediwave  
17 No. 06-40547 (Bankr. N.D. Ca.. April 14, 2004), Chief Judge Randall Newsome of the Bankruptcy  
18 Court for the Northern District of California authorized procedures for the interim payment of fees  
19 and reimbursement of expenses, as contemplated herein, whereby professionals submitting a  
20 monthly statement to which no objections were lodged were entitled to receive compensation for  
21 100% of their fees and 100% of their expenses (“Order Approving Motion For Authority to  
22 Establish Procedures For Interim Payment of Fees And Reimbursement of Expenses” Docket No.  
23 248, August 11, 2006).

24 For all of the foregoing reasons, the Court should permit the Professionals to file both Cover  
25 Sheet Applications and Interim Applications as provided herein.

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VI.

CONCLUSION

**WHEREFORE**, the Debtor respectfully requests that the Court enter an order establishing an interim fee application and expense reimbursement procedure as described above and granting such other and further relief as this Court deems just.

Dated: April 4, 2009

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ John D. Fiero  
John D. Fiero (CA Bar No. 136557)  
Kenneth H. Brown (CA Bar No. 100396)  
Miriam P. Khatiblou (CA Bar No. 178584)  
Teddy M. Kapur (CA Bar No. 242486)  
Attorneys for Heller Ehrman LLP,  
Debtor and Debtor in Possession