

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
OPPOSITION TO MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
BY LIFELOCK, INC.**

Date: April 16, 2009

Time: 9:30 a.m.

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

Judge: The Honorable Dennis Montali

21  
22 **I.**

23 **INTRODUCTION**

24 Heller Ehrman LLP (the “Debtor”), opposes the Motion For Relief From Automatic Stay (the  
25 “Motion”) filed by its former client, Lifelock, Inc. (“Lifelock”), because the Motion is nothing more  
26 than an attempt to force, through impermissible litigation, what Lifelock could not accomplish  
27 through negotiation. Because no “cause” exists for allowing Lifelock to defend the Debtor’s account  
28 receivable collection efforts through litigation filed in the federal district court in Los Angeles, the

1 Motion should be denied.

2 **II.**

3 **STATEMENT OF FACTS**

4 **A. Description of the Debtor and its Business**

5 The Debtor was a law firm with San Francisco roots dating back to 1890. Ultimately, the  
6 Debtor grew to more than 730 attorneys in offices across the United States, including Washington,  
7 D.C., where Mary Azcuenaga, a shareholder of one of the Debtor's partners, worked.

8 Lifelock sells consumer fraud protection services that are based on placing fraud alerts in the  
9 records of the credit reporting agencies. Lifelock's business model is somewhat controversial and  
10 has generated litigation against the company. Beginning in March 2007, Lifelock retained the  
11 Debtor to provide advice and counsel with respect to several legal matters. The matters were  
12 handled principally by attorneys in the Debtor's Washington D.C. office. All of the services were  
13 rendered prior to the Petition Date (as defined below).

14 The Debtor charged Lifelock roughly \$4 million in legal fees, of which Lifelock has paid  
15 roughly \$2 million. As of November 2008, total outstanding unpaid invoices to Lifelock were  
16 \$2,078,641.18.

17 On December 28, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief  
18 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor  
19 operates as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

20 **B. The Litigation in District Court.**

21 Even though Lifelock and the Debtor are parties to a written engagement letter requiring  
22 arbitration of disputes between them, Lifelock inexplicably filed a complaint (the "Complaint") in  
23 the United States District Court for the Central District of California (the "District Court Action") on  
24 February 18, 2009. In the Complaint, Lifelock alleged claims for fraudulent and negligent  
25 misrepresentation, breach of fiduciary duty, professional negligence and breach of contract against  
26 the Debtor and Mary Azcuenaga. The Complaint further alleged that the Debtor's services were  
27 "ineffectual" and that its billings were excessive due to overstaffing, inefficiency and performance of  
28 unnecessary services. Lifelock also claimed that the Debtor misrepresented the nature of its services

1 and put unfair financial pressure on Lifelock. Finally, the Complaint sought the return of  
2 approximately \$2.1 million in legal fees paid, plus unspecified compensatory and punitive damages.  
3 In the Complaint, Lifelock specifically acknowledged its awareness of the Debtor's pending  
4 bankruptcy case.

5 No warning or other communication was made by Lifelock prior to the filing of the District  
6 Court Action. As soon as the Debtor learned of the Complaint, counsel informed Lifelock by letters  
7 dated February 23 and 26, 2009 that the commencement of the District Court Action against the  
8 Debtor violated the automatic stay contained in Bankruptcy Code section 362, and demanded that  
9 Lifelock dismiss the District Court Action. *See* Declaration of John D. Fiero in Support of  
10 Opposition to Motion for Relief from Stay ("Fiero Decl.") ¶2, and **Exhibits A** and **B** thereto.  
11 Additionally, on February 24, 2009, the Debtor's counsel called Lifelock's counsel and inquired  
12 whether the District Court Action would be dismissed. Lifelock did not make any substantive  
13 response to these demands and inquiries. *See* Fiero Decl. ¶2.

14 Some time later, on March 2, 2009, Lifelock filed a Notice of Automatic Stay (the "Notice of  
15 Stay") with the District Court, but did not dismiss the Debtor from the litigation as it should have.  
16 *See* Fiero Decl. ¶3. In the Motion, Lifelock disingenuously characterizes its filing of the Notice of  
17 Stay as having occurred "immediately" after the filing of the Complaint. In fact, the Notice of Stay  
18 was filed after nearly two weeks had passed, and only after the Debtor sent two demand letters and  
19 made a phone call to Lifelock's counsel demanding dismissal. The Debtor's counsel made a third  
20 demand for dismissal in a telephone conversation with Lifelock's counsel on March 4, 2009.  
21 Lifelock did nothing in response to the demand. *See* Fiero Decl. ¶4.

22 Because Lifelock refused to dismiss the District Court Action, the Debtor's counsel began  
23 preparing a motion to enforce the automatic stay and for imposition of civil contempt sanctions.  
24 Lifelock's counsel was fully aware of the Debtor's intention to file its motion on 28 days' notice,  
25 and even went so far as to agree with the Debtor on a hearing date of April 17, 2009 for both the  
26 Debtor's motion and Lifelock's intended cross-motion for relief from stay. Lifelock also knew that  
27 the Debtor intended to file its motion for sanctions no later than March 20, 2009. *See* Fiero Decl. ¶5.

28 ///

1 On March 19, 2009, just one day before the Debtor was planning to file its motion for  
2 sanctions on 28 days notice, Lifelock unexpectedly informed counsel that it had dismissed the  
3 District Court Action against the Debtor and that there would be no need for the to Debtor to file its  
4 motion. At no time did Lifelock indicate that it would proceed with the instant Motion. *See Fiero*  
5 Decl. ¶6, and **Exhibit C** thereto.

6 The Debtor submits that Lifelock has run roughshod over the automatic stay and, in doing so,  
7 has already wasted the Debtor's resources. Lifelock's commencement of the District Court Action,  
8 followed by its unjustified refusal to dismiss the Complaint for nearly four weeks, caused the Debtor  
9 to incur significant attorneys fees arising from (a) repeated demands upon Lifelock's counsel that it  
10 dismiss the District Court Action in light of the automatic stay and (b) the preparation of a motion  
11 for enforcement of the automatic stay and for imposition of civil contempt sanctions.<sup>1</sup> Now, by this  
12 Motion, Lifelock continues its attempts to bypass the automatic stay, causing further detriment to the  
13 estate and other creditors when the truth of the matter is that Lifelock owes the Debtor money.

## 14 II.

### 15 ARGUMENT

#### 16 A. Relief From Stay Should Not Be Granted Unless "Cause" Exists

##### 17 (1) The Automatic Stay Is Important and Necessary

18 Section 362(a)(1) of the Bankruptcy Code operates as a stay, "applicable to all entities," of  
19 the commencement . . . of a judicial . . . proceeding against the debtor that was or could have been  
20 commenced before the commencement of the case . . . or to recover a claim against the debtor that  
21 arose before the commencement of the case under this title. Similarly, section 362(a)(3) stays "any  
22 act to obtain possession of property of the estate or of property from the estate or to exercise control  
23 over property of the estate." 11 U.S.C. § 362(a)(3). In addition, under section 362(a)(6), "any act to  
24 collect, assess, or recover a claim against the debtor that arose before the commencement of the  
25 case" is stayed. 11 U.S.C. § 362(a)(6).

26 The stay under section 362(a) has been described as the "single most important protection"  
27

28 <sup>1</sup> The Debtor will determine whether it will file a motion seeking to recover attorney fees incurred as a result of Lifelock's actions.

1 afforded to debtors by the Bankruptcy Code. It gives the debtor a breathing spell from creditors and  
2 halts foreclosure actions, collection efforts, and creditor harassment. H.R. Rep. No. 595, 95<sup>th</sup> Cong.,  
3 1<sup>st</sup> Sess. 340 to 42 (1977). *See also ACandS, Inc. v. Travelers Cas. & Sur. Co.*, 435 F.3d 252, 259  
4 (3d Cir. 2006) (quoting *In Re Cavanaugh*, 271 B.R. 414, 424 (Bankr. D. Mass. 2001). As noted in  
5 *In re Santa Clara Fair Ass’n, Inc.*, 180 B.R. 564 (9<sup>th</sup> Cir. BAP 1995), “[t]he automatic stay of  
6 section 362 serves two goals. It prevents the diminution or dissipation of the bankruptcy estate and  
7 enables the debtor to avoid the multiplicity of claims arising against the estate in different forums.”  
8 *Id.* at 566.

9 The automatic stay promotes the goal of equality of distribution by preventing a piecemeal  
10 dismemberment of the bankruptcy estate, while assuring that a debtor in possession has an  
11 opportunity to use property necessary for an effective reorganization. *Truebro, Inc. v. Plumberex*  
12 *Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551, 556 (C.D. Ca.  
13 2004).

14 (2) *The Moving Party Must Show “Cause” to Lift The Stay*

15 Section 362(d) provides, in pertinent part:

16 (d) On request of a party in interest and after notice and a hearing, the  
17 court shall grant relief from the stay provided under subsection (a) of  
18 this section, such as by terminating, annulling, modifying, or  
conditioning such stay--

19 (1) *for cause*, including the lack of adequate protection of an interest in  
property of such party in interest,...

20 11 U.S.C. § 362(d)(1) (emphasis added).

21 Thus, section 362(d)(1) directs the court to grant relief from the automatic stay upon a  
22 showing of “cause.” As noted in *Plumberex*, courts in the Ninth Circuit have granted relief from the  
23 stay under § 362(d)(1) “when necessary to permit pending litigation to be concluded in another  
24 forum if the non-bankruptcy suit involves multiple parties or is ready for trial.” *Id.* at 556-57. *See,*  
25 *e.g., Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9<sup>th</sup> Cir.  
26 1990) (stating that “[w]here a bankruptcy court may abstain from deciding issues in favor of an  
27 imminent state court trial involving the same issues, cause may exist for lifting the stay as to the  
28 state court trial”). Of course, as a threshold matter, here there is no pending litigation. Moreover,

1 the District Court Action should never have been filed in the first place because of the applicable  
2 arbitration clause, nor is the matter anywhere near trial, as the Complaint was filed just a few weeks  
3 after the Petition Date and has since been dismissed.

4 **a. The Burden To Show “Cause” Lies With Lifelock as the Moving Party**

5 The *Plumberex* case involved a motion by a judgment creditor for relief from stay for  
6 permission to initiate contempt proceedings in a non-bankruptcy forum against the chapter 11  
7 debtor. In denying the motion, the court held that (1) the creditor had the burden of proving why the  
8 stay should be lifted, (2) the creditor failed to show cause why the stay should be lifted and (3) the  
9 court was required to deny the motion for relief from stay because the creditor had failed to satisfy  
10 its burden. In reaching this conclusion, the Court cited the seminal case of *Sonnax Indus., Inc. v. Tri*  
11 *Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1285 (2<sup>nd</sup> Cir. 1990) and noted  
12 that the burden of proof on a motion to modify the automatic stay is a shifting one: “[t]o obtain relief  
13 from the automatic stay, the party seeking relief must first establish a *prima facie* case that ‘cause’  
14 exists for relief under § 362(d)(1). ... If the movant fails to meet its initial burden to demonstrate  
15 cause, relief from the automatic stay should be denied.” *Plumberex* at 557.

16 **b. Relevant Factors To Be Considered in Determining Whether Cause Exists**

17 Courts have identified a number of factors relevant to determining whether the stay should be  
18 lifted to allow a creditor to continue a pending litigation in a non-bankruptcy forum. *See In re*  
19 *Johnson*, 115 B.R. 634, 636 (Bankr. D. Minn. 1989) (articulating a seven-part test); *In re Curtis*, 40  
20 B.R. 795, 799-800 (Bankr. D. Utah 1984) (articulating a twelve-part test). Among the factors to be  
21 considered by the courts are the following: (1) whether insurance coverage with a duty of defense is  
22 available to the debtor or the estate, or conversely, whether the conduct of the defense will impose a  
23 financial burden on the debtor or the estate; (2) the lack of any connection with or interference with  
24 the bankruptcy case; (3) whether the state-court litigation has progressed to trial-readiness, with the  
25 likelihood that investment of resources in trial preparation would be wasted if trial were deferred;  
26 (4) whether the litigation in another forum would prejudice the interests of other creditors, the  
27 creditors’ committee and other interested parties; and (5) the interests of judicial economy and the  
28 expeditious and economical determination of litigation for the parties. Noting the Second Circuit’s

1 holding in *Sonnax*, the Court in *Plumberex* found that not all of the factors to be considered are  
2 relevant in every case, nor is the court required to give each factor equal weight. *Plumberex* at 560.

3 In essence, the *Plumberex* case condenses the jurisprudence from a number of circuits,  
4 including the Ninth Circuit, and lays out a road map for determining whether the automatic stay  
5 should be lifted.

6 **B. Lifelock Has Not Shown Any “Cause”**

7 By its Motion, Lifelock seeks to ignore the fact that the Debtor’s claim for fees and the  
8 merits of Lifelock’s alleged “overbilling” claim are both “core” proceedings. Lifelock would also  
9 like to ignore the automatic stay and proof of claim process in order to defend the Debtor’s account  
10 receivable collection efforts in a forum of its own choosing, namely the federal District Court in  
11 Orange County, California. However, Lifelock has not established a *prima facie* case that cause  
12 exists for relief under section 362. In fact, based upon the factors enumerated above, Lifelock  
13 cannot possibly meet its burden of establishing that the stay should be lifted.

14 First and foremost, the vast majority of cases in which the stay has been lifted involve a prior  
15 pending lawsuit in a non-bankruptcy forum, generally state court or a specialized tribunal. Here, no  
16 such pending case existed on the Petition Date, nor does one exist today, as Lifelock has dismissed  
17 the District Court Action against the Debtor.

18 Second, the question of whether insurance coverage with a duty of defense is available to the  
19 Debtor or the estate (or conversely, whether the conduct of the defense will impose a financial  
20 burden on the Debtor or the estate) weighs in favor of the Debtor. As the Court has already learned  
21 in this case, there is no coverage under the Debtor’s malpractice insurance before the Debtor has first  
22 expended \$2 million on account of self-insured retention. Moreover, while Lifelock appears to  
23 claim that \$4 million of fees are at issue, in reality Lifelock only paid the firm slightly in excess of  
24 \$2 million. Thus, any suit for “recovery” against the Debtor’s insurance policy would require  
25 Lifelock to (a) prove it owed nothing on account of the \$2.1 million in fees and costs for which it has  
26 not paid; (b) prove it was entitled to a refund of the \$2 million or so already paid; and (c) have the  
27 sum of (i) the creditor dividend on the refund claim and (ii) the expenditure of defense dollars by the  
28 Debtor exceed \$2 million (in order to exceed the self-insured retention). These are very unlikely

1 outcomes indeed, as a result of which the Motion should be denied.

2           Additionally, Lifelock’s reliance on *Matter of Holtkamp*, 669 F. 2d 505, 508-509 (7<sup>th</sup> Cir.  
3 1982) in support of its argument that the stay should be lifted because the Debtor has insurance  
4 coverage is misguided. In *Holtkamp*, the court granted relief from stay specifically because the  
5 “insurance company assumed *full* financial responsibility for defending that litigation.” *Id.*  
6 (emphasis added).<sup>2</sup> Here, that is most certainly not the case.

7           Third, the connection with or interference with the bankruptcy case also weighs against a  
8 finding of cause. By definition, both the Debtor’s collection effort and Lifelock’s alleged claims  
9 against the estate are “core” proceedings under 28 U.S.C. section 157(b)(2)(A), (B) and (C). The  
10 Debtor fully expects the Official Committee of Unsecured Creditors (the “Committee”) to weigh in  
11 on this matter as well.

12           Fourth, the District Court Action is nowhere near trial-ready. Indeed, the Debtor is not even  
13 a party to an action at this time. Accordingly, there is no risk that litigation resources will be wasted  
14 if the stay is not lifted at this time.

15           Fifth, litigation in federal District Court in Orange County would prejudice the interests of  
16 other creditors, the Committee and other interested parties. The Debtor has no office there, nor any  
17 attorneys, nor did it ever. Monies spent litigating in that forum would inevitably not be returned to  
18 creditors. Moreover, the Debtor’s relationship with Lifelock is the subject of an arbitration  
19 agreement; arbitration would prove less expensive than litigation in federal court. This factor, too,  
20 militates against a finding of cause for relief from stay.

21           Finally, the interests of judicial economy and the expeditious and economical determination

22 \_\_\_\_\_  
23 <sup>2</sup> Significantly, *Holtkamp* also noted that:

24           “[t]he purpose of the automatic stay is to preserve what remains of the debtor’s  
25 insolvent estate and to provide a systematic equitable liquidation procedure for all  
26 creditors, secured as well as unsecured, H.R.Rep.No.595, 95th Cong., 1st Sess. 340  
27 (1977), reprinted in (1978) U.S. Code Cong. & Ad. News 6296-97, thereby preventing a  
28 ‘chaotic and uncontrolled scramble for the debtor’s assets in a variety of uncoordinated  
proceedings in different courts.’ *In re Frigitemp Corp.*, 8 B.R. 284, 289 (D.C.S.D. N.Y.  
1981) citing *Fidelity Mortgage Investors v. Camelia Builders, Inc.*, 550 F. 2d 47, 55 (2d  
Cir. 1976), cert. denied, 429 U.S. 1093, 97 S. Ct. 1107, 51 L.Ed. 2d 540 (1977).”  
Understandably, the Debtor similarly hopes to avoid defending uncoordinated  
proceedings in different courts and the uncontrolled chaos they could cause.

1 of litigation require adherence to the constructs of the Bankruptcy Code. There is no cause for relief  
2 from stay, and the Court's own proof of claim process already provides an efficient venue for  
3 Lifelock.

4 **III.**

5 **CONCLUSION**

6 Lifelock's prior actions have already caused the Debtor to incur significant costs that are a  
7 direct result of Lifelock's willful violation of the automatic stay. Now, Lifelock seeks another  
8 chance to commence an action in a non-bankruptcy forum in another district, which would  
9 considerably increase litigation costs to the detriment of the estate, while putting forth no legal or  
10 factual justification for granting a relief from the automatic stay. Based upon the foregoing, the  
11 Debtor respectfully requests that the Court deny the Motion.

12 Dated: April 9, 2009

PACHULSKI STANG ZIEHL & JONES LLP

13 By /s/ John D. Fiero

14 John D. Fiero  
15 Kenneth H. Brown  
16 Miriam P. Khatiblou  
17 Teddy M. Kapur  
18 Attorneys for Heller Ehrman LLP,  
19 Debtor and Debtor in Possession  
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1 John D. Fiero (CA Bar No. 136557)  
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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  
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

**DECLARATION OF JOHN D. FIERO  
IN SUPPORT OF OPPOSITION TO  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY BY LIFELOCK,  
INC.**

Date: April 16, 2009

Time: 9:30 a.m.

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

Judge: The Honorable Dennis Montali

22 I, John D. Fiero, declare:

23 1. I am an attorney at law duly licensed in the State of California and admitted to  
24 practice before this Court and a member of Pachulski Stang Ziehl & Jones LLP, counsel to Heller  
25 Ehrman LLP (the "Debtor"). I make this declaration of my own personal knowledge and, if called  
26 as a witness, I could and would testify competently thereto.

27 2. After I became aware of the lawsuit filed against the Debtor by Lifelock, Inc.  
28 ("Lifelock") in the United States District Court for the Central District of California, Orange County

1 Division (the “District Court Action”), I made several efforts to inform Lifelock’s counsel of the  
2 ramifications of the automatic stay contained in 11 U.S.C. section 362. My first such attempt  
3 occurred on Monday, February 23, 2009 when I sent attorney James Rosen an emailed demand letter  
4 regarding the impropriety of the decision to file the District Court Action, and the need to rectify the  
5 situation. True and correct copies of my February 23 email and letter are attached hereto  
6 collectively as **Exhibit A**. My second such attempt occurred when I instructed my colleague, Teddy  
7 Kapur, to speak to Mr. Rosen on February 24 , 2009 to inquire as to why no response or dismissal  
8 had been forthcoming in response to **Exhibit A**. Based on my discussions with Mr. Kapur, I am  
9 informed and believe that Mr. Rosen declined to take any action based on the Debtor’s demand,  
10 preferring to study the matter further. Thereafter, on February 26, 2009, I sent Mr. Rosen a second  
11 demand letter by email. True and correct copies of my February 26 email and letter are attached  
12 hereto collectively as **Exhibit B**. I am not aware that Lifelock ever offered any substantive response  
13 to these demands and inquiries.

14 3. Some time later, on March 2, 2009, Lifelock filed a Notice of Automatic Stay with  
15 the District Court, but did not dismiss the Debtor from the litigation as it should have.

16 4. The Debtor’s counsel made a third demand for dismissal in a telephone conversation  
17 with Lifelock’s counsel on March 4, 2009. Lifelock did nothing in response to the demand.

18 5. Because Lifelock steadfastly refused to dismiss the District Court Action, my firm  
19 began preparing a motion to enforce the automatic stay and for imposition of civil contempt  
20 sanctions. Lifelock’s counsel, Ryan Saba, was fully aware of the Debtor’s intention to file its  
21 motion on 28 days’ notice. Lifelock even went so far as to agree with the Debtor on a hearing date  
22 of April 17, 2009 for both the Debtor’s motion and Lifelock’s intended cross-motion for relief from  
23 stay. As a result of a telephone conversation with Mr. Saba, I know that Lifelock knew of the  
24 Debtor’s intention to file its motion for sanctions on March 20, 2009.

25 6. On March 19, 2009, just one day before the Debtor was planning to file its motion for  
26 sanctions, Lifelock unexpectedly announced that it had dismissed the District Court Action against  
27 the Debtor, and that there would be no need for the Debtor to file its motion. True and correct copies  
28 of the email and attachment received from Mr. Saba are attached hereto collectively as **Exhibit C**.



# **EXHIBIT A**

## John Fiero

---

**From:** John Fiero  
**Sent:** Monday, February 23, 2009 9:17 AM  
**To:** 'jrosen@rosensaba.com'  
**Cc:** 'acarrasco@rosensaba.com'  
**Subject:** Lifelock v. Heller Ehrman  
**Attachments:** Heller - Letter to James Rosen 2-23-09.pdf

Dear Mr. Rosen,

Please direct your attention to the attached letter.

-- John Fiero

John Fiero  
Pachulski Stang Ziehl & Jones LLP  
150 California Street, 15th Floor  
San Francisco, CA 94111-4500  
Tel: 415.263.7000 | Fax: 415.263.7010  
jfiero@pszjlaw.com  
[www.pszjlaw.com](http://www.pszjlaw.com)

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PACHULSKI

STANG

 ZIEHL  
JONES

LAW OFFICES

LIMITED LIABILITY PARTNERSHIP

SAN FRANCISCO, CA  
LOS ANGELES, CA  
WILMINGTON, DE  
NEW YORK, NY

150 CALIFORNIA STREET  
15th FLOOR  
SAN FRANCISCO  
CALIFORNIA 94111-4500  
TELEPHONE: 415/263 7000  
FACSIMILE: 415/263 7010

LOS ANGELES  
10100 SANTA MONICA BLVD.  
11th FLOOR  
LOS ANGELES  
CALIFORNIA 90067-4100  
TELEPHONE: 310/277 6910  
FACSIMILE: 310/201 0760

DELAWARE  
919 NORTH MARKET STREET  
17th FLOOR  
P.O. BOX 8705  
WILMINGTON  
DELAWARE 19899-8705  
(Courier Zip Code 19801)  
TELEPHONE: 302/652 4100  
FACSIMILE: 302/652 4400

NEW YORK  
780 THIRD AVENUE  
36th FLOOR  
NEW YORK  
NEW YORK 10017-2024  
TELEPHONE: 212/561 7700  
FACSIMILE: 212/561 7777

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WEB: [www.pszjlaw.com](http://www.pszjlaw.com)

John D. Fiero

February 23, 2009

JFiero@pszjlaw.com  
(415) 263-7000

LifeLock, Inc.  
James R. Rosen, Esq.  
468 North Camden Drive, Third Floor  
Beverly Hills, California 90210

Re: *Heller Ehrman LLP*  
Chapter 11 Case No: 08-32514

Dear Mr. Rosen:

This office represents Heller Ehrman LLP (the "Debtor") in its chapter 11 bankruptcy case, which was commenced by the filing of a voluntary petition for relief on December 28, 2008 in the United States Bankruptcy Court, Northern District of California, San Francisco Division (the "Petition Date").

Reference is made to that certain complaint, Case No. 09-0199 (the "Complaint"), filed on or about February 18, 2009 in the United States District Court for the Central District of California against the Debtor, Mary Azcuenaga, and Does 1 through 50. The Complaint seeks general damages, compensatory damages, and punitive damages in connection with the Debtor's representation of LifeLock, Inc. prior to the Petition Date.


Pursuant to the provisions of Section 362 of the Bankruptcy Code, 11 U.S.C. § 362, the filing of a bankruptcy case creates an "automatic stay" of any act to collect or recover a claim against the debtor that arose prior to the commencement of such chapter 11 bankruptcy case. Actions taken in violation of the automatic stay are void. The purpose of the automatic stay is to channel all claims to the Bankruptcy Court where they will be addressed.

The Complaint violates Section 362(a) of the Bankruptcy Code because it seeks to recover property of the Debtor based on events that

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PACHULSKI

STANG

 ZIEHL  
JONES

LAW OFFICES  
LIMITED LIABILITY PARTNERSHIP

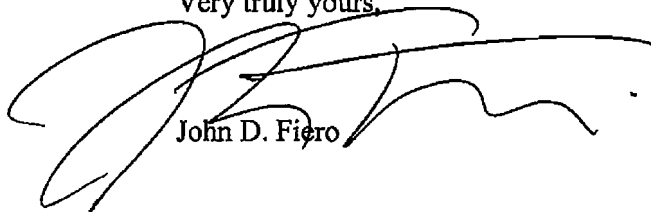
LifeLock, Inc.  
James R. Rosen, Esq.  
February 23, 2009  
Page 2

occurred before the Petition Date, and is therefore void and unenforceable. Moreover, to the extent the Complaint seeks recovery of the Debtor's property through claims against Mary Azcuenaga and Does 1 through 50, it also violates the statutory provisions of the automatic stay.

Accordingly, the Debtor demands that you dismiss the Complaint and not take any further action in violation of the automatic stay. Please be advised that a party's failure to comply with the automatic stay may subject it to contempt proceedings for damages. Should LifeLock, Inc. continue to pursue litigation of this action, the Debtor will seek relief from the Bankruptcy Court, including but not limited to recovery of fees incurred in responding to LifeLock, Inc.'s unlawful actions, and damages.

I trust that you will govern your future actions according to the dictates of the Bankruptcy Code, and dismiss the Complaint immediately.

Very truly yours,



John D. Fiero

# **EXHIBIT B**

## John Fiero

---

**From:** John Fiero  
**Sent:** Thursday, February 26, 2009 4:07 PM  
**To:** 'jrosen@rosensaba.com'  
**Cc:** 'acarrasco@rosensaba.com'  
**Subject:** Heller Ehrman LLP  
**Attachments:** Heller - Letter to James R. Rosen at Lifelock, Inc. from JDF of 2-26-09.pdf

Dear Mr. Rosen:

Please see the attached time-sensitive correspondence.

-- John

John Fiero  
Pachulski Stang Ziehl & Jones LLP  
150 California Street, 15th Floor  
San Francisco, CA 94111-4500  
Tel: 415.263.7000 | Fax: 415.263.7010  
jfiero@pszjlaw.com  
[www.pszjlaw.com](http://www.pszjlaw.com)

Los Angeles | San Francisco | Wilmington, DE | New York

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4/9/2009

PACHULSKI

STANG

 ZIEHL  
JONES

LAW OFFICES  
LIMITED LIABILITY PARTNERSHIP  
SAN FRANCISCO, CA  
LOS ANGELES, CA  
WILMINGTON, DE  
NEW YORK, NY

150 CALIFORNIA STREET  
15th FLOOR  
SAN FRANCISCO  
CALIFORNIA 94111-4500  
TELEPHONE: 415/263 7000  
FACSIMILE: 415/263 7010

LOS ANGELES  
10100 SANTA MONICA BLVD.  
11th FLOOR  
LOS ANGELES  
CALIFORNIA 90067-4100  
TELEPHONE: 310/277 6910  
FACSIMILE: 310/201 0760

DELAWARE  
919 NORTH MARKET STREET  
17th FLOOR  
P.O. BOX 8705  
WILMINGTON  
DELAWARE 19899-8705  
(Courier Zip Code 19801)  
TELEPHONE: 302/652 4100  
FACSIMILE: 302/652 4400

NEW YORK  
780 THIRD AVENUE  
36th FLOOR  
NEW YORK  
NEW YORK 10017-2024  
TELEPHONE: 212/561 7700  
FACSIMILE: 212/561 7777

WEB: [www.pszjlaw.com](http://www.pszjlaw.com)

John D. Fiero

February 26, 2009

[jfiero@pszjlaw.com](mailto:jfiero@pszjlaw.com)  
415.217.5101

VIA EMAIL AND U.S. MAIL

LifeLock, Inc.  
Attn: James R. Rosen, Esq.  
468 North Camden Drive, Third Floor  
Beverly Hills, California 90210

Re: *Heller Ehrman LLP*  
Chapter 11 Case No: 08-32514

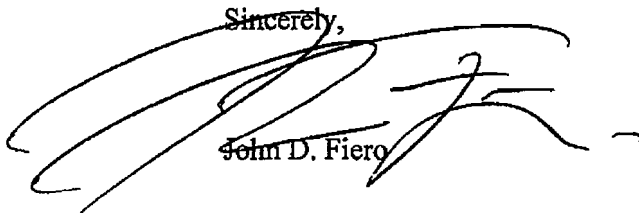
Dear Mr. Rosen:

I'm writing to follow up on my letter dated February 23, 2009 and the conversation you had with my associate, Teddy Kapur, on February 24, 2009 advising you of the necessity of dismissing Heller Ehrman LLP from the complaint your firm filed in Central District of California Case No. 09-0199 (the "Complaint") because the Complaint violates the "automatic stay."

You have acknowledged that you are aware of the Debtor's bankruptcy and the automatic stay. LifeLock's continued pursuit of this litigation intentionally violates the specific and definite provisions of the Bankruptcy Code.

If you do not dismiss the Complaint by the end of the day **Friday, February 27, 2009** and proffer evidence of the same, the Debtor will seek expedited relief from the Bankruptcy Court, including but not limited to compensatory damages and recovery of fees in responding to this matter, as authorized in *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9<sup>th</sup> Cir. 2003).

Sincerely,

  
John D. Fiero

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# **EXHIBIT “C”**

**John Fiero**

---

**From:** Ryan Saba [rsaba@rosensaba.com]  
**Sent:** Thursday, March 19, 2009 1:40 PM  
**To:** John Fiero  
**Cc:** 'Jim Rosen'; 'Ryan Saba'; 'Baeza Mejia'  
**Subject:** LifeLock v. Heller Ehrman  
**Attachments:** CMECF NOTICE OF DISMISSAL.pdf

John –

This email shall follow up the voicemail message that I just left for Celine. As a sign of good faith, LifeLock has elected to dismiss Heller Ehrman from the litigation for now. Accordingly, there is no reason for Heller Ehrman to proceed with its motion to enforce the stay. Attached is the ECF filed dismissal.

Thank you for your continued cooperation. If you have any questions, please contact our office.

Ryan

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Lifelock, Inc.

CASE NUMBER

SACV09-0199 AG (ANx)

Plaintiff(s),

v.

Heller Erhman, LLP, et al.

Defendant(s).

NOTICE OF DISMISSAL PURSUANT  
RULE 41(a) or (c) F.R.Civ.P.

PLEASE TAKE NOTICE: (*Check one*)

- This action is dismissed by the Plaintiff(s) in its entirety.
- The Counterclaim brought by Claimant(s) \_\_\_\_\_ is dismissed by Claimant(s) in its entirety.
- The Cross-Claim brought by Claimants(s) \_\_\_\_\_ is dismissed by the Claimant(s) in its entirety.
- The Third-party Claim brought by Claimant(s) \_\_\_\_\_ is dismissed by the Claimant(s) in its entirety.
- ONLY Defendant(s) Heller Erhman, LLP

is/are dismissed from (*check one*)  Complaint,  Counterclaim,  Cross-claim,  Third-Party Claim brought by Lifelock, Inc. without prejudice.

The dismissal is made pursuant to Rule 41(a) or (c) of the Federal Rules of Civil Procedure.

3/20/09

Date



Signature of Attorney/Party

**NOTE: F.R.Civ.P. 41(a):** This notice may be filed at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.

**F.R.Civ.P. 41(c):** Counterclaims, cross-claims & third-party claims may be dismissed before service of a responsive pleading or prior to the beginning of trial.

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  
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,<sup>1</sup>

15 Debtor.

Case No.: 08-32514

Chapter 11

**CERTIFICATE OF SERVICE**

[NO HEARING REQUIRED]

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<sup>1</sup> The Debtor's address is 333 Bush Street, San Francisco, CA 94104, Federal Tax I.D. No. 94-1217308.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 )  
CITY OF SAN FRANCISCO )

I, Liset Alvarado, am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 150 California Street, 15th Floor, San Francisco, California 94111-4500.

On April 9, 2009, I caused to be served the

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY BY LIFELOCK,  
INC.;**

**DECLARATION OF JOHN D. FIERO IN SUPPORT OF OPPOSITION TO MOTION  
FOR RELIEF FROM AUTOMATIC STAY BY LIFELOCK, INC.**

in this action by placing a true and correct copy of said document(s) in sealed envelopes addressed as follows:

*Please see attached Service List*

- (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY EMAIL) I caused to be served the above-described document by email to the parties indicated on the attached service list at the indicated email address.
- (BY FAX) I caused to be transmitted the above-described document by facsimile machine to the fax number(s) as shown. The transmission was reported as complete and without error. (Service by Facsimile Transmission to those parties on the attached List with fax numbers indicated.)
- (BY OVERNIGHT DELIVERY) By sending by \_\_\_\_\_ to the addressee(s) as indicated on the attached list.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on April 9, 2009, at San Francisco, California.

\_\_\_\_\_  
*/s/ Liset Alvarado*  
Liset Alvarado, Legal Assistant

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**Service List**

|  |   |  |
|--|---|--|
| <p><b>United States Trustee</b><br/>         Donna S. Tamanaha, Assistant U.S. Trustee<br/>         235 Pine Street, Suite 700<br/>         San Francisco, CA 94104<br/>         T<br/> <b>Donna.S.Tamanaha@usdoj.gov</b></p>  | <p><b>Counsel to BofA</b><br/>         David Minnick, Esq.<br/>         Leo Crowley, Esq.<br/>         Pillsbury Winthrop Shaw Pittman LLP<br/>         50 Fremont Street<br/>         San Francisco, CA 94105-2228<br/> <b>Tdminnick@pillsburylaw.com</b><br/> <b>Leo.crowley@pillsburylaw.com</b></p> | <p><b>Counsel to Citibank</b><br/>         Larry Peitzman, Esq.<br/>         Peitzman, Weg &amp; Kempinsky LLP<br/>         10100 Santa Monica Blvd., Suite 1450<br/>         Los Angeles, CA 90067<br/> <br/> <b>lpeitzman@pwkllp.com</b><br/> <b>RSN</b></p> |
| <p><b>Counsel to Committee of Unsecured Creditors</b><br/>         Steven H. Felderstein, Esq.<br/>         Thomas A. Willoughby, Esq.<br/>         Felderstein Fitzgerald Willoughby &amp; Pascuzzi, LLP<br/>         400 Capitol Mall, Suite 1450<br/>         Sacramento, CA 95814<br/> <b>sfelderstein@ffwplaw.com</b><br/> <b>twilloughby@ffwplaw.com</b><br/> <b>RSN</b></p> |   |  |
| <p><b>COMMITTEE OF UNSECURED CREDITORS</b></p>   |   |  |
| <p><b>Counsel for 333 Bush Associates</b><br/>         Michael P. Brody, Esq.<br/>         Darlene Haun, Esq.<br/>         Ellman Burke Hoffman &amp; Johnson<br/>         601 California Street, 19<sup>th</sup> Floor<br/>         San Francisco, CA 94108<br/> <b>mbrody@ellman-burke.com</b><br/> <b>dhaun@ellman-burke.com</b></p>  | <p><b>Counsel for 333 Bush Associates</b><br/>         Paul E. Paradis<br/>         101 California Street, Suite 1000<br/>         San Francisco, CA 94111<br/> <b>paul_paradis@hines.com</b></p>   | <p><b>Counsel for MEPT St. Matthews LLC</b><br/>         Bennett Williams<br/>         1215 4th Avenue, Suite 2400<br/>         Seattle, WA 98161<br/> <b>bennettw@kennedyusa.com</b></p>  |
| <p><b>Counsel for Williams Lea, Inc.</b><br/>         Deena Williamson<br/>         1400 K Street NW, Suite 800<br/>         Washington, DC 20005<br/> <br/> <b>deena.williamson@williamslea.com</b></p>   | <p>Alfred D. Moore<br/>         6340 Chelton Drive<br/>         Oakland, CA 94611<br/> <br/> <b>dacerc@sbcglobal.net</b><br/> <b>RSN</b></p>  | <p><b>Consel for Guckenheimer Enterprises, Inc.</b><br/>         William R. Pope<br/>         Three Lagoon Drive, Suite 325<br/>         Redwood Shores, CA 94065<br/> <br/> <b>bpope@guckenheimer.com</b></p>   |

| PARTIES REQUESTING SPECIAL NOTICE  |  |   |
|--|--|---|
| <p><b>Counsel for AFCO Acceptance Corporation</b><br/>David I. Katzen, CSB # 79090<br/>David A. Schuricht, CSB # 62690<br/>KATZEN &amp; SCHURICHT<br/>1981 N. Broadway, Suite 340<br/>Walnut Creek, CA 94596-8218<br/><b>katzen@ksfirm.com</b><br/><b>schuricht@ksfirm.com</b></p> | <p><b>Counsel for The Seaport Group LLC</b><br/>Scott Friedberg<br/>The Seaport Group, LLC<br/>360 Madison Avenue, 22<sup>nd</sup> Floor<br/>New York, NY 10017<br/><br/><b>Sfriedberg@Theseaportgroup.com</b></p>   | <p><b>Counsel for Columbia Center Property LLC and 333 South Hope Co., LLC</b><br/>Vincent M. Coscino, Esq.<br/>Michael S. Greger, Esq.<br/>Allen Matkins Leck Gamble Mallory &amp; Natsis LLP<br/>1990 Main Street, Fifth Floor<br/>Irvine, CA 92614-7321<br/><b>vcoscino@allenmatkins.com</b><br/><b>mgreger@allenmatkins.com</b></p> |
| <p><b>Counsel for Schiff Hardin LLP</b><br/>Jeffrey V. Commisso, Esq.<br/>Schiff Hardin LLP<br/>One Market, Spear Street Tower<br/>32<sup>nd</sup> Floor<br/>San Francisco, CA 94105<br/><b>jcommisso@schiffhardin.com</b></p>   | <p><b>Counsel for Schiff Hardin LLP</b><br/>Jason M. Torf, Esq.<br/>Schiff Hardin LLP<br/>6600 Sears Tower<br/>Chicago, IL 60606-6473<br/><b>jtorf@schiffhardin.com</b></p>  | <p><b>Counsel for A2D, LP</b><br/>Michael S. Kogan, Esq.<br/>Ervin, Cohen &amp; Jessup LLP<br/>9401 Wilshire Boulevard, 9<sup>th</sup> Floor<br/>Beverly Hills, CA 90212<br/><br/><b>mkogan@ecjlaw.com</b></p>  |
| <p><b>VIA FIRST CLASS MAIL</b><br/><br/><b>Counsel to State of Washington, Dept. of Revenue</b><br/>Zachary Mosner, Esq.<br/>Assistant Attorney General<br/>Bankruptcy &amp; Collections Unit<br/>800 Fifth Avenue, Suite 2000<br/>Seattle, WA 98104-3188</p>                      | <p><b>Counsel to 1620 K Street Associates Limited Partnership, A District of Columbia limited partnership</b><br/>Edward J. Tredinnick, Esq.<br/>Greene Radovsky Maloney Share &amp; Hennigh LLP<br/>Fourt Embarcadero Center, Suite 4000<br/>San Francisco, CA 94111-4106<br/><b>etredinnick@greeneradovsky.com</b></p> | <p><b>Counsel to Pension Benefit Guaranty Corporation</b><br/>Marc S. Pfeuffer, Esq.<br/>Office of the Chief Counsel<br/>Pension Benefit Guaranty Corporation<br/>1200 K Street, N.W.<br/>Washington, DC 20005-4026<br/><b>pfeuffer.marc@pbgc.gov</b><br/><b>efile@pbgc.gov</b></p>   |
| <p><b>Counsel to 4350 La Jolla Village LLC</b><br/>Dean P. Sperling, Esq.<br/>Law Offices of Dean P. Sperling<br/>201 East Sandpointe, Suite 220<br/>Santa Ana, CA 92707-57425<br/><b>Dean@sperlinglaw.com</b></p>   | <p><b>Counsel for the Vested Reirees</b><br/>Michael St. James, Esq.<br/>St. James Law<br/>155 Montgomery Street, Suite 1004<br/>San Francisco, CA 94104<br/><b>ecf@stjames-law.com</b></p>  | <p><b>In-House Counsel fo CB Richard Ellis, Inc.</b><br/>Laurie Gomez, Esq.<br/>Senior Counsel – Litigation<br/>CB Richard Ellis, Inc.<br/>200 Park Avenue<br/>New York, NY 10166<br/><b>laurie.gomez@cbre.com</b></p>  |
| <p><b>Consel to Creditors Darryl L. Snider and John S. Skilton</b><br/>Maria K. Pum, Esq.<br/>Henderson, Caverly, Pum &amp; Charney LLP<br/>P.O. Box 9144<br/>16236 San Dieguito Rd., Suite 4-13<br/>Rancho Santa Fe, CA 92067-9144<br/><b>mpum@hcesq.com</b></p>                  | <p><b>Counsel for Adworks, Inc.</b><br/>Howard Ross, Esq.<br/>Shulman, Rogers, Gandal, Porady &amp; Ecker, P.A.<br/>11921 Rockville Pike, Suite 300<br/>Rockville, MD 20852<br/><br/>F: 301-230-2891<br/><b>hross@srgpe.com</b></p>  | <p><b>Counsel for Robert G. Badal and Nancy Sher Cohen</b><br/>David A. Gill, Esq.<br/>Richard K. Diamond, Esq.<br/>Danning, Gill, Diamond &amp; Kollitz, LLP<br/>2029 Century Park East, Third Floor<br/>Los Angeles, CA 90067<br/><b>dgill@dgdk.com</b><br/><b>rdiamond@dgdk.com</b></p>  |
| <p>Robert G. Badal, Esq.<br/>WilmerHale, LLP<br/>350 S. Grand Avenue, Suite 2100<br/>Los Angeles, CA 90071<br/><b>robert.badal@wilmerhale.com</b></p>  | <p>Nancy Sher Cohen, Esq.<br/>Proskauer Rose, LLP<br/>2049 Century Park East, Suite 3200<br/>Los Angeles, CA 90067<br/><b>ncohen@proskauer.com</b></p>   | <p>Vicky Namken<br/>IBM Corporation<br/>13800 Diplomat Dr.<br/>Dallas, TX 75234<br/><b>vnamken@us.ibm.com</b></p>   |

|    |   |   |   |
|----|---|---|---|
| 1  | <b>Counsel to Constellation NewEnergy, Inc.</b> | <b>Counsel to Constellation NewEnergy, Inc.</b>               | Paul Sugarman                             |
| 2  | Bruce J. Ruzinsky, Esq.                         | Heather M. Forrest, Esq.                                      | 1200 Sunnyhills Road                      |
| 3  | D. Elaine Conway, Esq.                          | JACKSON WALKER L.L.P.   | Oakland, CA 94610                         |
| 4  | JACKSON WALKER L.L.P.                           | 901 Main Street, Suite 6000                                   | <b>sugars5@pacbell.net</b>                |
| 5  | 1401 McKinney Street, Suite 1900                | Dallas, TX 75202  |   |
| 6  | Houston, Texas 77010                            | <b>hforrest@jw.com</b>  |   |
| 7  | <b>bruzinsky@jw.com</b>                         |   |   |
| 8  | <b>econway@jw.com</b>                           |   |   |
| 9  | Christine R. Etheridge                          | <b>Counsel to Hewlett-Packard Company</b>                     | Mr. Ken Higman                            |
| 10 | IKON Financial Services                         | Ms. Anne Marie Kennelly, Esq.                                 | Sr. Default & Recovery Analyst            |
| 11 | Bankruptcy Administration                       | Corporate Counsel   | Hewlett-Packard Company                   |
| 12 | 1738 Bass Road                                  | 3000 Hanover St., M/S 1050                                    | 2125 E. Katella Ave., Suite 400           |
| 13 | P.O. Box 13708                                  | Palo Alto, CA 94304   | Anaheim, CA 92806                         |
| 14 | Macon, GA 31208-3708                            | <b>anne.kennelly@hp.com</b>                                   | <b>ken.higman@hp.com</b>                  |
| 15 | <b>christine.etheridge@ikonfin.com</b>          |   |   |
| 16 | Aseem S. Gupta                                  | <b>Counsel for Iron Mountain Information Management, Inc.</b> | Alan D. Smith                             |
| 17 | 3340 23 <sup>rd</sup> Street                    | Frank F. McGinn, Esq.   | Perkins Coie LLP                          |
| 18 | San Francisco, CA 94110                         | Bartlet Hackett Feinberg P.C.                                 | 1201 Third Avenue, 48 <sup>th</sup> Floor |
| 19 | <b>aseemsgupta@gmail.com</b>                    | 155 Federal Street, 9 <sup>th</sup> Floor                     | Seattle, WA 98101-3099                    |
| 20 |   | Boston, MA 02110  | <b>ADSmith@perkinscoie.com</b>            |
| 21 |   | <b>ffm@bostonbusinesslaw.com</b>                              |   |
| 22 | <b>Counsel to Lifelock, Inc.</b>                |   |   |
| 23 | James R. Rosen, Esq.                            |   |   |
| 24 | Ryan D. Saba, Esq.                              |   |   |
| 25 | ROSEN & SABA, LLP                               |   |   |
| 26 | 468 North Camden Drive                          |   |   |
| 27 | Third Floor                                     |   |   |
| 28 | Beverly Hills, CA 90210                         |   |   |
|    | Tel: (310) 285-1727                             |   |   |
|    | Fax: (310) 285-1728                             |   |   |
|    | <b>jrosen@rosensaba.com</b>                     |   |   |
|    | <b>rsaba@rosensaba.com</b>                      |   |   |