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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,
15 Debtor.

Case No.: 08-32514

Chapter 11

**MOTION FOR APPROVAL OF
COMPROMISE RELATING TO
RETENTION OF ORRICK FIRM IN
THE LRI MATTER**

16 Date: [To be announced]
17 Time: [To be announced]
18 Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
19 Judge: Honorable Dennis Montali

20
21 **TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY**
22 **JUDGE:**

23 Heller Ehrman, LLP, formerly known as Heller Ehrman White & McAuliffe LLP, a
24 California limited liability partnership, the debtor and debtor-in-possession in the above-
25 captioned case (the "Debtor"), hereby submits this motion (the "Motion"), pursuant to Rule
26 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for approval of
27 a compromise relating to the retention of Orrick Herrington & Sutcliffe LLP ("Orrick") as legal
28

1 counsel to Resource Investments, Inc. and Land Recovery, Inc. (collectively, “LRI”), a former
2 client of the Debtor in connection with a regulatory takings lawsuit filed by the Debtor on behalf
3 of LRI in May 1998 (the “Lawsuit”), which is still pending in the United States Court of Federal
4 Claims. This Motion is based on the annexed memorandum of points and authorities, the
5 Declaration of Jonathan Hayden filed in support hereof, and any other evidence properly before
6 the Court.

7 The Motion seeks an order from the Court pursuant to Bankruptcy Rule 9019(a)
8 approving a Confidential Agreement Regarding Fees and Costs and Mutual Release (the
9 “Settlement Agreement”) by and among LRI, Orrick, the Official Committee of Unsecured
10 Creditors in this bankruptcy case (the “Committee”) and Daniel Srydal (“Srydal), a former
11 shareholder of Heller.

12 The Debtor and the Committee have taken the position that the Debtor is entitled to a
13 contingent interest in any recoveries in the Lawsuit as predecessor counsel in the Lawsuit, under
14 the unfinished business doctrine and the case of Jewel v. Boxer, 156 Cal. App. 3d 171 (1984).
15 Orrick disagrees with this position. As a result of this potential issue, Orrick is not willing to
16 accept any representation of LRI in the Lawsuit absent an agreement with the Debtor and the
17 Committee defining each party’s interests in any future recoveries in the Lawsuit and waiving all
18 other rights, claims and interests in or to any future recoveries in connection with the Lawsuit.
19 Given the fact that deadlines in the Lawsuit are fast approaching and LRI will be substantially
20 prejudiced if it is unable to engage satisfactory successor counsel in April 2009, the Settlement
21 Agreement seeks to ensure that LRI secures legal representation by Orrick with regard to the
22 Lawsuit, while also defining the compensation to which each party, including the Debtor, shall be
23 entitled if LRI prevails in the Lawsuit.

24 The Debtor has determined that the Settlement Agreement is appropriate and in the best
25 interests of the creditors and the estate.

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11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re:
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15 Debtor.

Case No.: 08-32514

Chapter 11

**DECLARATION OF JONATHAN
HAYDEN IN SUPPORT OF MOTION
FOR APPROVAL OF COMPROMISE
RELATING TO RETENTION OF
ORRICK FIRM IN THE LRI MATTER**

18 Date: [To be announced]
19 Time: [To be announced]
20 Place: United States Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
21 Judge: The Honorable Dennis Montali

22 I, Jonathan Hayden, declare:

23 1. I am a member of the Dissolution Committee (the "Dissolution Committee") created
24 by the Plan of Dissolution adopted as of September 26, 2008 by Heller Ehrman LLP, formerly
25 known as Heller Ehrman White & McAuliffe LLP, the debtor and debtor-in-possession in the above-
26 captioned case (the "Debtor" or "Heller"). I am authorized to submit this declaration on behalf of
27 the Debtor. Except as stated herein based upon information and belief, I have personal knowledge of
28 the facts set forth below, and if called to testify, I would testify competently thereto.

1 2. I am informed and believe that on May 14, 1998, Heller filed on behalf of its clients,
2 Resource Investments, Inc. and Land Recovery, Inc. (collectively, "LRI"), a regulatory takings
3 complaint against the United States in the United States Court of Federal Claims, captioned
4 Resource Investments, Inc. and Land Recovery, Inc. v. United States of America, No. 98-419L (the
5 "Lawsuit") seeking "just compensation" under the Fifth Amendment to the United States
6 Constitution for a regulatory taking by the U.S. Army Corps of Engineers of all use of the 304th
7 Street landfill site formerly owned by LRI.

8 3. I am informed and believe that Daniel Syrdal ("Srydal") and Jonathan Palmer
9 ("Palmer"), former shareholders of one of Heller's partners, were actively involved in the
10 representation of LRI in connection with the Lawsuit. Through September 30, 2005, Heller
11 represented LRI in the case based on Heller's standard hourly rates. Since the inception of the case,
12 LRI has paid to Heller approximately \$2.5 million in legal fees and costs.

13 4. I am informed and believe that on or about October 1, 2005, Heller and LRI entered
14 into a contingency fee agreement, titled "Agreement Regarding Attorneys' Fees" (the "2005
15 Contingency Fee Agreement").

16 5. I am informed and believe that on or about September 27, 2007, Heller and Syrdal
17 entered into an "Agreement and General Release" (the "2007 Employment Agreement and General
18 Release") in recognition of the fact that while Syrdal was resigning his position as a full-time lawyer
19 with Heller, Heller, Syrdal and LRI each wished Syrdal to continue to provide services to LRI in
20 connection with the Lawsuit, acting as an attorney under contract with Heller. At the same time, on
21 or about September 27, 2007, Heller, Syrdal and LRI entered into a "Modification of Agreement
22 Regarding Attorney Fees" (the "2007 Modification Agreement"), which, by its terms, modified
23 certain terms of the 2005 Contingency Agreement in the event that it would become necessary for
24 Syrdal to be called as a testifying fact witness in connection with the Lawsuit. During the time
25 between October 1, 2005 and the Date of Dissolution, the value of Heller's recorded time on the LRI
26 matter was approximately \$1.58 million.

27 6. On February 9, 2009, LRI sent a notice to the Dissolution Committee informing it
28 that LRI had an urgent need to engage counsel and that Heller had an ethical responsibility either to

1 provide legal representation itself, or to agree to replace the 2005 Contingency Fee Agreement with
2 a new agreement that would permit a fee arrangement with new counsel and resolve any claims
3 Heller might have against successor counsel on any theory, including under theory of a duty to
4 account for unfinished business as discussed in Jewel v. Boxer, 156 Cal. App. 3d 171 (1984).

5 7. I am informed and believe that deadlines are approaching in the Lawsuit, including a
6 May 29, 2009 deadline for the filing of a pre-trial stipulation, such that LRI will be substantially
7 prejudiced if it is unable to engage satisfactory successor counsel in early May 2009.

8 8. I am informed and believe that after Heller's dissolution, Palmer became a partner of
9 Orrick Herrington & Sutcliffe LLP ("Orrick"). Orrick, including Mr. Palmer, and Syrdal (as a
10 lawyer under contract with Orrick) are LRI's choice of successor counsel to represent LRI in the
11 Lawsuit.

12 9. The Debtor and the Official Committee of Unsecured Creditors in this bankruptcy
13 case (the "Committee") have taken the position that the Debtor is entitled to a contingent interest in
14 any recoveries in the Lawsuit as predecessor counsel in the Lawsuit, under the unfinished business
15 doctrine and the case of Jewel v. Boxer. The Committee acknowledges that the specific amounts to
16 which the Debtor contends it may be entitled are unknown and could be the subject of future
17 disputes.

18 10. Orrick disputes that the Debtor or the Committee are entitled to any recoveries
19 against it, and is not willing to take on the representation of LRI without a satisfactory agreement
20 with the Debtor and the Committee that defines those parties' interests in any future recoveries in the
21 Lawsuit, and that otherwise waives, releases, abandons and foregoes all other rights, claims and
22 interests in or to any future recoveries in connection with the Lawsuit.

23 11. While the Debtor may be entitled to a contingent interest in recoveries in the Lawsuit,
24 the amount of which is unknown at this time, it has an ethical obligation to ensure that LRI's legal
25 representation in the Lawsuit continues. Thus, if the Debtor, LRI, the Committee, Srydal and Orrick
26 are unable to reach an agreement regarding their contingent rights to any recovery in the Lawsuit,
27 Orrick will not agree to represent LRI, which could leave LRI without legal representation at a
28 critical time, and potentially result in claims against the Debtor.

1 12. Accordingly, the parties have agreed to enter into a certain Confidential Agreement
2 Regarding Fees and Costs and Mutual Release (the "Settlement Agreement"), a true and correct
3 copy of which is attached hereto as **Exhibit A**, and which includes the following salient terms:

- 4 • Orrick shall pursue the Lawsuit as counsel to LRI;
- 5 • If LRI prevails in the Lawsuit, whether by settlement, judgment or any other payment by
6 or on account of the defendant in the Lawsuit, LRI shall compensate Orrick, Syrdal and
7 the Debtor in amounts to be determined based on the dollar amount of such recoveries
8 and in accordance with the payment scheme contemplated in the Settlement Agreement;
- 9 • LRI, the Debtor and the Committee shall enter into a mutual release of any and all
10 existing claims among them; and
- 11 • The Debtor shall release Syrdal and Orrick from any and all existing claims related to the
12 Lawsuit, the 2005 Contingency Fee Agreement, the 2007 Employment Agreement and
13 Release, the 2007 Modification Agreement, the events occasioned by Heller's dissolution
14 and pending bankruptcy, and specifically claims under the California case, Jewel v.
15 Boxer.

16 13. If the Court approves the Settlement Agreement and LRI's legal representation is
17 taken over by Palmer (and Orrick), it will present many advantages by (1) shielding the Debtor from
18 potential liability with respect to its ethical obligations to LRI by ensuring its continued
19 representation by Orrick; (2) eliminating future costs, delays and uncertainties that would likely
20 result if the Debtor were required to commence an adversary to resolve any dispute with respect to
21 the amounts to which it may be entitled under Jewel v. Boxer, assuming a positive outcome in the
22 Lawsuit; and (3) ensuring, then, that the Debtor will be compensated if and when there is a recovery
23 in the Lawsuit (as set forth in the Settlement Agreement). Accordingly, the Debtor believes the
24 Settlement Agreement is in the best interests of creditors and the bankruptcy estate.

25 I declare under penalty of perjury that the foregoing is true and correct and that this
26 declaration was executed this 1st day of May, 2009 at ~~Penngrove~~, California. *JMA*

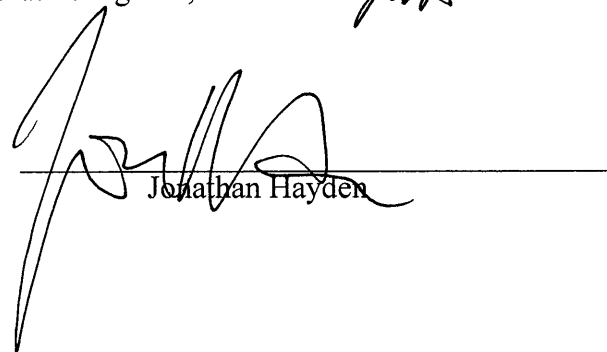
27
28

Jonathan Hayden

EXHIBIT A

TEMPORARILY

OMITTED

1 John D. Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
2 Miriam P. Khatiblou (CA Bar No. 178584)
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11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
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Chapter 11

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
COMPROMISE RELATING TO
RETENTION OF ORRICK FIRM IN
THE LRI MATTER**

16 Date: [To be announced]
17 Time: [To be announced]
18 Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
19 Judge: Honorable Dennis Montali

20
21
22
23 Heller Ehrman, LLP, formerly known as Heller Ehrman White & McAuliffe LLP, a
24 California limited liability partnership, the debtor and debtor-in-possession in the above-captioned
25 case (the “Debtor” or “Heller”), hereby submits this memorandum of points and authorities in
26 support of its *Motion for Approval of Compromise Relating to Retention of Orrick Firm in the LRI*
27 *Matter* (the “Motion”).
28

1 **I. JURISDICTION**

2 This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§157 and 1334. Venue
3 is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The subject matter of the Motion is a core
4 proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

5 **II. STATEMENT OF FACTS**

6 **A. Description of the Debtor**

7 On September 26, 2008, the partners of Heller approved a Plan of Dissolution (the “Plan”)
8 effective as of that date (“Date of Dissolution”), and began to formally cease business operations.
9 On December 28, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under
10 chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). *See* Declaration of
11 Jonathan Hayden (“Hayden Declaration”), submitted concurrently herewith, at ¶1.

12 Prior to its chapter 11 filing, the Debtor was a law firm with San Francisco roots dating
13 back to 1890. In the many years following its formation, the Debtor expanded its practice by
14 adding attorneys and multiple office locations both domestically and abroad. Ultimately, the
15 Debtor grew to more than 730 attorneys in offices all across the United States and in Europe and
16 Asia, including offices in New York City, Los Angeles, Washington, D.C., London, Hong Kong,
17 Beijing and Singapore.

18 The Debtor is currently winding down its business and affairs following the adoption of the
19 Plan. Although the Debtor is no longer engaged in the practice of law, a substantial number of
20 important bankruptcy-related tasks remain outstanding, including winding down the business,
21 maximizing the value of the Debtor’s assets for the benefit of its creditors and equity interest
22 holders and discharging the Debtor’s obligations to former clients.

23 **B. The LRI Matter**

24 **1. Pre-Petition Representation of LRI**

25 On May 14, 1998, Heller filed on behalf of its clients, Resource Investments, Inc. and Land
26 Recovery, Inc. (collectively, “LRI”), a regulatory takings complaint against the United States in the
27 United States Court of Federal Claims, captioned Resource Investments, Inc. and Land Recovery,
28

1 Inc. v. United States of America, No. 98-419L (the “Lawsuit”). The Lawsuit seeks “just
2 compensation” under the Fifth Amendment to the United States Constitution for a regulatory
3 taking by the U.S. Army Corps of Engineers of all use of the 304th Street landfill site formerly
4 owned by LRI. Hayden Declaration, ¶2.

5 Daniel Syrdal (“Srydal”) and Jonathan Palmer (“Palmer”), former shareholders of Heller,
6 were actively involved in the representation of LRI in connection with the Lawsuit. Through
7 September 30, 2005, Heller represented LRI in the case based on Heller’s standard hourly rates.
8 Since the inception of the case, LRI has paid to Heller approximately \$2.5 million in legal fees and
9 costs. Hayden Declaration, ¶3.

10 On or about October 1, 2005, Heller and LRI entered into a contingency fee agreement,
11 titled “Agreement Regarding Attorneys’ Fees” (the “2005 Contingency Fee Agreement”). Hayden
12 Declaration, ¶4.

13 On or about September 27, 2007, Heller and Syrdal entered into an “Agreement and
14 General Release” (the “2007 Employment Agreement and General Release”) in recognition of the
15 fact that while Syrdal was resigning his position as a full-time lawyer with Heller, Heller, Syrdal
16 and LRI each wished Syrdal to continue to provide services to LRI in connection with the Lawsuit,
17 acting as an attorney under contract with Heller. At the same time, on or about September 27,
18 2007, Heller, Syrdal and LRI entered into a “Modification of Agreement Regarding Attorney Fees”
19 (the “2007 Modification Agreement”), which, by its terms, modified certain terms of the 2005
20 Contingency Agreement in the event that it would become necessary for Syrdal to be called as a
21 testifying fact witness in connection with the Lawsuit. Hayden Declaration, ¶5.

22 During the time between October 1, 2005 and the Date of Dissolution, the value of Heller’s
23 recorded time on the LRI matter was approximately \$1.58 million. Hayden Declaration, ¶5.

24 **2. Post-Petition Successor Representation of LRI**

25 On February 9, 2009, LRI sent notice to Heller’s Dissolution Committee informing it that
26 LRI had an urgent need to engage counsel, and that Heller had an ethical responsibility either to
27 provide legal representation itself, or to agree to replace the 2005 Contingency Fee Agreement with
28 a new agreement that would permit a fee arrangement with new counsel and resolve any claims

1 that the Debtor might have against successor counsel on any theory, including under the theory of a
2 duty to account for unfinished business as discussed in Jewel v. Boxer, 156 Cal. App. 3d 171
3 (1984). Hayden Declaration, ¶6.

4 Deadlines are approaching in the Lawsuit, including a May 29, 2009 deadline for the filing
5 of a pre-trial stipulation, such that LRI will be substantially prejudiced if it is unable to engage
6 satisfactory successor counsel in early May 2009. Hayden Declaration, ¶7.

7 After Heller's dissolution, Palmer became a partner of Orrick Herrington & Sutcliffe LLP
8 ("Orrick"). Orrick, including Mr. Palmer, and Syrdal (as a lawyer under contract with Orrick) are
9 LRI's choice of successor counsel to represent LRI in the Lawsuit. Hayden Declaration, ¶8.

10 The Debtor and the Official Committee of Unsecured Creditors in this bankruptcy case (the
11 "Committee") have taken the position that the Debtor is entitled to a contingent interest in any
12 recoveries in the Lawsuit as predecessor counsel in the Lawsuit, under the unfinished business
13 doctrine and the case of Jewel v. Boxer. The Committee acknowledges that the specific amounts to
14 which the Debtor contends it may be entitled are unknown and could be the subject of future
15 disputes. Hayden Declaration, ¶9.

16 Orrick disputes that the Debtor or the Committee are entitled to any recoveries against it,
17 and is not willing to take on the representation of LRI without a satisfactory agreement with the
18 Debtor and the Committee that defines those parties' interests in any future recoveries in the
19 Lawsuit, and that otherwise waives, releases, abandons and foregoes all other rights, claims and
20 interests in or to any future recoveries in connection with the Lawsuit. Hayden Declaration, ¶10.

21 An actual dispute has arisen between the parties regarding the successor representation of
22 LRI in connection with the Lawsuit. While the Debtor may be entitled to a contingent interest in
23 recoveries in the Lawsuit, the amount of which is unknown at this time, it has an ethical obligation
24 to ensure that LRI's legal representation in the Lawsuit continues. Thus, if the Debtor, LRI, the
25 Committee, Srydal and Orrick are unable to reach an agreement regarding their contingent rights to
26 any recovery in the Lawsuit, Orrick will not agree to represent LRI, which could leave LRI without
27 legal representation at a critical time, and potentially result in claims against the Debtor. Hayden
28 Declaration, ¶11.

1 Accordingly, the parties have conducted their own respective investigations of the
2 foregoing assertions and subsequently engaged in significant settlement discussions. Based on
3 those discussions, and each relying on their own investigation and analysis, and the advice of their
4 own counsel, the parties have agreed to enter into a certain Confidential Agreement Regarding
5 Fees and Costs and Mutual Release (the “Settlement Agreement”), subject to the Court’s approval
6 of the agreement on or about May 8, 2009.¹

7 Upon approval of the Motion by this Court, the Settlement Agreement shall, among other
8 things, govern the Debtor’s rights to fees in the event of a recovery in the Lawsuit. The salient
9 terms of the Settlement Agreement are as follows:

- 10 • Orrick shall pursue the Lawsuit as counsel to LRI;
- 11 • If LRI prevails in the Lawsuit, whether by settlement, judgment or any other payment
12 by or on account of the defendant in the Lawsuit, LRI shall compensate Orrick, Syrdal
13 and the Debtor in amounts to be determined based on the dollar amount of such
14 recoveries and in accordance with the payment scheme contemplated in the Settlement
15 Agreement;
- 16 • LRI, the Debtor and the Committee shall enter into a mutual release of any and all
17 existing claims among them; and
- 18 • The Debtor shall release Syrdal and Orrick from any and all existing claims related to
19 the Lawsuit, the 2005 Contingency Fee Agreement, the 2007 Employment Agreement
20 and Release, the 2007 Modification Agreement, the events occasioned by Heller’s
21 dissolution and pending bankruptcy, and specifically claims under the California case,
22 Jewel v. Boxer.

23 Hayden Declaration, ¶12.

24 **III. THE COURT SHOULD APPROVE THE PROPOSED COMPROMISE PURSUANT**
25 **TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

26 Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides, in relevant part, “[o]n
27 Motion by the trustee and after notice an a hearing, the court may approve a compromise or
28 settlement.” Fed. R. Bankr. P. 9019(a). In reviewing proposed settlements, the standard that courts

¹ The business terms of this arrangement have already been approved by the Committee. However, while a prior version of the written terms of the Settlement Agreement was available to the Committee at the last time it met, the final version of the Settlement Agreement was not yet available for review at that time. The Debtor understands that the Committee will consider the Motion in advance of the hearing, and present its views of the final form of the Settlement Agreement at the hearing on the Motion.

1 applied under the former Bankruptcy Act is also applicable under the Bankruptcy Code. Matter of
2 Carla Leather, Inc., 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1984). The standard for approval of a
3 compromise was addressed by the Supreme Court in the benchmark case of Protective Committee
4 for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, reh'g denied,
5 391 U.S. 909 (1968). In TMT Trailer, the Supreme Court held that compromises reached during
6 the course of insolvency proceedings must be “fair and reasonable.” 390 U.S. at 424.
7 Significantly, the Court stated that “[b]asic to this process in every instance, of course, is the need
8 to compare the terms of the compromise with the likely rewards of litigation.” Id.

9 The Ninth Circuit has held that in considering a proposed compromise the Court must
10 evaluate (i) the probability of success; (ii) the difficulties with collection, if any, to be encountered
11 in the matter; (iii) the complexity of litigation involved, and the expense, inconvenience and delay
12 in necessarily attending to it; and (iv) the paramount interests of creditors. In re A & C Properties,
13 784 F.2d 1377, 1381 (9th Cir.), cert. denied sub nom. Martin v. Robinson, 479 U.S. 854 (1986).

14 A court, however, should not substitute its own judgment for the judgment of a trustee or
15 the debtor. Matter of Carla Leather, Inc., *supra*, at 465. In reviewing a proposed settlement, a
16 court is not “to decide the numerous questions of law and fact ... but rather to canvass the issues
17 and see whether the settlement falls below the lowest point in the range of reasonableness.” In re
18 W. T. Grant & Co., 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822. A “mini-trial” on
19 the merits of the underlying cause of action is not required and should not be undertaken by the
20 Bankruptcy Court. In re Blair, 538 F.2d 849 (9th Cir. 1976); In re Walsh Construction, Inc., 669
21 F.2d 1325 (9th Cir. 1982).

22 The facts and circumstances surrounding the future representation of LRI clearly satisfy this
23 standard. As a threshold matter, in the absence of an agreed stipulation such as the one
24 contemplated herein, Orrick will not agree to represent LRI. Hayden Declaration, ¶10. This would
25 leave LRI with either no counsel at all, or, a more likely alternative, new counsel with no history or
26 experience with respect to the Lawsuit. If LRI is left without counsel while facing a critical
27 deadline at the end of the month, the Debtor may potentially be sued for breaching its obligation to
28 LRI to ensure that its representation in the LRI matter continue. If LRI is forced to seek entirely

1 new counsel, the Debtor will presumably not be entitled to an interest in recoveries under Jewel v.
2 Boxer, and even if it were, the expenses and costs associated with bringing such new counsel up to
3 speed on the Lawsuit could potentially reduce the amounts to which the Debtor is entitled.

4 The Debtor and the Committee believe that under the Jewel v. Boxer doctrine, the Debtor is
5 entitled to a contingent interest in recoveries in the Lawsuit if LRI's representation is continued by
6 a former Heller shareholder, although the amount of such interest is entirely uncertain. Hayden
7 Declaration, ¶9.

8 If this Court approves the Settlement Agreement and LRI's representation is taken over by
9 Palmer (and Orrick), it will present many advantages by (1) shielding the Debtor from potential
10 liability with respect to its ethical obligations to LRI by ensuring its continued representation by
11 Orrick; (2) eliminating future costs, delays and uncertainties that would likely result if the Debtor
12 were required to commence an adversary to resolve any dispute with respect to the amounts to
13 which it may be entitled under Jewel v. Boxer, assuming a positive outcome in the Lawsuit; and (3)
14 ensuring, then, that the Debtor will be compensated if and when there is a recovery in the Lawsuit
15 (as set forth in the Settlement Agreement).

16 Finally, the Debtor has consulted with the Committee with respect to the Settlement
17 Agreement. The Debtor has also solicited the Committee's comments concerning the Settlement
18 Agreement and believes that the Committee does not oppose the relief requested therein.

19 The Debtor submits that the applicable A&C Properties factors are satisfied concerning the
20 compromise set forth in the Settlement Agreement and that approval of the Settlement Agreement
21 is in the best interests of the estate and all parties in interest. The Debtor therefore requests that the
22 Court approve the Settlement Agreement and grant such other relief as is just and proper.

23 Dated: May 1, 2009

PACHULSKI STANG ZIEHL & JONES LLP

24
25 By /s/ John D. Fiero

John D. Fiero
Kenneth H. Brown
Miriam P. Khatiblou
Teddy M. Kapur
Attorneys for Heller Ehrman LLP,
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9 Attorneys for Heller Ehrman LLP,
Debtor and Debtor in Possession

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11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
14 Heller Ehrman LLP,
15 Debtor.

Case No.: 08-32514

Chapter 11

CERTIFICATE OF SERVICE

16 Date: [To be announced]
17 Time: [To be announced]
18 Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
19 Judge: Honorable Dennis Montali

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
CITY OF SAN FRANCISCO)

I, Oliver Carpio, 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 May 1, 2009, I caused to be served the

MOTION FOR APPROVAL OF COMPROMISE RELATING TO RETENTION OF ORRICK FIRM IN THE LRI MATTER;

DECLARATION OF JONATHAN HAYDEN IN SUPPORT OF MOTION FOR APPROVAL OF COMPROMISE RELATING TO RETENTION OF ORRICK FIRM IN THE LRI MATTER; AND

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF COMPROMISE RELATING TO RETENTION OF ORRICK FIRM IN THE LRI MATTER;

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

***** PLEASE SEE 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.

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 May 1, 2009, at San Francisco, California.

/s/ Oliver Carpio
Oliver Carpio, Legal Assistant

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