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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,¹
15 Debtor.

Case No.: 08-32514

Chapter 11

**DEBTOR'S SECOND AMENDED
APPLICATION FOR ENTRY OF
ORDER AUTHORIZING
RETENTION AND EMPLOYMENT
OF GREENBERG TRAUIG, LLP AS
CO-COUNSEL FOR THE DEBTOR
NUNC PRO TUNC AS OF THE
PETITION DATE**

The Honorable Dennis Montali

[NO HEARING REQUIRED]

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21 The above-captioned debtor and debtor-in-possession (the “**Debtor**”), hereby submits this
22 second amended application, which amends a prior application filed on January 12, 2009 and a first
23 amended application filed on February 9, 2009 (as amended, the “**Application**”) for entry of an
24 order: (a) authorizing the retention and employment of the law firm of Greenberg Traurig, LLP
25 (“**Greenberg Traurig**”) (i) as co-counsel to the Debtor, pursuant to Sections 327(a) and 328(a) of
26 title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and Rules
27 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), *nunc*
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¹ The Debtor’s address is 333 Bush Street, San Francisco, CA 94104, Federal Tax I.D. No. 94-1217308.

1 *pro tunc* as of the Petition Date (as defined herein) through and including January 31, 2009, and (ii)
2 as special counsel to the Debtor, pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and
3 Bankruptcy Rules 2014(a) and 2016(b) effective as of February 1, 2009; the facts and circumstances
4 supporting the Application are as set forth herein and in the Affidavit of Keith Shapiro Pursuant to
5 Bankruptcy Rule 2014(a) in Support of the Application (the “**Shapiro Affidavit**”) and the
6 Supplemental Affidavit of Keith Shapiro, filed herewith (the “**Supplemental Shapiro Affidavit**”);
7 and (b) providing any additional relief required in order to effectuate the foregoing. In support of the
8 Application, the Debtor respectfully states as follows:

9 **I.**

10 **JURISDICTION AND VENUE**

11 1. This Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334.
12 This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A) and (O).

13 2. Venue of this proceeding and this Application is proper in this District pursuant to 28
14 U.S.C. §§ 1408 and 1409.

15 3. The statutory predicates for the relief sought herein are sections 327(a) and 328(a) of
16 the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016.

17 **II.**

18 **BACKGROUND**

19 4. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy
20 Code on December 28, 2008 (the “**Petition Date**”). Prior to the Petition Date, the Debtor adopted a
21 Plan of Dissolution as of September 26, 2008 (the “**Plan**”). Since implementation of the Plan, the
22 Debtor has continued in possession of its property and, now, is in the process of winding down its
23 business as debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy
24 Code.

25 5. On January 5, 2009, the United States Trustee for this district appointed an official
26 committee of unsecured creditors (the “**Committee**”). No request has been made for the
27 appointment of a trustee or examiner.
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1 6. Prior to the Petition Date, Greenberg Traurig served as lead counsel to the Debtor in
2 connection with its dissolution and various related matters. Beginning on or about December 10,
3 2008, Greenberg Traurig began providing bankruptcy-related services to the Debtor and represented
4 the Debtor in the preparation of this Chapter 11 case. On the eve of filing, the Debtor also retained
5 Pachulski Stang Ziehl & Jones LLP (“**Pachulski Stang**”), which has offices in San Francisco, to
6 serve as co-counsel to the Debtor. On January 12, 2009, the Debtor filed an application (the
7 “**Original Application**”) seeking authorization to retain Greenberg Traurig as co-counsel (with
8 Pachulski Stang) under Section 327(a) of the Bankruptcy Code. The Debtor desires to further clarify
9 Greenberg Traurig’s expected role in this case and the services it will provide to the Debtor.

10 7. Specifically, beginning on or about February 1, 2009, Greenberg Traurig effectively
11 transitioned substantially all of the day-to-day bankruptcy-related work to Pachulski Stang, and
12 thereafter, will be providing the following services to the Debtor: (i) advice and representation
13 concerning the Debtor’s foreign offices, (ii) advice and representation concerning the Debtor’s
14 pension and other employee-related obligations, (iii) advice and representation on corporate
15 governance issues, including, without limitation, dissolution and liquidation matters, and (iv) advice
16 and representation on tax matters (collectively, the “**Revised Specified Services**”). Further, from
17 time to time, the Debtor may request that Greenberg Traurig provide additional services to the
18 Debtor in areas where Greenberg Traurig has the appropriate background, knowledge and expertise,
19 which additional services Greenberg Traurig may agree to perform subject to either approval by the
20 Committee or further order of the Court (such additional services, the “**Additional Services,**” and
21 together with the Revised Specified Services, the “**Services**”).

22 8. The Debtor believes that the Services fall within the scope of services performed by
23 special counsel under Section 327(e) of the Bankruptcy Code. As demonstrated in the Shapiro
24 Affidavit and Supplemental Shapiro Affidavit, and as described in the Original Application,
25 Greenberg Traurig is qualified to represent the Debtor under both Section 327(a) of the Bankruptcy
26 Code (for the period from the Petition Date through January 31, 2009) and Section 327(e) of the
27 Bankruptcy Code (for the period beginning February 1, 2009).

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III.

RELIEF REQUESTED

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3 9. By this Application, the Debtor respectfully requests that this Court enter an Order
4 authorizing it to employ and retain Greenberg Traurig as (i) its co-counsel in this case pursuant to
5 Section 327(a) of the Bankruptcy Code, *nunc pro tunc* to the Petition Date and through and
6 including January 31, 2009, and (ii) its special counsel to perform the Services in this case effective
7 as of February 1, 2009, pursuant to Section 327(e) of the Bankruptcy Code for the period up to June
8 30, 2009. In the event the Debtor wishes to continue to engage Greenberg Traurig for the Services
9 after June 30, 2009, authority to do so will be sought in a follow-up application by the Debtor.

10 10. As noted above, since June 2008, Greenberg Traurig served as the Debtor's lead
11 counsel in connection with the firm's dissolution and continued to serve as lead counsel throughout
12 the dissolution process. In that capacity, Greenberg Traurig has advised the Debtor in various
13 aspects of its business and financial affairs, including, but not limited to, dissolution, partnership,
14 employment, benefits and litigation matters. Moreover, since approximately December 10, 2008,
15 Greenberg Traurig has advised the Debtor with respect to bankruptcy-related matters. Because of
16 this background, Greenberg Traurig is uniquely familiar with the Debtor's business and dissolution,
17 and has the necessary background to effectively deal with pending matters and with the issues that
18 may arise in this case. The Debtor believes that this experience makes Greenberg Traurig well
19 qualified to act as the Debtor's counsel during the pendency of this chapter 11 case in an efficient
20 and timely manner.

21 11. The Debtor also seeks to retain Greenberg Traurig to perform the Services because of
22 the firm's extensive experience and knowledge in the areas of international law, cross-border
23 insolvency law, pension and ERISA law, corporate governance, and tax law. Keith Shapiro, one of
24 the key Greenberg Traurig attorneys who will represent the Debtor in this case, is a former Board
25 Member of INSOL International, the global insolvency organization. Mr. Shapiro has extensive
26 knowledge and experience in cross-border insolvencies. Further, Greenberg Traurig maintains
27 offices throughout the United States (many in locations where the Debtor operated prior to its
28 dissolution) as well as offices in Europe and in Asia (including Shanghai, where the Debtor

1 maintains an office). The members of the firm practice in almost every practice area, including
2 bankruptcy, workouts, tax, partnership dissolution, international, litigation, business and commercial
3 law.

4 12. Based on the foregoing, the Debtor has determined that Greenberg Traurig has the
5 resources and experience necessary to represent it in this case. Greenberg Traurig has become
6 intimately familiar with the Debtor's business and financial status, and continuing the firm's
7 employment, as set forth herein, will provide the most effective and efficient counsel for the estate.
8 Thus, the Debtor desires to employ Greenberg Traurig as its counsel in this case because such
9 employment is in the best interest of the Debtor, the estate and its creditors.

10 **IV.**

11 **SCOPE OF EMPLOYMENT**

12 13. From the Petition Date through and including January 31, 2009, the professional
13 services that Greenberg Traurig expects to render to the Debtor may include, but shall not be limited
14 to, the following:

- 15 (a) providing legal advice with respect to the Debtor's powers and duties as
16 debtor-in-possession in the continued operation and winding down of its
17 business and management of its property;
- 18 (b) negotiating, drafting and pursuing confirmation of a plan of liquidation and
19 approval of any accompanying disclosure statement;
- 20 (c) preparing on behalf of the Debtor all applications, motions, answers, orders,
21 reports and other legal papers necessary to the administration of the
22 Debtor's estate;
- 23 (d) appearing in Court for appropriate matters and protecting the interests of the
24 Debtor before the Court;
- 25 (e) assisting with any disposition of the Debtor's assets, by sale or otherwise;
- 26 (f) attending, when appropriate, meetings and negotiating with representatives
27 of creditors, the United States Trustee, and other parties-in-interest; and
- 28 (g) performing all other legal services for, and providing all other necessary
legal advice to, the Debtor which may be necessary and proper in this case.

14. As noted above, the Debtor has filed an application to retain Pachulski Stang as its
co-counsel. The services to be provided by Greenberg Traurig as co-counsel will not be duplicative

1 of those provided by Pachulski Stang, and Greenberg Traurig will coordinate any services performed
2 with the services of Pachulski Stang, as appropriate, to minimize duplication of effort.

3 15. In addition, effective as of February 1, 2009 (and through June 30, 2009), Greenberg
4 Traurig will be providing the following Revised Specified Services: (i) advice and representation
5 concerning the Debtor's foreign offices, (ii) advice and representation concerning the Debtor's
6 pension and other employee-related obligations, (iii) advice and representation on corporate
7 governance issues, including, without limitation, dissolution and liquidation matters, and (iv) advice
8 and representation on tax matters. From time to time, the Debtor also may request that Greenberg
9 Traurig provide Additional Services to the Debtor in areas where Greenberg Traurig has the
10 appropriate background, knowledge and expertise, which Additional Services Greenberg Traurig
11 may agree to perform subject to either approval by the Committee or further order of the Court.

12 16. Subject to this Court's approval of this Application, Greenberg Traurig has indicated
13 that it is willing to serve as Debtor's counsel in this case to perform the services described above.

14 **V.**

15 **GREENBERG TRAURIG'S DISINTERESTEDNESS**

16 17. As set forth in greater detail in the Shapiro Affidavit, Greenberg Traurig has
17 completed a conflicts check that compares: (a) the Debtor; (b) the members of the Dissolution
18 Committee (which was formed to manage the Debtor pursuant to a Plan of Dissolution adopted on
19 September 26, 2008); (c) the Debtor's prepetition secured lenders and other potential secured
20 creditors; (d) the Debtor's landlords; (e) taxing and governmental authorities; and (f) the Debtor's
21 thirty (30) largest unsecured creditors (collectively, the "**Potentially Interested Parties**") against a
22 list of Greenberg Traurig's current and former engagements, clients and adverse parties. The
23 conflicts check revealed that certain of the Potentially Interested Parties are current or former
24 Greenberg Traurig clients (the list of such clients is attached to the Shapiro Affidavit as **Attachment**
25 "**2,**" and is referred to herein as the "**Client Match List**"). Through the information generated from
26 the above-mentioned computer inquiry, and through follow-up inquiries with Greenberg Traurig
27 attorneys responsible for certain clients listed on the Client Match List to the extent necessary,
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1 Greenberg Traurig determined that the representation of those clients on the Client Match List
2 concerned matters unrelated to the Debtor or this case.

3 18. Further, as noted on the Client Match List, Greenberg Traurig currently represents,
4 has represented in the past and will likely represent in the future, Bank of America, CitiBank, N.A.
5 and certain of their respective affiliates and subsidiaries in matters unrelated to the Debtor or this
6 case. Bank of America and CitiBank are the Debtor's secured lenders. Greenberg Traurig has
7 decided that it will not be adverse to Bank of America or CitiBank in this case, and thus, if the
8 Debtor's involvement is required, Pachulski Stang will represent the Debtor in any adversary
9 proceedings or other significant contested matters involving Bank of America or CitiBank.

10 19. Greenberg Traurig also currently represents The Irvine Company, one of the Debtor's
11 landlords. Greenberg Traurig continues to represent, and likely will represent The Irvine Company
12 in the future in matters unrelated to the Debtor or this case. Although Greenberg Traurig does not
13 believe that any conflict of interest exists, Greenberg Traurig has decided that it will not represent
14 the Debtor in a matter adverse to The Irvine Company in this case, and thus, Pachulski Stang will
15 represent the Debtor in any adversary proceedings or other significant contested matters involving
16 The Irvine Company.

17 20. The Debtor has been advised that the Committee believes there should be an
18 investigation of Greenberg Traurig's representation of the Debtor prior to the Petition Date. The
19 Debtor's estate and the Committee will jointly investigate whether those pre-petition services give
20 rise to any claims in favor of the estate. Greenberg Traurig has strongly denied any liability arising
21 from this representation, but the parties make this disclosure about the Debtor's and Committee's
22 joint investigation in an abundance of caution. This second amended application is made on the
23 mutual understandings that nothing in the order approving this application or any subsequent order
24 entered with regard to the employment or compensation of Greenberg Traurig shall have any
25 preclusive effect or bar any claims, causes of action or equitable theories of recovery of any nature,
26 if any, the estate may have against Greenberg Traurig (the "Potential Claims"), and that Greenberg
27 Traurig reserves any and all rights, claims and defenses with respect to any such Potential Claims.
28 Notwithstanding the foregoing, the Debtor and Committee have also agreed that neither the alleged

1 existence nor the commencement of any pre-petition claims against Greenberg Traurig shall serve as
2 the basis of any objection to, or otherwise preclude the allowance or payment of, any fees or
3 expenses sought by Greenberg Traurig in this case (whether on an interim or final basis).

4 21. To the best of the Debtor's knowledge, and based upon the Shapiro Affidavit and
5 Supplemental Shapiro Affidavit, Greenberg Traurig (a) does not hold or represent any interest
6 adverse to the Debtor or its chapter 11 estate, its creditors, or any other party in interest, and (b) is a
7 "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code. Because
8 Greenberg Traurig is a large firm with an international practice, the Debtor is aware that Greenberg
9 Traurig may represent, or may have represented, certain creditors of the Debtor's estate or other
10 parties-in-interest in matters unrelated to the Debtor or this case, which are disclosed in the Shapiro
11 Affidavit. None of Greenberg Traurig's representations of parties-in-interest in this case comprises a
12 material component of Greenberg Traurig's practice.

13 22. Through a firm wide e-mail, Greenberg Traurig has solicited information from its
14 shareholders and associates to determine if any attorneys employed by Greenberg Traurig are related
15 to the Honorable Dennis Montali, the Bankruptcy Judge presiding over this case, the United States
16 Trustee for Region 17, or any person employed in the San Francisco Office of the United States
17 Trustee. Two Greenberg Traurig shareholders indicated that they were partners with Judge Montali
18 in law firms in the 1990s; otherwise Greenberg Traurig is not aware of any such relations or
19 connections with these parties. In the event any additional connections are discovered, Greenberg
20 Traurig will supplement the Shapiro Affidavit to the extent necessary.

21 VI.

22 **PROFESSIONAL COMPENSATION**

23 23. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional
24 person on any reasonable terms and conditions of employment, including on an hourly basis. *See* 11
25 U.S.C. § 328(a). Greenberg Traurig intends to apply for compensation for professional services
26 rendered in connection with this case subject to the approval of this Court and in compliance with
27 applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules and orders of this
28 Court, on an hourly basis, plus reimbursement of actual, necessary expenses and other charges

1 incurred by Greenberg Traurig. Greenberg Traurig has agreed to provide the Debtor with a 15%
2 discount off of the firm's hourly rates and not to charge the Debtor for non-working travel time.
3 Greenberg Traurig has advised the Debtor that the current hourly rates (prior to the discount)
4 applicable to the principal attorneys and paralegals proposed to represent the Debtor are:

Name	Rate Per Hour
Keith J. Shapiro	\$850
Leslie D. Corwin	\$800
Alan I. Annex	\$800
Andrew Cardonick	\$710
David W. Baddley	\$555
Adam M. Starr	\$455
Jason L. Weidberg	\$365
Alexandra Aquino-Fike	\$360
Ethan F. Ostrow	\$325
Kerry Carlson	\$225

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13 Other attorneys and paralegals will render services to the Debtor as needed. Generally, Greenberg
14 Traurig's hourly rates (prior to the discount) are in the following ranges:

Professional	Rate Per Hour
Shareholders	\$355 to \$1,000
Of Counsel	\$350 to \$900
Associates	\$190 to \$565
Legal Assistants/Paralegals	\$65 to \$310

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19 The Debtor understands that the hourly rates set forth above are subject to periodic adjustments to
20 reflect economic and other conditions.

21 24. The hourly rates set forth above are Greenberg Traurig's standard hourly rates for
22 work of this nature. These rates are set at a level designed to fairly compensate Greenberg Traurig
23 for its work and to cover fixed and routine overhead expenses. It is Greenberg Traurig's policy to
24 charge its clients in all areas of practice for all other expenses incurred in connection with the
25 client's case. The expenses charged to clients include, among other things, telephone and telecopier
26 toll and other charges, mail and express mail charges, special or hand delivery charges, document
27 processing, photocopying charges, travel expenses, expenses for "working meals," computerized
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1 research, and transcription costs, as well as non-ordinary overhead expenses such as overtime for
2 secretarial personnel and other staff. Greenberg Traurig will charge the Debtor's estate for these
3 expenses in a manner and at rates consistent with charges made generally to Greenberg Traurig's
4 clients. Greenberg Traurig believes that these expenses should fairly be charged to the clients
5 incurring them rather than to increase the hourly rates and spread the expenses among all clients.
6 The amounts currently charged by Greenberg Traurig for ordinary and customary expenses are as
7 follows:

8	Automobile Travel:	\$.55 per mile
9	Faxes (outgoing only):	\$1.00 per page
10	Internal Photocopies:	\$.20 per page
11	Airfare:	Actual amount incurred
12	Hotel Accommodations:	Actual amount incurred
13	Car Rental:	Actual amount incurred
14	Computerized Research:	Actual amount incurred
15	Court Reporter Fees:	Actual amount incurred
16	Document Storage & Disposal:	Actual amount incurred
17	Filing Fees:	Actual amount incurred
18	Lodging	Actual amount incurred
19	Lien and UCC Searches	Actual amount incurred
20	Local Travel (e.g. taxi and car service):	Actual amount incurred
21	Long Distance Telephone:	Actual amount incurred
22	Messenger:	Actual amount incurred
23	Outside photocopying:	Actual amount incurred
24	Overnight Delivery:	Actual amount incurred
25	Parking:	Actual amount incurred
26	Postage and Handling:	Actual amount incurred
27	Printing:	Actual amount incurred
28	Process Service:	Actual amount incurred
	Witness Fees:	Actual amount incurred

25. In addition, Greenberg Traurig intends to seek compensation for all time and expenses associated with its retention in accordance with sections 330 and 331 of the Bankruptcy Code and any orders of this Court, including the preparation of retention papers and any monthly fee statements or interim or final fee applications.

26. Although Greenberg Traurig began representing the Debtor in June, 2008 in connection with various partnership and other matters, Greenberg Traurig did not begin performing bankruptcy-related services until approximately December 10, 2008. Prior to the Petition Date,

1 Greenberg Traurig received payments from the Debtor for bankruptcy-related counseling services in
2 the approximate amount of \$156,500. Of this amount, approximately \$76,500 was expended
3 providing bankruptcy consulting services to the Debtor prior to the Petition Date, leaving a
4 remaining advance retainer in the amount of approximately \$80,000 for post-petition services. In
5 total, Greenberg Traurig was paid approximately \$1,486,484 in fees for services rendered prior to
6 the Petition Date. This amount reflects a 15% discount off of the hourly rates charged to the Debtor
7 for any serviced rendered since November 1, 2008.

8 27. Other than as set forth herein, there is no proposed arrangement to compensate
9 Greenberg Traurig. Greenberg Traurig has not shared, nor agreed to share (a) any compensation it
10 has received or may receive with any other party or person, other than with the shareholders, counsel
11 and associates of Greenberg Traurig, or (b) any compensation another person or party has received
12 or may receive.

13 **VII.**

14 **REQUEST FOR APPROVAL OF RETENTION OF**
15 **GREENBERG TRAURIG, NUNC PRO TUNC TO PETITION DATE**

16 28. The Debtor requests that Greenberg Traurig's retention be made effective, *nunc pro*
17 *tunc*, as of the Petition Date in order to allow Greenberg Traurig to be compensated for the work it
18 has performed for the Debtor since the Petition Date, but prior to the Court's consideration of this
19 Application.

20 **VIII.**

21 **CONCLUSION**

22 **WHEREFORE**, the Debtor respectfully requests that this Court enter an Order,
23 substantially in the form annexed hereto, (i) granting the relief requested herein and (ii) granting
24 such other and further relief as the Court deems just and proper.

25 Dated: April 13, 2009

26 Heller Ehrman LLP,

27 /s/ Peter J. Benvenuti
28 By: Peter J. Benvenuti
Its: Responsible Person

