

Exhibit C – Compromise and Settlement Agreement

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement (the “*Settlement Agreement*” or “*Settlement*”), dated as of October 8, 2009, is entered into by and between Debora K. Biggers, Carl Goodman, Anna Scarpa, and Marjorie Norris (collectively the “*Plaintiff Class Representatives*”), on behalf of themselves and on behalf of the individuals named on **Exhibit A** hereto (the Class Representatives and the persons listed on **Exhibit A** hereto are collectively referred to as the “*Plaintiff Class Members*”), on the one hand, and Heller Ehrman LLP (the “*Debtor*”), Heller Ehrman (California), A Professional Corporation; Heller Ehrman (Washington), P.S.; Heller, Ehrman, White, & McAuliffe (Oregon), P.C.; Heller Ehrman (Alaska), P.C.; Heller Ehrman (New York), A Professional Corporation; Heller Ehrman (China), P.C., (collectively, the “*Professional Corporation Defendants*”); individuals Matthew Larrabee, Robert Hubbell, Steven Koppel, Marie Fiala, Mark Weeks, Barry Levin, Kenneth Chernof, Lawrence Keeshan, Robert Rosenfeld, on behalf of themselves and on behalf of all Shareholders of the Professional Corporation Defendants as of August 11, 2008 (hereinafter “*Defendant Shareholder Class*”) (Defendant Shareholder Class members are listed on **Exhibit B**)¹; and Peter Benvenuti, Jonathan Hayden, and Lynn Loacker individually and as members of the Defendant Shareholder Class (collectively, combined with the Professional Corporation Defendants and the Defendant Shareholder Class, hereinafter referred to as the “*non-Debtor Defendants*”), and the Official Committee of Unsecured Creditors of the Debtor (the “*Committee*”), on the other hand. The Debtor, non-Debtor Defendants, the Defendant Shareholder Class, the Committee, and the Plaintiff Class Members will collectively be referred to hereafter as the “*Parties*,” and individually as “*Party*.”

This Settlement Agreement is made with respect to the following recitals:

1. The Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “*Bankruptcy Code*”) on December 28, 2008, initiating the Chapter 11 Case under Case Number 08-32514, in the United States Bankruptcy Court of the Northern District of California (the “*Bankruptcy Court*”).

2. On or about March 31, 2009, the Class Representatives filed a class-action complaint, *Biggers, et al. v. Heller Ehrman LLP*, Case No. 09-03058 (the “*Biggers Action*”), commencing an adversary proceeding against the Debtor on behalf of themselves and purportedly on behalf of the Plaintiff Class Members. On or about April 23, 2009, the Class Representatives filed an amended complaint (“*Amended Complaint*”), which added as defendants the following entities and individuals: Heller, Ehrman, White & McAuliffe, A Professional Corporation; Heller, Ehrman, White & McAuliffe (Washington), P.C.; Heller, Ehrman, White & McAuliffe (Oregon), P.C.;

¹ Whether or not a Defendant Shareholder Class is certified, and without regard to whether or not an individual is listed on Exhibit B, references herein to the Defendant Shareholder Class are intended to refer to all persons who would be members were the Defendant Shareholder Class, as defined in the Amended Complaint in the *Biggers* Action, certified. The members of that class are sometimes referred to as the “*Defendant Shareholder Class Members*.”

Heller, Ehrman, White & McAuliffe (Alaska), P.C.; Heller, Ehrman, White & McAuliffe, A Professional Corporation, A New York professional corporation; Heller Ehrman (China), P.C., a District of Columbia professional corporation; Richard L. Cassin, P.A., a Florida professional corporation,² as well as individuals Matthew Larrabee, Robert Hubbell, Steven Koppel, Marie Fiala, Mark Weeks, Lynn Loacker, Barry Levin, Kenneth Chernof, Lawrence Keeshan, Robert Rosenfeld, Peter Benvenuti, Paul Sugarman, and Jonathan Hayden, individually and on behalf of those similarly situated³. The Amended Complaint alleges 1) violation of the Federal Worker Adjustment and Retraining Notification (“WARN”) Act, 29 U.S.C. §§ 2101 *et seq.*; 2) violation of the California WARN Act; 3) failure to pay vacation in violation of California law; 4) waiting time penalties/exemplary damages; 5) failure to pay wages under Washington law; 6) breach of contract as to the Washington and New York putative vacation class; 7) promissory estoppel as to the Washington and New York putative vacation class; 8) failure to pay wages under Washington, D.C. and New York law; and 9) unfair business practices under California law.

3. On or about March 27, 2009, lawyers for the Plaintiff Class Members also filed with the Bankruptcy Court a class proof of claim (“***Class Proof of Claim***”) on behalf of all purported Plaintiff Class Members in the *Biggers* Action and making the same claims as made in the Amended Complaint filed with the Bankruptcy Court.

4. The Plaintiffs have defined two classes of employees seeking damages for allegedly inadequate WARN notifications (“***WARN Damages***”) (classes collectively known as the “***WARN Classes***”), five classes seeking the monetary value of accrued, vested and unused Vacation entitlements (collectively known as the “***Vacation Classes***”) and one class of employees seeking unpaid wages (other than vacation), severance and contract entitlements (the “***Unpaid Wages Class***”) following their terminations from Heller Ehrman LLP. The various Vacation Classes members and the various WARN Classes members are herein collectively referred to as “***Plaintiff Class Members***,” as follows:

WARN Class: “All employees who worked at or reported to one of defendants’ facilities and were terminated without cause in the 30 days starting October 10, 2008, or were terminated without cause as the reasonable foreseeable consequence of the mass layoff or plant closing ordered by Defendants on or about October 10, 2008, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5).”

California WARN Class: “All employees who worked at or reported to one of Defendants’ qualifying facilities in the State of California and who were subject to a mass layoff, relocation, or termination ordered by Defendants on or after October 10, 2008.”

² The foregoing Defendant names appear here as they appear in the Complaint.

³ On May 6, 2009, Plaintiffs voluntarily dismissed Richard Cassin, P.A., a Florida Professional Corporation from the *Biggers* Action due to the fact that Richard Cassin, P.A. was no longer in existence at the time of the dissolution. On September 23, 2009, the Plaintiffs voluntarily dismissed Paul Sugarman from the *Biggers* Complaint since he had ceased being an active Shareholder months before the events alleged in the *Biggers* Complaint.

California Vacation Class: “All former employees of Defendants in the State of California whose employment with Defendants ended on or after October 3, 2008, through the trial of this case, and who had accrued but unused vacation or sabbatical at the time of termination, or who were owed severance pay.”

Washington Vacation Class: “All former employees of Defendants in the State of Washington whose employment with Defendants ended on or after October 3, 2008, through the trial of this case, and who had accrued but unused vacation or sabbatical at the time of termination, or who were owed severance pay.”

New York Vacation Class: “All former employees of Defendants in the State of New York whose employment with Defendants ended on or after October 3, 2008, through the trial of this case, and who had accrued but unused vacation or sabbatical at the time of termination, or were owed severance pay.”

District of Columbia Vacation Class: “All former employees of Defendants in the District of Columbia whose employment with Defendants ended on or after October 3, 2008, through the trial of this case, and who had accrued but unused vacation or sabbatical at the time of termination, or were owed severance pay.”

5. Plaintiff Class Members are listed on **Exhibit A** attached hereto (and filed under seal). The Debtor and non-Debtor Defendants believe that the various “Vacation Classes” members include all of the employees of the Debtor who the Debtor terminated after September 26, 2008 pursuant to the dissolution and mass layoff that took place on or about October 10, 2008 and thereafter, and include all of the Debtor’s employees (secretaries, paralegals, associates, and administrative personnel) terminated in connection therewith other than employees who are not entitled to participate in this Settlement Agreement because (i) they released the Debtor from any and all claims arising out of their employment other than in connection with Plan of Liquidation; or (ii) they had no accrued vacation at the time of their termination. The Vacation Classes do not include any employees of the Debtor who held the title “Of Counsel” or “Senior Of Counsel,” unless otherwise identified on **Exhibit A**.

6. The Debtor and non-Debtor Defendants believe that the various “WARN Classes” members include all of the employees of the Debtor who the Debtor terminated on, or within 30 days of, October 10, 2008 pursuant to the dissolution and mass layoff, and who did not receive 60 days of notice prior to their termination. The various WARN Classes members include all of the Debtor’s employees (secretaries, paralegals, associates, and administrative personnel) so terminated other than employees who are not entitled to participate in this Settlement Agreement because (i) they voluntarily resigned from their employment with the Debtor or were terminated for cause or good reason; or (ii) they released the Debtor from any and all claims arising out of their employment other than in connection with Plan of Liquidation; or (iii) they did not work in a Heller Ehrman LLP office that employed at least 50 full-time employees; or (iv) they suffered no economic WARN damages as a result of their termination. The various WARN Class Members do not include any employees of the Debtor who held the title “Of Counsel” or “Senior Of Counsel,” unless otherwise identified on **Exhibit A**.

7. The Debtor and non-Debtor Defendants believe that the "Unpaid Wages Class" Members include all of the employees of the Debtor who the Debtor terminated after September 26, 2008 pursuant to the dissolution and mass layoff, and who are owed monies in accordance with sabbatical, wage, and/or non-discretionary bonus contracts. The Unpaid Wages Class includes all of the Debtor's employees (secretaries, paralegals, associates, and administrative personnel) terminated in connection therewith other than employees who are not entitled to participate in this Class because (i) they released the Debtor from any and all claims arising out of their employment other than in connection with Plan of Liquidation; (ii) they had no contract with the Debtor for wages; (iii) they had no contract with the Debtor for payment of a non-discretionary bonus, or had not satisfied the conditions precedent of such a contract; or (iv) they had no vested sabbatical entitlement. The Unpaid Wages Class does not include any employees of the Debtor who held the title "Of Counsel" or "Senior Of Counsel," unless otherwise identified on **Exhibit A**.

8. The Defendant Shareholder Class includes all former Shareholders to the Professional Corporation Defendants as of August 11, 2008, or who would be members of the Defendant Shareholder Class, as defined in the Amended Complaint in the *Biggers* Action, whether or not such persons are listed on **Exhibit B** (the "**Defendant Shareholder Class**"), attached hereto.

9. The Parties recognize and agree that:

A. Accrued and vested and unused vacation is subject to priority treatment pursuant to section 507(a)(4) of the Bankruptcy Code, up to the amount of \$10,950 per individual (sometimes referred to herein as the "**Wage Priority Cap**") if earned between May 4, 2008 and October 31, 2008. Any unpaid vacation claims that accrued prior to May 4, 2008, after October 31, 2008, and/or exceed the Wage Priority Cap, are general unsecured claims that are not entitled to priority treatment.

B. The portion of the Plaintiff Class Members' claims for unpaid "wages" and non-discretionary bonuses that accrued between May 4, 2008 and October 31, 2008, are subject to priority treatment pursuant to section 507(a)(4) of the Bankruptcy Code, up to the amount of Wage Priority Cap to the extent the individual is under the Priority Wage Cap after amounts are paid to such individuals on account of their priority vacation claims. Any unpaid wages claims that accrued prior to May 4, 2008, after October 31, 2008, and/or exceed the Wage Priority Cap, are general unsecured claims that are not entitled to priority treatment;

C. To the extent allowed as priority claims under this Settlement Agreement, the Plaintiff Class Members' claims for WARN damages are subject to priority treatment pursuant to section 507(a)(4) of the Bankruptcy Code, up to the amount of the Wage Priority Cap to the extent the individual is under the Priority Wage Cap after amounts are paid to such individual on account of their priority vacation and wage/non-discretionary bonus claims. Any allowed claims under this Settlement Agreement based on WARN damages that exceed the Priority Wage Cap after the payment of non-WARN

priority claims subject to section 507(a)(4), are general unsecured claims not entitled to priority treatment; and

D. The question of whether so-called waiting time penalty claims/exemplary damages claims (asserted in the Amended Complaint pursuant to various state law statutes requiring the timely payment of an employee's last day's wages) would be entitled to wage priority involves unsettled legal issues and for the purposes of this settlement, such waiting time penalty claims will not be entitled to priority treatment and shall not be treated *pari passu* with other general unsecured creditors. Rather, all waiting time penalties/exemplary damages will be subordinated to the claims of all other allowed unsecured claims and shall not be paid until the allowed unsecured claims of all other creditors are paid in full, with interest, under applicable law.

10. Subject to certain exceptions, the WARN Act requires employers having 100 or more full-time employees to provide written notice of a "plant closing" (as defined by the WARN Act) if the shut-down results in an "employment loss" (as defined in the WARN Act) during any 30-day period for 50 or more employees at a single site of employment, excluding "part-time employees" (as defined in the WARN Act).

11. The Debtor and the non-Debtor Defendants, on the one hand, and the Plaintiff Class Representatives, on the other hand, disagree as to whether the Debtor and the non-Debtor Defendants have liability under the WARN Act. In particular, the Debtor has asserted that it satisfies the requirements of the "unforeseeable business circumstances" exception of the WARN Act, which the Debtor further asserts may excuse notice or may reduce the time such notice must be provided to the employees. The Defendant Shareholder Class disputes that there is any basis for individual liability, without regard to whether the Debtor and/or the non-Debtor Defendants are liable. The Plaintiff Class Representatives dispute that Debtor could successfully prove up any defense to the WARN Act claims, and contend that the Defendant Shareholder Class is also liable.

12. The Debtor and the non-Debtor Defendants, on the one hand, and the Plaintiff Class Representatives, on the other hand, further disagree as to whether the Debtor and the non-Debtor Defendants have any liability for waiting time penalties/exemplary damages. In particular, the Debtor has asserted that its actions were not "willful," in that it was not a free agent which intentionally failed to pay terminating Heller Ehrman LLP employees for their accrued and vested and unused vacation. The Defendant Shareholder Class disputes that there is any basis for individual liability, without regard to whether the Debtor and/or the non-Debtor Defendants are liable. The Plaintiff Class Representatives dispute that these defenses apply, and contend that the Defendant Shareholder Class is also liable.

13. Certain Plaintiff Class Members filed individual proofs of claim in the Debtor's Chapter 11 Case based on the termination of their employment. To the extent these individual claims relate to or are based on the failure to provide notice under the WARN Act, vacation pay, waiting time penalties/exemplary damages, other unpaid wage claims, severance pay or benefits arising out of the termination of the a Plaintiff Class

Members' employment, including, but not limited to: (i) claims asserted or that could have been asserted in the *Biggers* Action; and (ii) any other claims for severance pay, benefits or waiting time penalties/exemplary damages based on or arising out of any federal, state or local statute, ordinance or regulation, they are referred to herein as the "***Individual Proofs of Claim.***"

14. Class Counsel also filed a Class Proof of Claim on or about March 27, 2009 with the Bankruptcy Court on behalf of all Plaintiff Class Members. Class Counsel filed an Amended Class Proof of Claim on or about April 3, 2009.

15. The non-Debtor Defendants, on the one hand, and the Class Representatives, on the other hand, further disagree as to whether the non-Debtor Defendants have any liability for any of the claims that are alleged.

16. The Committee believes that it is in the best interests of creditors to obtain the releases provided herein.

17. There exist significant and complex legal and factual issues regarding the application of the federal WARN and California WARN Act and the various cases and regulations interpreting these WARN Acts and regarding the viability of the *Biggers* Action. There further exist significant, complex legal and factual issues regarding the Debtor's potential liability for waiting time penalties/exemplary damages. To avoid extensive, costly litigation over these issues, the Debtor, the non-Debtor Defendants, the Committee, and the Class Representatives, on their own behalf and on behalf of the Plaintiff Class Members, through their counsel, Blum Collins LLP ("***Class Counsel***") have engaged in significant negotiations regarding a possible consensual resolution of these claims. In addition, counsel for the Committee, and representatives of the Committee, participated in these settlement negotiations culminating in a day-long mediation on Thursday September 24, 2009 involving counsel for all of the parties to the *Biggers* Action and representatives of the Debtor, the Committee and its lead counsel. Neither the Defendant Shareholder Class nor its Members participated in these negotiations but are beneficiaries of the releases provided herein. As a result of these negotiations, the Parties have agreed to enter into this Settlement Agreement.

18. Class Counsel asserts that the number of the Plaintiff Class Members and the Defendant Shareholder Class Members is so numerous that joinder of all members within each class is impracticable, satisfying the numerosity requirements, as to each class, of Rule 23(a) of the Federal Rules of Bankruptcy Procedure as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure.

19. Class Counsel asserts that the issues common to the claims of the members of each defined class constitute virtually all the issues affecting their rights and thus predominate over the issues that are not common.

20. Class Counsel asserts that the claims of the Plaintiff Class Representatives are typical of the claims of the Class in that the claims of the Class Representatives arose from the same course of conduct that gave rise to the claims of the Class.

21. Class Counsel asserts that the interests of the Defendant Class Representatives are typical of the interests of the other Shareholders in the Defendant Shareholder Class in that the Defendant Class Representatives are all similarly situated as to the course of conduct that gave rise to the claims of the Plaintiff Class Members against the Defendant Shareholder Class.

22. Class Counsel asserts that the determination of the claims of some but not all Plaintiff Class Members would prejudice the claims of the remaining Plaintiff Class Members.

23. Class Counsel asserts that they will provide adequate representation to the Plaintiff Class Members.

24. Class Counsel asserts that they have expended substantial time in prosecuting the claims of the Plaintiff Class Members and the legal fee provided herein is fair and reasonable under the circumstances.

25. The Parties have agreed to fully and finally compromise, settle, and resolve any and all demands, claims, damages, and causes of action, present and future, arising from the claims in the *Biggers* Action.

26. The Parties have agreed to pursue settlement on a simultaneous “double track.” Pursuant to the settlement, all Plaintiff and Defendant Shareholder Class Members who do not opt out of the settlement of the *Biggers* Action will be members of a certified class. Plaintiff Class Members may elect to receive the consideration due to them under the Settlement by 1) executing and returning a release as specified in the Plan of Liquidation (which Plan release shall be at least as extensive and encompassing as the releases provided herein including in Paragraphs 22-26, below), or 2) not executing the Plan release and refraining from Opting Out of the *Biggers* Certified Class, and receiving their settlement amount (which is identical to the amount that will be offered to them through the Plan of Liquidation) as specified herein. Plaintiff Class Members who opt out of the Settlement and do not execute and return the release pursuant to the Plan will not be entitled to the benefits of the Settlement, and will not be part of the *Biggers* Certified Class.

NOW, THEREFORE, as material consideration and inducement to the execution of this Settlement Agreement, and in consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

a. The “*Effective Date*” of this Settlement Agreement shall be the date upon which all of the following have occurred, each of which is a condition precedent to the Settlement Agreement:

A. The issuance by the Bankruptcy Court (in a form similar to that contained in **Exhibit C**) of an order (“**Preliminary Order**”), preliminarily approving the Settlement, approving class certification for purposes of settlement, appointing class

counsel, and authorizing the Debtor to mail a “*Class Notice*” (in a form similar to that contained in **Exhibit D**) to all Plaintiff Class Members, including a *Biggers* Class Opt-Out Notice (in a form similar to that contained in **Exhibit E**) as noted below. The Bankruptcy Court must also authorize the Debtor to mail a Class Notice (in a form similar to that contained in **Exhibit F**) to all Defendant Shareholder Class Members, including a *Biggers* Class Opt-Out Notice (in a form similar to that contained in **Exhibit G**);

B. The entry of a final judgment by the Bankruptcy Court dismissing the *Biggers* Action, with prejudice, which shall be deemed to have occurred when 15 days have elapsed from the entry of the Bankruptcy Court’s judgment dismissing the *Biggers* Action, with prejudice (i) which judgment has not been reversed, stayed, modified or amended, (ii) as to which the time to or the right to appeal or seek reconsideration, review, rehearing, or certiorari has expired or been waived (without regard to whether the time to seek relief from a judgment under Bankruptcy Rule 9024 has expired), and (iii) as to which no appeal or petition for reconsideration, review, rehearing, or certiorari is pending.

C. The entry of a final order in a form similar to that contained in **Exhibit K** by the Bankruptcy Court approving the Settlement Agreement under Fed. R. Bankr. P. 9019, after notice and hearing to creditors and parties in interest, in accordance with applicable law and local rules, which shall be deemed to have occurred when 15 days have elapsed from the entry of the Bankruptcy Court’s order approving the Settlement (i) which order has not been reversed, stayed, modified or amended, (ii) as to which the time to or the right to appeal or seek reconsideration, review, rehearing, or certiorari has expired or been waived, and (iii) as to which no appeal or petition for reconsideration, review, rehearing, or certiorari is pending (“*Final Order*”);

D. The entry of a Final Order confirming the Debtor’s Plan of Liquidation;

E. 10 calendar days have elapsed after the expiration of the right of the Plaintiff Class Members to Opt-Out of the Settlement;

F. The Debtor has not elected to terminate the Settlement Agreement as a result of an Opt-Out percentage that equals or exceeds the percentage specified on **Exhibit H** hereto (and filed under seal) (“*Excessive Opt Out Percentage*”);

G. Plaintiff Class Members have withdrawn their Motion for Class Certification and related papers and pleadings, which the Plaintiff Class Representatives filed on or about September 23, 2009; and

b. The Debtor shall determine whether the number of potential Plaintiff Class Members who Opt-Out of the Settlement Agreement equals or exceeds the Excessive Opt-Out Percentage. The Parties agree that the Debtor may elect to terminate the Settlement Agreement by providing written notice to Class Counsel of

same within twenty (20) days after the expiration of the right of the Plaintiff Class Members to Opt-Out of the Settlement Agreement.

In the event that the conditions precedent set forth above at section 1 herein do not occur, or the Debtor elects to terminate this Settlement Agreement based on the number of Opt-Outs: (a) the Settlement Agreement and the recitals contained herein shall be without force or effect, and neither this Settlement Agreement, nor any of the statements contained herein, shall be admissible in any proceeding involving the Parties; (b) any classes, including both Plaintiff and Defendant class, that are preliminarily certified for settlement purposes will be deemed not certified and the fact of their conditional certification for settlement purposes shall not be referred to or argued as supporting class certification in any subsequent proceedings; (c) neither the motions to obtain an order approving this Settlement Agreement nor any of the pleadings filed in support of the motions shall be admissible in any proceeding involving the Parties; and (d) the Parties will use their best efforts to negotiate a mutually-acceptable amendment to the Settlement Agreement to reflect the changed circumstances presented by any Opt-Out elections, but no Party shall be obligated or bound to agree to such an amendment; and (e) none of the provisions hereof shall prejudice or impair any rights, remedies or defenses of any of the Parties.

c. The Parties agree that there are 46 former Heller Ehrman LLP employees who worked beyond the date the Shareholders voted to dissolve the Firm but who have no vacation, wage, WARN, or waiting time damages, or any other damages, and who filed no Proof of Claim. The Parties agree that these 46 employees are not Plaintiff Class Members. **Exhibit I** is a list of the names of these 46 individuals.

d. The parties agree that those Plaintiff Class Members who choose to accept the Settlement via the Plan of [Liquidation](#) by executing [the release prescribed by the Plan of Liquidation \(that shall also include the non-Debtor Defendants\)](#) shall be deemed not to have opted out of this Settlement Agreement for purpose of computing the Excessive Opt-Out Percentage.

e. The Debtor's Plan of Liquidation shall provide that not later than 15 days after the Effective Date, and subject to the terms of this Settlement Agreement, the Plaintiff Class Members shall receive the following from the Debtor on account of their priority and unsecured claims, provided, however, that the non-Debtor Defendants shall not be liable for any such payments or allowed claims:

Vacation Claims:

An aggregate total priority wage claim of \$3,011,035.62 (Three Million, Eleven Thousand, Thirty-Five Dollars and Sixty-Two cents) as allowed priority claims pursuant to section 507(a) (4) of the Bankruptcy Code with each Plaintiff Class Member having an individual allowed priority claim under section 507(a)(4) of the Bankruptcy Code pursuant to the schedule attached as **Exhibit A** on account of accrued, vested and unused vacation claims earned between May 4 and October 31, 2008, up to the lesser of (i) the

Priority Wage Cap; or (ii) the Plaintiff Class Member's scheduled claim for accrued, vested and unused vacation as set forth in the Debtor's schedules.

27. An aggregate total general unsecured claim of \$4,174,392.20 (Four Million, One-Hundred Seventy-Four Thousand, Three-Hundred Ninety-Two Dollars and Twenty Cents) with each Plaintiff Class Member having an individual allowed general unsecured claim in the amounts set forth in the schedule attached as **Exhibit A**, on account of allowed accrued, vested and unused vacation claims, to be paid as and when the claims of other general unsecured creditors are paid, if so paid, pursuant to the Plan of Liquidation.

WARN Claims:

28. An aggregate total priority wage claim of \$1,500,000 (One Million, Five-Hundred Thousand Dollars) as allowed priority claims pursuant to section 507(a)(4) of the Bankruptcy Code with each Plaintiff Class Member having an individual allowed priority claim under section 507(a)(4) of the Bankruptcy Code pursuant to the schedule attached as **Exhibit A** on account of alleged WARN Damages.

29. An aggregate total allowed general unsecured claim of \$2,350,000 (Two Million, Three-Hundred Fifty Thousand Dollars) with each Plaintiff Class Member having an individual allowed general unsecured claim in the amounts set forth in the schedule attached as **Exhibit A**, on account of alleged WARN Damages, to be paid as and when the claims of other general unsecured creditors are paid, if so paid, pursuant to the Plan of Liquidation.

Unpaid Wage Claims (Other Than Vacation):

30. An aggregate total priority wage claim of \$71,543.90 (Seventy-One Thousand, Five Hundred Forty Three Dollars and Ninety Cents) as allowed priority claims pursuant to section 507(a)(4) of the Bankruptcy Code with each Plaintiff Class Member having an individual allowed priority claim under section 507(a)(4) of the Bankruptcy Code pursuant to the schedule attached as **Exhibit A**, on account of alleged unpaid wages (other than vacation).

31. An aggregate total allowed general unsecured claim of \$890,515.89 (Eight-Hundred Ninety Thousand, Five-Hundred Fifteen Dollars and Eighty Nine Cents) with each Plaintiff Class Member having an individual allowed general unsecured claim in the amounts set forth in the schedule attached as **Exhibit A**, on account of alleged unpaid wages (other than vacation) to be paid as and when the claims of other general unsecured creditors are paid pursuant to the Plan of Liquidation.

Waiting Time Penalties/Exemplary Damages

32. An aggregate total allowed subordinated general unsecured claim of \$7,000,000 (Seven Million Dollars) with each Plaintiff Class Member having an individual allowed subordinated general unsecured claim in the amounts set forth in the

schedule attached as **Exhibit A**, on account of alleged waiting time penalties/exemplary damages.

33. The payment, if any, of these allowed subordinated general unsecured claims shall be in accordance with the terms set forth in the Plan of Liquidation, but in no event shall these allowed subordinated general unsecured claims be paid before all other allowed claims of creditors of the Debtor are paid in full.

The following chart summarizes the various treatments of the claims of Plaintiff Class Members provided pursuant to this Settlement Agreement and the Bankruptcy Code:

		Vacation	Bonuses/ Wage Contracts	WARN	Waiting Time Penalties/ Exemplary Damages	Attorneys' Fees & Costs
Admin. Priority	Total= \$950,000	\$0	\$0	\$0	\$0	\$950,000
Priority	Total= \$4,582,579.52	\$3,011,035.62 (100% treated as priority treatment)	\$71,543.90	\$1,500,000	\$0	\$0
Non-Priority	Total= \$7,414,908.09	\$4,174,392.20 (allowed as non-priority general unsecured claim based on vacation entitlement)	\$890,515.89	\$2,350,000 (allowed as non-priority general unsecured claim based on WARN damages)	\$0	\$0
Subordinated to all other allowed claims	Total= \$7,000,000	\$0	\$0	\$0	\$7,000,000	\$0
Total	\$19,947,487.61	\$7,185,427.82	\$962,059.79	\$3,850,000	\$7,000,000	\$950,000

a. The foregoing payments of priority claims and allowance of unsecured non-priority claims as set forth in paragraph 5 above and summarized in the above chart shall be in full and complete satisfaction of all claims of the Plaintiff Class Members against the Debtor, the Debtor's estate, the non-Debtor Defendants and their estates that were or could have been alleged in the *Biggers* Action and for vacation

pay, WARN Damages, unpaid wage claims, waiting time penalties/exemplary damages and attorneys' fees.

b. The Debtor shall retain Development Specialists, Inc. ("*DSI*") to administer the settlement as Claims Administrator, including causing the Debtor to pay, after issuance of the Dismissal Order, Plaintiff Class Members the amounts required by this Settlement Agreement. The Debtor warrants that it will engage DSI, at its expense, upon receipt of a Preliminary Order authorizing and directing DSI to administer all aspects of this Settlement Agreement. Any employee payroll tax withholdings required by federal, state or local law shall be withheld from the distributions to the Plaintiff Class Members receiving payments under this Settlement Agreement and the Debtor will issue Plaintiff Class Members a W-2 Form reflecting all payments. These amounts shall include the employee portion of all applicable federal, state and local taxes, including, without limitation, Federal Insurance Contribution Act ("*FICA*") taxes, as well as any other taxes and unemployment compensation contributions which are required to be withheld from the Plaintiff Class Members' distributions based on the treatment of those distributions as wages. The Debtor, in consultation with the Claims Administrator, shall determine in its sole discretion the amount of any employee taxes that will become due and owing and to be withheld.

c. The Debtor agrees to and will be responsible to pay the employer portion of the FICA taxes and required federal and state unemployment taxes. The payment of the employer portion of these taxes shall be in addition to the payments set forth in Paragraph 5. The Debtor shall also be responsible for the reporting of same, as well as the provision of Forms W-2 and other required tax reporting forms. The Claims Administrator will act as the agent of the Debtor to determine required withholdings, fulfilling reporting requirements, including federal and state payroll tax returns, the issuance of Forms W-2 and other required federal and state tax forms, and related matters. For the purpose of calculating applicable taxes, the Parties agree that 100% of the amounts actually paid to the Plaintiff Class Members, after deducting attorneys' fees and costs, but before deducting applicable taxes, shall constitute wages reportable on IRS Form W-2. For avoidance of doubt, the Parties agree that the aggregated amount subject to applicable taxes on wages subject to priority treatment under the Settlement Agreement is \$3,597,961.84 (Three Million, Five-Hundred Ninety-Seven Thousand, Nine Hundred Sixty-One Dollars and Eighty-Four Cents). As, and to the extent, Plaintiff Class Members receive distributions on their allowed general unsecured claims, the Debtor similarly will be responsible to pay the employer portion of the FICA taxes and required federal and state unemployment taxes from the Debtor's funds and these funds shall be in addition to the Payments set forth in Paragraph 5. The Debtor shall also be responsible for the reporting of same, as well as the provision of Forms W-2 and other required tax reporting forms. In addition to the vacation claim payments, the unpaid wages claim payments, the WARN claim payments, and the waiting time/exemplary damages claims payments described in Paragraph 5 above, the Debtor will separately pay up to \$950,000 as attorneys' fees and costs to Class Counsel pursuant to this Settlement Agreement and as noted below,

will withhold no taxes and will issue a Form 1099 to the Law Firm of Blum Collins LLP.

d. **Attorneys' fees:** Subject to approval of the Bankruptcy Court, Class Counsel is hereby recognized as class counsel for the Plaintiff Class Members, and for having pursued claims against Debtor and the non-Debtor Defendants for alleged wage and penalty claims, and in settling such claims and any other claims of the Plaintiff Class Members, is entitled to attorneys' fees. Subject to approval of the Bankruptcy Court, Plaintiff Class Counsel shall have an allowed administrative claim of \$700,000.00 (Seven Hundred Thousand Dollars) against the Debtor, as a "substantial contribution" pursuant to Bankruptcy Code section 503(b)(3)(D)(4), so long as::

A. At least 75% of the Plaintiff Class Members timely participate in the Plan of Liquidation or do not opt out of the Settlement; and

B. Funds are available to allow the Debtor to make the payments described in Paragraph 5 above (i.e. the Debtor's Plan of Liquidation is approved and the Debtor has sufficient funds on hand to make the payments described in Paragraph 5 above).

e. Subject to approval of the Bankruptcy Court, Class Counsel shall have an additional allowed administrative claim of \$250,000.00 (Two-Hundred and Fifty-Thousand Dollars), as a "substantial contribution" pursuant to Bankruptcy Code section 503(b)(3)(D)(4), if 9(a) and 9(b) occur, and so long as the following event also occurs:

A. The number of Opt-Outs does not exceed the Excessive Opt-Out Percentage, or the number of Opt-Outs exceeds such Percentage but the Debtor nonetheless elects not to exercise its right to terminate this Settlement Agreement pursuant to Paragraph 1(f) herein. For purposes of determining the Opt-Out Percentage or the number of Opt-Outs pursuant to this paragraph, any class member who either (a) does not opt-out or (b) elects to receive the benefits of the Plan of Liquidation by executing a completed Release of Claims and Rights, shall be deemed not to be an "Opt-Out."

f. The attorneys' fees and costs paid to Class Counsel shall, upon approval by order of the Bankruptcy Court, supersede any contingency fee agreements any of the Plaintiff Class Members have with Class Counsel. Should the Court reduce the amount of attorneys' fees and/or costs to be paid to Class Counsel under this Settlement Agreement, the Debtor will distribute any residual amount to the Plaintiff Class Members as "non-priority" treatment on a *pro rata* basis to be applied to any unpaid priority claims as shown on **Exhibit A**. Under no circumstances will any action of the Court with respect to modifying the amount of attorneys' fees and/or costs to Class Counsel have any effect on the other terms of this settlement.

g. The Debtor shall bear the ultimate responsibility to produce and mail all required Class Notices but may engage the Claims Administrator as its agent for such purposes. An address and P.O. Box the Claims Administrator will identify will be used as the return address for the Class Notices and checks mailed to the Plaintiff Class Members.

h. The Debtor shall cause the Plaintiff Class Notices to be delivered by first class mail to Plaintiff Class Members at the last known addresses of Plaintiff Class Members as reflected in the Debtors' records no later than 10 business days after the Bankruptcy Court issues a Preliminary Order preliminarily approving this Settlement Agreement and the form of Class Notice. The Class Notice shall be in substantially the form annexed hereto as **Exhibit D** or such substantially similar form as the Bankruptcy Court may approve. The Class Notice shall contain the following information, which shall be individualized for each Plaintiff Class Member:

A. That each Plaintiff Class Member has the right to opt out of the Class and preserve all of her/his rights, if any, against the Debtor, Non-Debtor Defendants, and the Defendant Shareholder Class and its Members, if any (all such opting out Plaintiff Class Members are herein referred to as the "**Opt-Outs**");

B. All of the information contained on **Exhibit A** as pertains to that Plaintiff Class Member;

C. That the Settlement Agreement shall become effective only if the Bankruptcy Court finally approves it;

D. That the Settlement Agreement shall be effective as to all Plaintiff Class Members who do not Opt-Out of the Class; however, if the Bankruptcy Court does not approve the Settlement Agreement, or if the Debtor elects to terminate the Settlement Agreement because the Excessive Opt-Out Percentage was met or exceeded, the Settlement Agreement shall not become effective, except that Paragraph 9 herein shall remain effective even if the Debtor elects to terminate the Settlement Agreement because the Excessive Opt-Out Percentage was met or exceeded, so long as at least 75% of the Class Members timely elect to participate in the Settlement through the Plan of Liquidation; and ;

E. That in the event that any Plaintiff Class Member Opts-Out, such Opting-Out Plaintiff Class Member shall not have any rights under the Settlement and shall not have the allowed claims set forth set forth in **Exhibit A** to the Settlement Agreement, except for any undisputed claims relating to accrued, vested and unused vacation and unpaid wages, which Plaintiff Class Member is entitled to whether or not they are a party to the Settlement;

F. That all "Claims," as that term is defined in Paragraph 22 herein, including any Individual Proofs of Claim filed with the Bankruptcy Court, of a Plaintiff Class Member shall be released (whether released by operation of the Plan of Liquidation and releases executed by Plaintiff Class Members in connection therewith or

pursuant to this Settlement Agreement), and that no person, including the Plaintiff Class Members, shall be entitled to any further distribution thereon, or to otherwise assert the Claims or any of them against the Parties or any of them;

G. That the Debtor represents that to the best of its knowledge, information and belief, the information contained in **Exhibit A** hereto accurately reflects the contents of the Debtor's books and records as to each Plaintiff Class Member; and

H. That such Plaintiff Class Member has the right to object to this Settlement Agreement, with or without counsel, and to retain counsel other than Blum Collins LLP to lodge the objection.

In addition, no later than 10 business days after the Bankruptcy Court issues a Preliminary Order preliminarily approving this Settlement Agreement, the Debtor shall cause a "**Summary Plaintiff Class Notice**" in the form annexed hereto as **Exhibit J** to be posted on the Debtor's website (www.hellerehrman.com) for a period of not less than 90 days following entry of the Preliminary Order;

i. The Debtor shall also cause the Defendant Shareholder Class Notices to be delivered by first class mail to Defendant Shareholder Class Members at the last known addresses of Defendant Shareholder Class Members as reflected on the Debtor's records no later than 10 business days after the Bankruptcy Court issues the Preliminary Order preliminarily approving this Settlement Agreement and the form of Class Notice. The Defendant Shareholder Class Notice shall be in substantially the form annexed hereto as **Exhibit F** or such substantially similar form as the Bankruptcy Court may approve. The Defendant Shareholder Class Notice shall contain the following information:

A. That each Defendant Shareholder Class Member has the right to opt out of the Class and preserve all of her/his rights, if any (all such opting out Defendant Shareholder Class Members are herein referred to as the "**Defendant Opt-Outs**");

B. That the Settlement Agreement shall become effective only if the Bankruptcy Court finally approves it;

C. That the Settlement Agreement shall be effective as to all Defendant Class Members who do not Opt-Out of the Class; however, if the Bankruptcy Court does not approve the Settlement Agreement, or if the Debtor elects to terminate the Settlement Agreement because the Excessive Opt-Out Percentage was met or exceeded, the Settlement Agreement shall not become effective, except that Paragraph 9 herein shall remain effective even if the Debtor elects to terminate the Settlement Agreement because the Excessive Opt-Out Percentage was met or exceeded, so long as at least 75% of the Class Members timely elect to participate in the Settlement through the Plan of Liquidation; and

D. That Defendant Shareholder Class Members have the right to object to this Settlement Agreement, with or without counsel;

j. A Plaintiff Class Member or Defendant Shareholder Class Member may object to this Settlement Agreement by filing with the Bankruptcy Court and sending timely written notice of such objection (“*Notice of Objection*”) to the recipients on the following list:

A. the Debtor’s Counsel, Attn: John C. Fox, Esq., Manatt, Phelps & Phillips LLP, 1001 Page Mill Road, Building 2, Palo Alto, CA 94304;

B. Class Counsel, Attn: Steven A. Blum, Esq., Blum Collins LLP, 707 Wilshire Boulevard, 48th Floor, Los Angeles, CA 90017;

C. the Debtor’s bankruptcy counsel, attn: Kenneth H. Brown, Esq., Pachulski, Stang Ziehl & Jones LLP, 150 California Street, 15th Floor, San Francisco, CA 94111;

D. Counsel for certain non-Debtor Defendants, Attn: David M. Stern, Esq., Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, 39th Floor, Los Angeles, CA 90067;

E. Counsel for certain non-Debtor Defendants, Attn: Tobias S. Keller, Esq., Jones Day, 555 California Street, 26th Floor, San Francisco, CA 94104; and

F. Counsel for the Creditors’ Committee, Attn: Thomas A. Willoughby, Esq., Felderstein, Fitzgerald, Willoughby & Pascuzzi LLP, 400 Capital Mall, Suite 1450, Sacramento, CA 95814.

k. Notice of Objection will be timely if it is filed with the Bankruptcy Court and the recipients on the Service List receive Notice of Objection not later than Thursday December 3, 2009. Such objection shall clearly specify the relief sought and the grounds for any such relief.

l. Any Plaintiff Class Member or Defendant Shareholder Class Member may Opt-Out of the Class by mailing to any Claims Administrator at an address and P.O. Box to be provided by the Claims Administrator, the appropriate completed and executed Opt-Out Notice Form, attached to the Class Notices as **Exhibits E** and **G** hereto (and which shall be attached to the Class Notices) so that the Claims Administrator receives the completed and executed Opt-Out Notice Form no later than Wednesday December 2, 2009. Upon the Claim Administrator’s receipt of such timely notice, such Plaintiff Class Member or Defendant Shareholder Class Member shall be classified as an Opt-Out. Within three days of the expiration of the last day to Opt-Out, Debtor’s Counsel shall cause the Claims Administrator to provide to the Parties’ counsel a list of the Plaintiff Class Members and Defendant Shareholder Class Members who have timely returned an Opt-Out Notice Form.

m. If and when the Settlement Agreement becomes legally effective, all Class Members who have not Opted-Out shall be bound by the terms of this Settlement Agreement.

n. Notwithstanding anything to the contrary in this Settlement Agreement, nothing contained herein shall release or impair the rights and claims, if any, of the Opt-Outs, nor shall anything contained herein affect the defenses and offsets that the Professional Corporation Defendants, the Defendant Shareholder Class and its Members, their estates, their respective assigns, heirs, or agents, the Debtor, the Debtor's estate, its respective subsidiaries, affiliates, successors or any of its present or former officers, directors, shareholders, employees, agents, lawyers, consultants, stockholders or members of any thereof, may have against any such rights or claims asserted by Opt-Outs. To the extent that a Defendant Shareholder Class is not certified, each Defendant Shareholder Class Member, whether or not a signatory hereto, is an intended third-party beneficiary of the releases contained herein.

o. The Debtor represents that **Exhibit A** lists all of the former employees of the Debtor who the Debtor terminated after September 26, 2008, other than those employees who do not fall into the Vacation Classes, the Unpaid Wages Class, or the WARN Classes. Upon execution of this Settlement Agreement, the Parties consent that a class shall be certified in connection with this litigation and pursuant to the motion to approve this Settlement Agreement, consisting of the individuals listed on **Exhibit A**; provided however that such class shall be certified for settlement purposes only pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure as made applicable by Rule 7023 of the Federal Rules of Bankruptcy Procedure.

p. If settlement checks issued to Plaintiff Class Members remain uncashed as of the 241st day after the initial distribution, such funds (the "Residual Funds") shall escheat to the state or federal territory in which the Plaintiff Class Member was last working (i.e., any residual funds from a Plaintiff Class Member last employed by the Debtor in California will escheat to the State of California; any residual funds from a Plaintiff Class Member last employed by the Debtor in the District of Columbia will escheat to the District of Columbia; etc). No portion of the Residual Funds will revert to the Debtor for any reason, or be retained by Class Counsel.

q. Except for the rights arising out of, provided for, or reserved in this Settlement Agreement, upon the Effective Date set forth above, the Plaintiff Class Members (except for any Plaintiff Class Members who have opted out of this Agreement), for and on behalf of themselves, and their respective successors and assigns (collectively, the "**Releasing Parties**"), do hereby fully and forever release and discharge the Professional Corporation Defendants, the Professional Corporation Defendants' estates, all their respective assigns, heirs, and agents, the Debtor, the Debtor's estate, the Defendant Shareholder Class and its Members (except for those who have opted out of this Agreement), their current and former parents, liquidating trustee, subsidiary and affiliated entities, and their respective shareholders, officers, directors, shareholders, agents, employees, partners, members, accountants, attorneys, insurers, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the "**Released Parties**"), of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action,

costs, expenses, attorneys' fees and costs and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, which the Releasing Parties may now have or hereafter may have against the Released Parties, which relate to or are based on the facts alleged in the Individual Proofs of Claim or the Amended Complaint including, but not limited to claims relating to the federal and California WARN Acts, waiting time penalties/exemplary damages, or wages, severance, payments for accrued, vested and unused vacation or benefits under any federal, state or local law or regulation arising out of the employment or termination of the Plaintiff Class Members' employment by the Debtor, including, but not limited to: (i) all claims asserted or that could have been asserted in the Amended Complaint; (ii) the WARN claims; and (iii) any other claims for vacation, back or severance pay, wages, or benefits based on or arising out of any federal, state or local statute, ordinance or regulation; provided, however, that claims and/or rights as against Bank of America, N.A., or related companies, and as against Citibank, N.A., or related companies, shall not be released; and provided further that claims arising under or related to any employee's Supplemental Profit Sharing Contributions pursuant to Heller Ehrman LLP's 401k Retirement Savings and Profit Sharing Plan shall not be released. The claims released hereunder are referred to herein as the "*Claims*." The Released Parties expressly reserve the right to object to, offset or oppose any and all claims, obligations, or causes of action, of any type, except those claims expressly allowed hereunder.

r. Upon the Effective Date, Plaintiff Class Members and Plaintiff Class Counsel agree to file a withdrawal of the Class Proof of Claim to effect the removal of the Class Proof of Claim from the Bankruptcy Court's claim register in a form satisfactory to the Debtor. Upon the Effective Date, the Class Proof of Claim shall be deemed withdrawn, expunged, and disallowed.

s. Upon the Effective Date, each of the Individual Proofs of Claim filed by Plaintiff Class Members who do not opt out of this Class Settlement shall be deemed withdrawn, expunged and disallowed.

t. Upon the Effective Date set forth in Paragraph 1 above, the Plaintiff Class Members agree that any Individual Proofs of Claim that have been scheduled on behalf of, or filed by, the Class Representatives or the Plaintiff Class Members in the Chapter 11 Case, are disallowed in their entirety and may be expunged from the Debtor's schedules or claims register, as appropriate, in the Debtor's discretion; provided, however, that the allowed claims provided for in this Settlement Agreement shall survive.

u. The Releasing Parties and Plaintiff Class Counsel acknowledge that they are familiar with, and/or, in the case of the Plaintiffs and Class Members, have been informed by the notice to the Plaintiff Class, and by written notice to the Defendant Shareholder Class Members of the provisions of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

With respect to the Claims being released hereunder, the Releasing Parties waive and relinquish, to the fullest extent that the law permits, the provisions, rights, and benefits of California Civil Code section 1542 and other statutes, regulations or common law principles of similar effect. Such release, however, shall not release the Debtor's obligations under this Settlement Agreement. The Releasing Parties hereby agree and acknowledge that this waiver and relinquishment is an essential term of this Settlement Agreement, without which the consideration provided to them would not have been given. In connection with such waiver and relinquishment, the Releasing Parties and Plaintiff Class Counsel acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released herein. Nevertheless, it is the intent of the Releasing Parties and Plaintiff Class Counsel in executing this Settlement Agreement fully, finally, and forever to settle and release all such matters, and all claims relative thereto, which exist, may exist or might have existed (whether or not previously or currently asserted in any action or proceeding) which are the subject of the releases granted hereunder.

v. Upon entry of the Final Judgment, all Claims are deemed settled, released and dismissed in their entirety, on the merits, with prejudice.

w. If the Settlement Agreement does not become finally approved, then the provisions of this Settlement Agreement shall be null and void and any conditional certification of plaintiff or defendant classes will be null and void. The Debtor, the non-Debtor Defendants, the Defendant Shareholder Class and its Members, the Committee, or any other party-in-interest shall be free to object to and/or defend against any effort to certify any classes, and the claims asserted in the Amended Complaint or any other claims asserted by the Plaintiff Class Members. Execution of this Settlement Agreement by the Debtor, the non-Debtor Defendants, the Defendant Class Representatives and the Committee does not waive any defense or objection to any claims asserted or that may be asserted.

x. The Debtor, the Committee and Class Counsel shall cooperate to cause joint motions to be filed with the Bankruptcy Court for orders approving this Settlement Agreement ("**Settlement Motion**"), preliminarily approving the class settlement, conditionally certifying the classes described herein, including the Defendant Shareholder Class and thereafter finally approving this class settlement. The Debtor shall give notice to parties in interest.

y. If any Plaintiff Class Member, including any Plaintiff Class Representative, timely and properly elects to Opt-Out of the proposed Class, that Plaintiff Class Member's rights and obligations will be unaffected by this Settlement

Agreement and that Plaintiff Class Member will have the same rights and obligations as he or she would have had if the *Biggers* Action had never been filed and this Settlement Agreement had never been executed, except that the Class Proof of Claim will have been withdrawn. Any Plaintiff Class Member who elects to Opt-Out shall not have an allowed claim against the Debtor or the non-Debtor Defendants by reason of this Settlement Agreement, provided such Plaintiff Class Member does not execute a release in connection with the Plan of Liquidation, and shall retain his or her rights against the Debtor or the non-Debtor Defendants, if any. Subsequent to mailing the completed and executed Opt-Out Notice Form, a Plaintiff Class Member who timely Opt-Out out of the Settlement Agreement shall have the right to file an individual proof of claim setting forth, on an individual basis, the same claims as were set forth in the Class Proof of Claim. Such individual proof of claim shall be deemed timely filed only if it is filed no later than thirty (30) days after entry of the Final Judgment, after which time such individual proofs of claim shall be time barred.

z. In the event that any Plaintiff Class Member Opts-Out, such Opting-Out Plaintiff Class Member shall not have any rights under the Settlement and shall not have the allowed claims set forth in **Exhibit A** to the Settlement Agreement, except for any undisputed claims relating to accrued, vested and unused vacation and unpaid wages, which Plaintiff Class Member is entitled to whether or not they are a party to the Settlement.

aa. The Debtor, the non-Debtor Defendants, and the Committee reserve all rights against any Plaintiff Class Members who Opt-Out. In such event, the payments set forth in section 5 above shall be reduced by such opting-out Plaintiff Class Members' share of the payments as shown on **Exhibit A** and the allowed amounts of their general unsecured claims and subordinated general unsecured claims shall be reduced by the amounts of such claims as shown on **Exhibit A**.

bb. Plaintiff Class Members are only entitled to one payment for their claims, and shall not receive payments under both the Plan of Liquidation and the Settlement Agreement.

cc. The Parties agree that they are compromising and settling disputed claims. Other than as set forth herein, each of the Parties shall bear its own attorney's fees, expenses and court costs. Each of the Parties agrees it shall not commence or continue any contested matter, adversary proceeding, lawsuit, or arbitration which contests, disputes, or is inconsistent with any provision of this Settlement Agreement.

dd. Neither this Settlement Agreement nor any of its provisions, nor evidence of any negotiations or proceedings related to this Settlement Agreement, shall be offered or received in evidence in the Chapter 11 Case, or any other action or proceeding, as an admission or concession of liability or wrongdoing of any nature on the part of any of the Released Parties, or anyone acting on their behalf, and the Debtor and the non-Debtor Defendants specifically denies any such liability or wrongdoing. Nothing herein shall prevent any Party from seeking to offer this Settlement Agreement in evidence after the entry of the Final Order approving the

Settlement Agreement by the Bankruptcy Court for the purpose of enforcing the terms of the Settlement Agreement.

ee. This Settlement Agreement shall be binding upon and shall inure to the benefit of the predecessors, successors and assigns of each of the Parties to the fullest extent under the law.

ff. This Settlement Agreement shall be construed pursuant to the laws of the State of California and the United States Bankruptcy Code.

gg. This Settlement Agreement and the Exhibits hereto represent the entire agreement and understanding between the Parties as to the subject matter hereof and supersede all previous agreements and discussions between the Parties as to the matters herein addressed. This Settlement Agreement can be amended or modified only in writing and signed by all the Parties hereto, subject to any necessary Bankruptcy Court or other approval.

hh. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute but one agreement. This Settlement Agreement may be executed by facsimile, or PDF and such facsimile or PDF signature shall be treated as an original signature hereunder.

ii. This Settlement Agreement has been prepared by the joint efforts of the respective attorneys for each of the Parties. Each and every provision of this Settlement Agreement shall be construed as though each and every party hereto participated equally in the drafting hereof. As a result of the foregoing, any rule that the document is to be construed against the drafting party shall not be applicable.

jj. This Settlement Agreement is subject to and contingent upon the approval by the Bankruptcy Court. The Bankruptcy Court shall have exclusive jurisdiction to determine as a core proceeding any dispute or controversy with respect to the interpretation or enforcement of this Settlement Agreement.

kk. The Parties may not waive any provision of this Settlement Agreement except by a written agreement that all of the Parties have signed. A waiver of any provision of this Settlement Agreement will not constitute a waiver of any other provision. The Parties may modify or amend this Settlement Agreement only by a written agreement that all of the Parties have signed.

ll. This Settlement Agreement is intended to settle and dispose of claims which are contested and denied. Nothing herein shall be construed as an admission by any Party of any liability of any kind to any other Party.

Dated: October____, 2009

BLUM & COLLINS

ON BEHALF OF THE CLASS REPRESENTATIVES
AND PLAINTIFF CLASS MEMBERS (DEBORA K.
BIGGERS, CARL GOODMAN, ANNA SCARPA,
AND MARJORIE NORRIS, ON BEHALF OF
THEMSELVES AND ON BEHALF OF THE
INDIVIDUALS NAMED ON **EXHIBIT A** HERETO)

By _____
Steven A. Blum, Esq.

Dated: October____, 2009

MANATT, PHELPS & PHILLIPS LLP

ON BEHALF OF THE DEBTOR'S CHAPTER 11
ESTATE (HELLER EHRMAN LLP)

By _____
John C. Fox, Esq.

Dated: October____, 2009

PACHULSKI STANG ZIEHL & JONES LLP

ON BEHALF OF THE DEBTOR'S CHAPTER 11
ESTATE, (HELLER EHRMAN LLP)

By _____
Kenneth H. Brown, Esq.

Dated: October____, 2009

FELDERSTEIN, FITZGERALD, WILLOUGHBY &
PASCUZZI LLP

ON BEHALF OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

By _____
Thomas A. Willoughby, Esq.,

Dated: October____, 2009

JONES DAY

ON BEHALF OF NON-DEBTOR DEFENDANTS
STEVEN KOPPEL, AND PETER BENVENUTTI

By _____
Tobias S. Keller, Esq.

Dated: October____, 2009

KLEE, TUCHIN, BOGDANOFF & STERN LLP

ON BEHALF OF NON-DEBTOR DEFENDANTS
(MATTHEW LARRABEE, ROBERT HUBBELL,
MARIE FIALA, MARK WEEKS, BARRY LEVIN,
KENNETH CHERNOF, LAWRENCE KEESHAN,
AND ROBERT ROSENFELD)

By _____
Matthew C. Heyn, Esq.

Dated: October____, 2009

LYNN LOACKER, ESQ.

ON BEHALF OF HERSELF

By _____
Lynn Loacker, Esq.

Dated: October____, 2009

JONATHAN P. HAYDEN, ESQ.

ON BEHALF OF HIMSELF

By _____
Jonathan P. Hayden, Esq.

Dated: October____, 2009

HELLER EHRMAN (CALIFORNIA), A
PROFESSIONAL CORPORATION

By _____
Paul W. Sugarman
Authorized Signatory

Dated: October____, 2009

HELLER EHRMAN (WASHINGTON), P.S.

By _____
Paul W. Sugarman
Authorized Signatory

Dated: October____, 2009

HELLER, EHRMAN, WHITE, & MCAULIFFE
(OREGON), P.C.

By _____
Paul W. Sugarman
Authorized Signatory

Dated: October____, 2009

HELLER EHRMAN (ALASKA), P.C.

By _____
Paul W. Sugarman
Authorized Signatory

Dated: October____, 2009

HELLER EHRMAN (NEW YORK) A
PROFESSIONAL CORPORATION

By _____
Paul W. Sugarman
Authorized Signatory

Dated: October____, 2009

HELLER EHRMAN (CHINA), P.C.

By _____
Paul W. Sugarman
Authorized Signatory

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