

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

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

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

9 Steven H. Felderstein (CA Bar No. 56978)
Thomas A. Willoughby (CA Bar No. 137597)
10 Christopher Crowell (CA Bar No. 253103)
FELDERSTEIN FITZGERALD WILLOUGHBY &
11 PASCUZZI LLP
400 Capitol Mall, Suite 1450
12 Sacramento, CA 95814
Telephone: (916) 329-7400
13 Facsimile: (916) 329-7435

14 Attorneys for The Official Committee of Unsecured Creditors

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

18 In re:

19 **HELLER EHRMAN LLP,**

20 Debtor.

Case No.: 08-32514

Chapter 11

**JOINT PLAN OF LIQUIDATION OF
HELLER EHRMAN LLP (MAY 14, 2010)**

Confirmation Hearing

Date: July 6, 2010

Time: 1:30 p.m.

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

Judge: Honorable Dennis Montali

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

ARTICLE I DEFINITIONS 2

1.1 “Administrative Claim” 3

1.2 “Administrative Claims Bar Date” 3

1.3 “Administrative Claims Bar Date Order” 3

1.4 “Allowed” 3

1.5 “Allowed Secured Claim” 4

1.6 “Allowed Unsecured Claim” 4

1.7 “Amended Complaint” 4

1.8 “Assumed Contract” or “Assumed Contracts” 5

1.9 “Assumption and Cure Order” 5

1.10 “Available Cash” 5

1.11 “Avoidance Actions” 5

1.12 “Ballot” 5

1.13 “Bank of America” 5

1.14 “Bank of America Preference Action” 5

1.15 “Bankruptcy Code” 5

1.16 “Bankruptcy Court” or “Court” 6

1.17 “Bankruptcy Rules” 6

1.18 “Banks” 6

1.19 “Bar Date” 6

1.20 “Biggers Adversary” 6

1.21 “Biggers Approval Order” 6

1.22 “Biggers Defendant Shareholder Class” 6

1.23 “Biggers Class” 7

1.24 “Biggers Priority Employee Claim” 7

1.25 “Biggers Opt Out” 7

1.26 “Biggers Opt Out Deadline” 7

1.27 “Biggers Settlement Agreement” 7

1.28 “Biggers Subordinated Unsecured Claim” 7

1.29 “Biggers Unsecured Claim” 7

1.30 “Business Day” 8

1.31 “Cash” 8

1.32 “Cash Collateral Account” 8

1.33 “Chapter 11 Case” 8

1.34 “Citibank” 8

1.35 “Claim” 8

1.36 “Claimant” 8

1.37 “Claims Reserve Account” 8

1.38 “Class” 8

1.39 “Class Counsel” 8

1.40 “Class Proof of Claim” 8

1.41 “Committee” 9

1.42 “Confirmation” 9

1.43 “Confirmation Date” 9

1.44 “Confirmation Hearing” 9

1.45 “Confirmation Order” 9

1.46 “Continuing Employee Benefit Plans” 9

1.47 “Creditor” 9

1.48 “Cure Obligation” 9

1.49 “Debt” 9

1	1.50	“Debtor”	9
	1.51	“Disallowed Claim”	10
2	1.52	“Disclosure Statement”	10
	1.53	“Dissolution Committee”	10
3	1.54	“Disputed Claim”	10
	1.55	“Disputed Claims Amount”	10
4	1.56	“Effective Date”	11
	1.57	“Employee Retention Orders”	11
5	1.58	“Estate”	11
	1.59	“Estate Assets”	11
6	1.60	“Exculpated Parties”	11
	1.61	“Executory Contracts”	11
7	1.62	“Exit Financing”	11
	1.63	“Exit Financing Collateral”	11
8	1.64	“Exit Financing Lender”	11
	1.65	“Final Order”	12
9	1.66	“Former Shareholders”	12
	1.67	“Former Shareholder Settlement Letter”	12
10	1.68	“Former Shareholder Settlement Mechanism”	12
	1.69	“Former Shareholder Settlement Payment”	12
11	1.70	“Heller Ehrman”	12
	1.71	“Heller Ehrman PCs”	12
12	1.72	“Insured Malpractice Claim”	12
	1.73	“Insured Portion”	13
13	1.74	“Interest Holder”	13
	1.75	“Interests”	13
14	1.76	“Jewel Claims”	13
	1.77	“Lien”	13
15	1.78	“Liquidating Debtor”	13
	1.79	“Malpractice Claim”	13
16	1.80	“Malpractice Claim Expenses”	13
	1.81	“Malpractice Policy” or “Policies”	14
17	1.82	“Main Special Counsel Agreement for Legal Services”	14
	1.83	“Model Former Shareholder Settlement Agreement”	14
18	1.84	“MPC”	14
	1.85	“MPC Equity”	14
19	1.86	“Net Available Cash”	14
	1.87	“New Plan Documents”	14
20	1.88	“Non-Debtor Biggers Defendants”	14
	1.89	“Petition Date”	14
21	1.90	“Plaintiff Class Members”	14
	1.91	“Plaintiff Class Representatives”	14
22	1.92	“Plan”	15
	1.93	“Plan Administrator”	15
23	1.94	“Plan Expenses”	15
	1.95	“Plan of Dissolution”	15
24	1.96	“Post-Confirmation Budget”	15
	1.97	“Post-Confirmation Motion and Opportunity for Hearing”	16
25	1.98	“Post-Confirmation Service List”	16
	1.99	“Priority Employee Claim”	16
26	1.100	“Priority Employee Benefit Claim”	16
	1.101	“Priority Tax Claim”	16
27	1.102	“Professional Fees”	16
	1.103	“Professionals”	16
28	1.104	“Pro Rata” or “Pro Rata Share”	16
	1.105	“Rejected Contract(s)”	17

1	1.106	“Rejection Claim”	17
	1.107	“Rejection Claim Bar Date”	17
2	1.108	“Reserved Claims Pool”	17
	1.109	“Reserved Claims Pool Account”	17
3	1.110	“Retained Claims and Defenses”	17
	1.111	“Schedules”	17
4	1.112	“Secured Claim”	18
	1.113	“Self Insured Retention”	18
5	1.114	“Settling Former Shareholder”	18
	1.115	“SIR Amount”	18
6	1.116	“Subordinated Former Shareholders”	18
	1.117	“Subordinated Former Shareholder Notes”	18
7	1.118	“Substantial Contribution Payment”	18
	1.119	“Top Thirty Former Shareholders”	19
8	1.120	“Uninsured Malpractice Claim”	19
	1.121	“Unliquidated Claim”	19
9	1.122	“Unsecured Claim”	19
	1.123	“WARN Act”	19

ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS 19

11	2.1	Criterion of Class.	19
12	2.2	Classes of Claims and Interests.	19
	2.2.1	Class 1 Claims.	19
13	2.2.2	Class 2 Claims.	20
	2.2.3	Class 3 Claims.	20
14	2.2.4	Class 4 Claims.	20
	2.2.5	Class 5 Claims.	20
15	2.2.6	Class 6 Claims.	20
	2.2.7	Class 7 Claims.	20
16	2.2.8	Class 8 Claims.	20
	2.2.9	Class 9 Claims.	20
17	2.2.10	Class 10 Interests.	20

ARTICLE III TREATMENT OF UNCLASSIFIED CLAIMS 20

18	3.1	Administrative Claims.	20
19	3.2	Administrative Claim Bar Date.	20
20	3.3	Claims for Professional Fees.	21
21	3.4	Priority Tax Claims.	21

ARTICLE IV TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS 21

22	4.1	Class 1 (Priority Employee Claims).	21
23	4.2	Class 2 (Biggers Priority Employee Claims).	22
	4.3	Class 3 (Priority Employee Benefits Claims).	22
24	4.4	Class 4 (Claims of Bank of America and Citibank).	22
	4.5	Class 5 Claims (Secured Claim of MPC).	24
25	4.6	Class 6 Claims (Insured Malpractice Claims).	24
	4.7	Class 7 (General Unsecured Claims).	25
26	4.8	Class 8 (Biggers Subordinated Unsecured Claims).	26
	4.9	Class 9 (Subordinated Former Shareholder Claims).	26
27	4.10	Class 10 (Interests).	27
28	4.11	Nonconsensual Confirmation.	28
	4.11.1	Classes 1 through 9 Cramdown.	28
	4.11.2	Class 10 Cramdown.	28

1	ARTICLE V MEANS FOR IMPLEMENTATION OF THE PLAN	28
2	5.1 Effective Date Transactions.	28
3	5.2 Revesting of Estate Assets.	29
4	5.3 Replacement of Dissolution Committee/Continued Existence.	29
5	5.4 Management of Liquidating Debtor by Plan Administrator.	29
6	5.5 Continued Business of Liquidating Debtor.	30
7	5.6 Continued Administrative Support for the Heller Ehrman PCs.	30
8	5.7 Retained Claims and Defenses.	31
9	5.7.1 Small Claims and Defenses.	31
10	5.7.2 Large Claims and Defenses.	31
11	5.7.3 Bankruptcy Rule 2004.	31
12	5.7.4 Standing.	31
13	5.8 Avoidance Actions.	32
14	5.9 Claims Reserve Account.	32
15	5.10 Liquidating Debtor Litigation.	32
16	5.11 Liquidating Debtor Liquidation Budget.	32
17	5.12 Former Shareholder Settlement Mechanism.	33
18	5.13 Limitation of Liability of Plan Administrator and the Committee.	33
19	5.14 Continuation of and Powers of the Committee.	34
20	5.15 Material Default Under the Plan.	35
21	5.16 Cooperation.	36
22	5.17 Payment of Plan Expenses.	36
23	5.18 Biggers Settlement Mechanism.	36
24	5.19 Distribution Procedures.	36
25	5.20 Resolution of Disputed Claims	37
26	5.21 Reserve Provisions for Disputed Claims.	37
27	5.22 Allocation of Distributions.	39
28	5.23 Exit Financing and Exit Financing Collateral.	39
	5.24 Rounding.	40
	5.25 De Minimis Distributions.	40
	5.26 Disputed Payments.	41
	5.27 Unclaimed Property.	41
	5.28 Successor Plan Administrator.	41
	5.29 Setoffs.	42
	5.30 No Distributions on Late-Filed Claims.	42
	5.31 Withholding Taxes.	42
	5.32 Post-Effective Date Reports.	42
	5.33 Post-Effective Date Employment and Compensation of Professionals.	43
	5.34 Final Decree.	44
	5.35 Procedures for Post-Confirmation Motion and Opportunity for Hearing.	44
	5.36 Certain Death Benefits.	44
22	ARTICLE VI EXECUTORY CONTRACTS	44
23	6.1 Executory Contracts.	44
24	6.1.1 Assumption.	44
25	6.1.2 Rejection.	45
26	6.2 Satisfaction of Cure Obligations.	45
27	6.3 Post-Petition Executory Contracts and Unexpired Leases.	46
28	6.4 Continuing Employee Benefit Plans.	46
	6.5 Order Authorizing Assumption or Rejection.	46
	ARTICLE VII CONDITIONS PRECEDENT	46
	7.1 Conditions to Confirmation.	46

1 7.2 **Conditions to Effective Date**..... 47

2 **ARTICLE VIII EFFECTS OF CONFIRMATION**..... 47

3 8.1 **Binding Effect of Plan**..... 47

4 8.2 **Revesting of Property Free and Clear**..... 47

5 8.3 **Injunction**..... 48

6 8.4 **Limitation of Liability**..... 48

7 **ARTICLE IX RETENTION OF JURISDICTION** 49

8 **ARTICLE X MISCELLANEOUS** 51

9 10.1 **Severability of Plan Provisions**..... 51

10 10.2 **Governing Law**..... 51

11 10.3 **Headings**..... 51

12 10.4 **Language Interpretation**..... 51

13 10.5 **Exhibits**..... 52

14 10.6 **Exemption from Transfer Taxes:** 52

15 10.7 **Notices**..... 52

16 10.8 **Computation of Time Periods**..... 53

17 10.9 **Defects, Omissions and Amendments**..... 53

18 10.10 **Filing of Additional Documents**..... 53

19 10.11 **Successors and Assigns**..... 54

20 10.12 **Implementation**..... 54

21 10.13 **Certain Actions**..... 54

22 10.14 **Waiver of Fourteen (14) Day Stay**..... 55

Exhibits

16 Exhibit A Assumed Contracts

17 Exhibit B Former Shareholders

18 Exhibit C Subordinated Former Shareholder Notes

19 Exhibit D Compromise and Settlement Agreement

20 Exhibit E Subordinated Former Shareholders

21 Exhibit F Top Thirty Former Shareholders

22 Exhibit G Main Special Counsel Agreement for Legal Services

23 Exhibit H Term Sheet for Exit Financing

24 Exhibit I List of Malpractice Policies

25 Exhibit J Burkart Bio

26 Exhibit K Post Confirmation Budget

27 Exhibit L Model Former Shareholder Settlement Agreement

28

PRELIMINARY STATEMENT

1
2 Heller Ehrman LLP, the above-referenced debtor and debtor in possession (the “Debtor”)
3 and the Official Unsecured Creditors’ Committee appointed in the Debtor’s case (the
4 “Committee”) and together with the Debtor (the “Proponents”), hereby propose the following *Joint*
5 *Plan of Liquidation* (the “Plan”). All Creditors should review the Disclosure Statement, and its
6 accompanying exhibits and other information, before voting to accept or reject the Plan.

7 The Plan sets forth a proposal for the resolution of all Claims and Interests against the
8 Debtor. In sum, the Plan provides for the Debtor to continue its wind-down efforts after
9 confirmation with its administration to be handled by a professional wind-down manager (the
10 “Plan Administrator”) replacing the Dissolution Committee as the primarily responsible party.
11 Confirmation of the Plan shall constitute and confirm the appointment of the Plan Administrator,
12 including responsibility and authority to (a) exercise the rights, power, and authority of the
13 Liquidating Debtor, under the applicable provisions of the Plan and bankruptcy and non-
14 bankruptcy law, and (b) retain post-confirmation professionals to represent the Liquidating Debtor
15 and assist the Plan Administrator in performing and implementing the Plan, including without
16 limitation retaining professionals originally engaged by the Debtor and/or the Committee, and (c)
17 otherwise implement the Plan, wind up the affairs of the Estate and close the Chapter 11 Case.

18 The Plan contemplates the liquidation of all Estate Assets for the benefit of the holders of
19 Allowed Claims and Allowed Interests. The resulting funds, after payment of Plan Expenses, will
20 be made available for distribution to holders of Allowed Claims and Allowed Interests in
21 accordance with the terms of the Plan. The Plan Administrator’s operation of the Liquidating
22 Debtor will be for the purpose of liquidating and monetizing Estate Assets, which consist primarily
23 of the Retained Claims and Defenses.

24 From and after the Effective Date, the Liquidating Debtor, acting through the Plan
25 Administrator, shall expeditiously seek to collect, liquidate, sell and/or reduce to Cash all Estate
26 Assets, including, without limitation, through pursuit of the Retained Claims and Defenses, and
27 use the proceeds thereof to fund the Plan.
28

1 As set forth in the Disclosure Statement, the Proponents believe that the Plan will allow the
2 holders of Unsecured Claims to receive a meaningful return on account of their Allowed Claims
3 against the Debtor, depending on the outcome of litigation and the allowance of Claims.

4 With the Plan, Creditors will receive a Ballot for voting on the Plan, and a Disclosure
5 Statement that provides information concerning the Debtor and the Plan. The Disclosure
6 Statement includes a summary of the assets and liabilities of the Debtor, a summary of what
7 Creditors and Interest Holders will receive under the Plan, a discussion of certain alternatives to
8 the Plan, and a summary of the procedures and voting requirements necessary for confirmation of
9 the Plan. You should thoroughly review both the Plan and Disclosure Statement before deciding
10 whether you will accept or reject the Plan.

11 As more fully described in the Disclosure Statement, the Plan must be approved by the
12 requisite number of Creditors and the Bankruptcy Court must find that it meets the applicable legal
13 standards before the Plan can be confirmed. If the Plan is not confirmed, the Bankruptcy Court may
14 order the case dismissed, or converted to a liquidating case under Chapter 7 of the Bankruptcy Code,
15 or the Debtor or other parties in interest may propose a different plan.

16 The Debtor and the Committee believe that the Plan provides the best mechanism available
17 for maximizing returns to Creditors and urge Creditors to vote in favor of the Plan.

18 **ARTICLE I**

19 **DEFINITIONS**

20 For purposes of this Plan, all capitalized terms used herein and not otherwise defined shall
21 have the meanings set forth below. A term not defined in the Plan, but defined in the Bankruptcy
22 Code or the Bankruptcy Rules, shall have the meaning ascribed to it in the Bankruptcy Code or the
23 Bankruptcy Rules, unless the context clearly requires otherwise. The rules of construction used in
24 section 102 of the Bankruptcy Code shall apply to construction of this Plan. The phrase “as soon
25 as practicable” shall mean within ten (10) Business Days of the relevant date. Headings and
26 captions are utilized in this Plan for convenient reference only, and shall not constitute a part of
27 this Plan for any other purpose.
28

1 1.1 **“Administrative Claim”** shall mean a Claim for an expense of administration of the
2 Debtor arising during the period commencing on the Petition Date and ending on the Effective Date
3 under sections 503(b), 1114(e)(2) or 546(c)(2) of the Bankruptcy Code and entitled to priority under
4 section 507(a)(1) of the Bankruptcy Code, including, but not limited to, (i) any actual and necessary
5 cost or expense of preserving the Estate of the Debtor or conducting the business of the Debtor,
6 (ii) administrative expenses previously allowed by the Bankruptcy Court, (iii) administrative claims
7 that are timely filed prior to the applicable Administrative Claims Bar Date, (iv) any Tax Claims
8 incurred by the Debtor after the Petition Date or relating to a tax year or period which occurs after
9 the Petition Date, (v) any claim by a seller of goods for reclamation; (vi) Professional Fees, and
10 (vii) all fees and charges assessed against the Debtor pursuant to 28 U.S.C. § 1930. For purposes of
11 this Plan, Administrative Claims shall also include Cure Obligations.

12 1.2 **“Administrative Claims Bar Date”** shall mean (a) March 19, 2010 for claims
13 arising prior to December 31, 2009, and (b) the first Business Day that is thirty (30) days after the
14 Effective Date pursuant to which Claimants must file a request for payment of any Administrative
15 Claim that arose between January 1, 2010 and the Effective Date, for which notice shall be provided
16 in the Proponents’ notice of the entry of the Confirmation Order.

17 1.3 **“Administrative Claims Bar Date Order”** shall mean, (a) for administrative claims
18 arising prior to December 31, 2009 the Court’s *Order (1) Establishing New General Bar Date for*
19 *Affected Creditors, (2) Establishing Interim Administrative Claims Bar Date, and (3) Designating*
20 *Form and Manner Of Notice Thereof*; and (b) for claims arising between January 1, 2010 and the
21 Effective Date, an order setting an Administrative Claims Bar Date, which order could be the
22 Confirmation Order.

23 1.4 **“Allowed”** shall mean, with respect to any Claim (other than an Administrative
24 Claim as set forth below):

25 (i) a Claim that appears in the Schedules, except a Claim that is listed as
26 disputed, contingent or unliquidated, or for which a contrary proof of Claim has been filed;

1 (ii) a Claim for which a proof of Claim has been timely filed as of the Bar Date or
2 Rejection Claim Bar Date, as applicable, and no objection thereto has been made on or before any
3 applicable deadline; or

4 (iii) a Claim that has been allowed, but only to the extent allowed (i) by a Final
5 Order, (ii) under this Plan, or (iii) under any agreements entered into prior to the Effective Date (and
6 approved by the Bankruptcy Court) or in connection with this Plan (and approved in accordance
7 with the terms of this Plan) establishing the amount and nature of any Claim; and

8 With respect to an Administrative Claim, a request for payment that has been filed
9 prior to the Administrative Claims Bar Date, and in accordance with either section 503(b) of the
10 Bankruptcy Code or the procedures for filing requests for payment of an expense of administration
11 set forth in the Administrative Claims Bar Date Order, and as to which either no objection has been
12 made on or before any applicable deadline, or if an objection has been made, a claim has been
13 allowed by Final Order.

14 1.5 **“Allowed Secured Claim”** shall mean that portion of an Allowed Claim (i) secured
15 by a valid, perfected and enforceable Lien that is not subject to avoidance under bankruptcy or
16 non-bankruptcy law, in an amount equal to the value, as determined by the Bankruptcy Court
17 pursuant to sections 506(a) and 1129(b) of the Bankruptcy Code and Bankruptcy Rule 3012, of the
18 interest of the holder of such Allowed Claim in the property of the Debtor, the Liquidating Debtor,
19 or the Estate, securing such Allowed Claim, or (ii) in an amount equal to the amount subject to setoff
20 by the holder of such Claim under section 553 of the Bankruptcy Code.

21 1.6 **“Allowed Unsecured Claim”** shall mean any Allowed Claim (including any
22 Rejection Claim) that is not an Allowed Administrative Claim, an Allowed Professional Fee Claim,
23 an Allowed Secured Claim, an Allowed Priority Employee Claim, an Allowed Biggers Priority
24 Employee Claim, an Insured Malpractice Claim, an Allowed Priority Employee Benefit Claim, an
25 Allowed Priority Tax Claim or an Assumed Obligation.

26 1.7 **“Amended Complaint”** means the amended complaint in the Biggers Adversary
27 filed on or about April 23, 2009, which added as defendants the Biggers Defendant Shareholder
28 Class and the Non-Debtor Defendants. The Amended Complaint alleges (1) violation of the Federal

1 Worker Adjustment and Retraining Notification (“WARN”) Act, 29 U.S.C. §§ 2101 *et seq.*;
2 (2) violation of the California WARN Act; (3) failure to pay vacation in violation of California law;
3 (4) waiting time penalties; (5) failure to pay wages under Washington law; (6) breach of contract as
4 to the Washington and New York putative vacation class; (7) promissory estoppel as to the
5 Washington and New York putative vacation class; (8) failure to pay wages under Washington, D.C.
6 and New York law; and (9) unfair business practices under California law.

7 1.8 “**Assumed Contract**” or “**Assumed Contracts**” shall mean each Executory Contract
8 assumed by the Debtor.

9 1.9 “**Assumption and Cure Order**” shall mean, with respect to any Assumed Contract,
10 an order of the Bankruptcy Court approving the assumption of such Executory Contract, and
11 determining any Cure Obligation with respect thereto. The Confirmation Order may constitute an
12 Assumption and Cure Order.

13 1.10 “**Available Cash**” shall mean, with respect to any distribution contemplated herein,
14 the aggregate amount of all Cash held by the Liquidating Debtor immediately prior to such
15 distribution.

16 1.11 “**Avoidance Actions**” shall mean all claims or causes of action arising under
17 sections 547 and 548 of the Bankruptcy Code.

18 1.12 “**Ballot**” shall mean the form for acceptance or rejection of the Plan distributed to
19 those Creditors entitled to vote on the Plan, as such form may be approved by the Bankruptcy Court
20 and which shall otherwise comply with the requirements of Bankruptcy Rule 3018(c).

21 1.13 “**Bank of America**” shall mean Bank of America, N.A.

22 1.14 “**Bank of America Preference Action**” shall mean that certain adversary proceeding
23 styled as *Official Committee of Unsecured Creditors v. Bank of America, et al.*, Adv. No. 09-03071.

24 1.15 “**Bankruptcy Code**” shall mean Title 11 of the United States Code, §§ 101 *et seq.*, as
25 in effect on the Petition Date, as the same thereafter has been and may be amended, provided such
26 amendments are in effect.

27
28

1 Agreement. The Biggers Defendant Shareholder Class comprises all shareholders of Heller Ehrman
2 PCs as of September 26, 2008.

3 1.23 “**Biggers Class**” shall mean each former employee of the Debtor who meets the
4 description of the Plaintiff Class Members set forth in Recital D to the Biggers Settlement
5 Agreement attached hereto as **Exhibit D**.

6 1.24 “**Biggers Priority Employee Claim**” shall mean that portion of an Allowed Claim
7 held by a member of the Biggers Class who does not exercise the Biggers Opt Out that is unsecured
8 and is entitled to priority under sections 507(a)(4) of the Bankruptcy Code. Such claims relate
9 primarily to claims under the WARN Act.

10 1.25 “**Biggers Opt Out**” shall mean that certain right of a member of the Biggers Class to
11 opt out of the Biggers Class as set forth in Section 17 of the Biggers Settlement Agreement attached
12 hereto as **Exhibit D**.

13 1.26 “**Biggers Opt Out Deadline**” shall mean May 13, 2010.

14 1.27 “**Biggers Settlement Agreement**” means that certain *Compromise and Settlement*
15 *Agreement*, dated as of October 8, 2009, as amended, entered into by and between certain Plaintiff
16 Class Representatives on behalf of the Plaintiff Class Members, on the one hand and the Debtor, the
17 Non-Debtor Biggers Defendants, the Biggers Defendant Shareholder Class, and the Committee, on
18 the other hand, and attached hereto as **Exhibit D**.

19 1.28 “**Biggers Subordinated Unsecured Claim**” shall mean an Allowed Claim for that
20 portion of a Biggers Unsecured Claim held by a member of the Biggers Class who does not exercise
21 the Biggers Opt Out in an amount that is set forth in an exhibit to be sent to each member of the
22 Biggers Class in connection with the solicitation of the member’s vote on this Plan. Such claims
23 relate primarily to waiting time penalties.

24 1.29 “**Biggers Unsecured Claim**” shall mean shall mean an Allowed Claim for that
25 portion of a Claim held by a member of the Biggers Class who does not exercise the Biggers Opt
26 Out that is unsecured and is not an Administrative Claim, a Priority Tax Claim, a Priority Employee
27 Claim, a Biggers Priority Employee Claim, a Biggers Subordinated Unsecured Claim, a Secured
28 Claim, or an Assumed Obligation. Such claims relate primarily to claims under the WARN Act.

1 1.30 “**Business Day**” shall mean any day that is not a Saturday, a Sunday or other day on
2 which banks are required or authorized by any federal, state or local law to be closed in the City of
3 San Francisco, California.

4 1.31 “**Cash**” shall mean cash and cash equivalents including, but not limited to, cash on
5 deposit in the bank accounts of the Debtor or the Liquidating Debtor, as applicable, checks, wire
6 transfers, money orders, certificates of deposit, money market or similar investments, and other
7 similar readily marketable securities or instruments.

8 1.32 “**Cash Collateral Account**” shall mean the account numbers XXX3459559 and
9 XXXX265976 both held in the name of Bank of America FBO Heller Ehrman LLP at Bank of
10 America.

11 1.33 “**Chapter 11 Case**” shall mean the Chapter 11 Case commenced by the Debtor upon
12 the filing with the Bankruptcy Court of a voluntary petition under chapter 11 of the Bankruptcy
13 Code.

14 1.34 “**Citibank**” shall mean Citibank, N.A.

15 1.35 “**Claim**” shall mean a claim against the Debtor within the meaning of section 101(5)
16 of the Bankruptcy Code.

17 1.36 “**Claimant**” shall mean the holder of a Claim.

18 1.37 “**Claims Reserve Account**” shall mean an interest bearing bank account or money
19 market account to be established and held in trust for the benefit of holders of Allowed Unsecured
20 Claims by the Liquidating Debtor on or after the Effective Date for the purpose of holding the funds
21 to be distributed under the Plan to Unsecured Creditors and for Plan Expenses, and any interest,
22 dividends or other income earned upon the investment of such Claims Reserve Account.

23 1.38 “**Class**” shall mean a category or group of Creditors or Interest Holders which are
24 substantially similar to the Claims or Interests of the other Creditors or Interests Holders in such
25 Class, as designated by this Plan pursuant to sections 1122 and 1123 of the Bankruptcy Code.

26 1.39 “**Class Counsel**” means Blum & Collins LLP.

27 1.40 “**Class Proof of Claim**” means the Class Proof of Claim filed on behalf of all
28 purported Plaintiff Class Members in the Biggers Adversary on or about March 27, 2009 and the

1 Amended Class Proof of Claim filed on April 3, 2009 and alleging substantially the same claims as
2 alleged in the Biggers Adversary.

3 1.41 **“Committee”** shall mean the Official Committee of Unsecured Creditors appointed
4 by the United States Trustee in the Debtor’s Chapter 11 Case.

5 1.42 **“Confirmation”** shall mean the approval of the Plan by and subject to the terms of
6 the Confirmation Order.

7 1.43 **“Confirmation Date”** shall mean the date of Confirmation.

8 1.44 **“Confirmation Hearing”** shall mean the duly noticed hearing held by the
9 Bankruptcy Court on confirmation of the Plan pursuant to section 1128 of the Bankruptcy Code.
10 The Confirmation Hearing may be adjourned by the Bankruptcy Court from time to time without
11 further notice other than the announcement of the adjourned date at the Confirmation Hearing.

12 1.45 **“Confirmation Order”** shall mean the order of the Bankruptcy Court, confirming
13 this Plan and providing for the effectuation of the transactions contemplated by this Plan in
14 accordance with the terms and provisions hereof and thereof.

15 1.46 **“Continuing Employee Benefit Plans”** shall mean the following programs that were
16 established by the Debtor for the benefit of its employees, that have not been terminated and are still
17 in effect as of the Effective Date, specifically, vacation, holiday and sick time, employee medical
18 insurance coverage (either paid directly to the insurer or reimbursed to the employee), employee
19 IRA contribution matching at 1%, vision insurance coverage, disability insurance coverage, life
20 insurance coverage and commuter benefits.

21 1.47 **“Creditor”** shall mean any entity that holds a Claim.

22 1.48 **“Cure Obligation”** shall mean, individually, any monetary amount payable to the
23 non-debtor party to an Assumed Contract pursuant to section 365(b)(1) of the Bankruptcy Code as a
24 condition to the assumption of such contract or lease and, collectively, all monetary amounts payable
25 to all non-debtor parties to all Assumed Contracts.

26 1.49 **“Debt”** shall mean liability on a Claim.

27 1.50 **“Debtor”** shall mean Heller Ehrman, LLP, as debtor and debtor in possession in its
28 Chapter 11 Case.

1 1.51 **“Disallowed Claim”** shall mean (i) a Claim or any portion thereof, that has been
2 disallowed by a Final Order of the Bankruptcy Court; (ii) a Claim that has been listed in the
3 Schedules at zero or as contingent, disputed, or unliquidated and as to which no proof of Claim has
4 been timely filed or deemed timely filed with the Bankruptcy Court pursuant to the Bankruptcy
5 Code, any Final Order of the Court, or other applicable law; or (iii) a Claim that has not been listed
6 in the Schedules and as to which no proof of Claim has been timely filed or deemed timely filed with
7 the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Court, or other
8 applicable law.

9 1.52 **“Disclosure Statement”** shall mean the disclosure statement in support of the Plan,
10 in the form approved by the Bankruptcy Court, disseminated by the Proponents to the holders of
11 Claims against the Debtor in order to provide to such persons adequate information in accordance
12 with section 1125 of the Bankruptcy Code, as such disclosure statement may be modified, amended
13 or supplemented from time to time.

14 1.53 **“Dissolution Committee”** shall mean the Dissolution Committee formed under the
15 Plan of Dissolution for the purpose of governing the affairs of the Debtor after September 26, 2008,
16 currently comprised of Peter J. Benvenuti, Jonathan Hayden, Lynn Loacker, and Paul Sugarman.

17 1.54 **“Disputed Claim”** shall mean any Claim or portion of a Claim as to which an
18 objection to the allowance thereof has been interposed (whether as a separate objection to claim or in
19 connection with an adversary proceeding) as of the Effective Date or any later deadline fixed under
20 the Plan or by order of the Bankruptcy Court, which objection has not been withdrawn or determined
21 by Final Order. To the extent an objection relates to the allowance of only a part of a Claim, such
22 Claim shall be a Disputed Claim only to the extent of the objection.

23 1.55 **“Disputed Claims Amount”** shall mean the aggregate amount of Disputed Claims
24 that are fixed, absolute – and neither contingent nor unliquidated. For purposes of calculating
25 distributions of Cash under the Plan, the amount of each Disputed Claim shall be based upon the
26 face amount of such Creditor’s Disputed Claim (or the disputed portion thereof) as set forth in the
27 Creditor’s filed proof of Claim.
28

1 1.56 “**Effective Date**” shall mean the first Business Day on which each of the conditions
2 specified in Article VII of the Plan has been satisfied or duly waived.

3 1.57 “**Employee Retention Orders**” shall mean that certain *Order (1) Authorizing*
4 *Debtor And Debtor In Possession To (A) Pay And Honor Pre-Petition Employee Wages And Other*
5 *Employee Obligations In The Ordinary Course Of Business, And (B) Continue Honoring Employee*
6 *Obligations, Including Wages, Benefits On A Post-Petition Basis; And (2) Providing Related Relief*
7 entered on or about December 30, 2008, and the *Order Approving Revised Non-Insider Employee*
8 *Retention And Incentive Bonus Plan* entered on or about March 3, 2009.

9 1.58 “**Estate**” shall mean the bankruptcy estate of the Debtor pursuant to Bankruptcy
10 Code section 541.

11 1.59 “**Estate Assets**” shall mean all property of the estate of the Debtor under section 541
12 of the Bankruptcy Code including, all property, assets, equitable or legal rights or interests, contract
13 rights, benefits, causes of action, claims, or any other thing tangible or intangible, of any kind
14 whatsoever, owned or held by or on behalf of the Debtor in which the Debtor has any right, title or
15 interest to the full extent provided under section 541 of the Bankruptcy Code including, without
16 limitation, Available Cash, any Retained Claims and Defenses, the MPC Equity and MPC Equity
17 Payments, and Avoidance Actions.

18 1.60 “**Exculpated Parties**” shall have the meaning assigned to it in Article 8.4 of this
19 Plan.

20 1.61 “**Executory Contracts**” shall mean executory contracts and unexpired leases within
21 the meaning of Bankruptcy Code section 365.

22 1.62 “**Exit Financing**” shall mean that certain secured exit financing under which the
23 Debtor is the borrower and the Exit Financing Lender is the lender, the material terms of which are
24 set forth on **Exhibit H** to this Plan.

25 1.63 “**Exit Financing Collateral**” shall mean the liens and security interests granted in
26 connection with the Exit Financing.

27 1.64 “**Exit Financing Lender**” shall mean the Heller Ehrman PCs collectively.
28

1 1.65 **“Final Order”** shall mean an order or judgment of the Bankruptcy Court or other
2 court of competent jurisdiction (i) which has not been reversed, stayed, modified or amended, (ii) as
3 to which the time to or the right to appeal or seek reconsideration, review, rehearing, or certiorari has
4 expired or been waived (without regard to whether the time to seek relief from a judgment under
5 Bankruptcy Rule 9024 has expired), and (iii) as to which no appeal or petition for reconsideration,
6 review, rehearing, or certiorari is pending.

7 1.66 **“Former Shareholders”** shall mean each of the individuals that held an equity
8 interest in one of the Heller Ehrman PCs, each of whom is named on **Exhibit B**, attached hereto.

9 1.67 **“Former Shareholder Settlement Letter”** shall mean the individualized letters to be
10 sent to each Former Shareholder who has not previously agreed to settlement terms with the
11 Committee detailing the terms on which the Committee will settle the Estate’s known and unknown
12 claims against such Former Shareholder.

13 1.68 **“Former Shareholder Settlement Mechanism”** shall mean the process described in
14 Article 5.12 of this Plan.

15 1.69 **“Former Shareholder Settlement Payment”** shall mean a timely payment in good
16 funds made by a Former Shareholder of an amount fixed by the Committee, on terms agreed upon by
17 the Committee in the Model Former Shareholder Settlement Agreement, or other settlement
18 agreement between the parties.

19 1.70 **“Heller Ehrman”** shall mean Heller Ehrman, LLP.

20 1.71 **“Heller Ehrman PCs”** shall mean each of the six partners holding an equity interest
21 in the Debtor, including but not limited to: Heller Ehrman (California), a Professional Corporation,
22 Heller Ehrman White & McAuliffe (Washington), P.S., a Washington professional service
23 corporation, Heller Ehrman White & McAuliffe (Oregon), P.C., an Oregon professional corporation,
24 Heller Ehrman (Alaska), P.C., a professional corporation, Heller Ehrman (New York), a Professional
25 Corporation, and Heller Ehrman (China), P.C., a District of Columbia professional corporation.

26 1.72 **“Insured Malpractice Claim”** shall mean the Insured Portion of any Malpractice
27 Claim.
28

1 1.73 **“Insured Portion”** shall mean, with respect to any Malpractice Claim, the amount
2 for which insurance coverage is available under any Malpractice Policy.

3 1.74 **“Interest Holder”** shall mean, individually, each of the Heller Ehrman PCs, or their
4 successors and assigns.

5 1.75 **“Interests”** shall mean any interests in the Debtor owned by the Heller Ehrman PCs,
6 or Julian N. Stern, P.C., or their successors and assigns.

7 1.76 **“Jewel Claims”** shall mean the Estate’s claims arising under the California Court of
8 Appeal decision in *Jewel v. Boxer*, 156 Cal.App.3d 171 (1984), or any related unfinished business
9 doctrine claims, which have previously been assigned to the Committee for investigation and
10 prosecution, and or any necessary Avoidance Action to recover the value of the foregoing.

11 1.77 **“Lien”** shall mean a charge against or interest in property to secure payment of a debt
12 or performance of an obligation.

13 1.78 **“Liquidating Debtor”** shall mean the Debtor as reorganized and reconstituted on and
14 after the Effective Date.

15 1.79 **“Malpractice Claim”** shall mean any unsecured non-priority claim against the
16 Debtor or any Former Shareholder, or any former employee of the Debtor arising out of alleged acts,
17 errors, or omissions in connection with the rendering or failing to render professional legal services
18 by the Debtor or other potential or actual liability or costs arising in connection therewith, whether
19 or not covered by a Malpractice Policy.

20 1.80 **“Malpractice Claim Expenses”** shall mean, as to any Malpractice Policy, all fees,
21 costs and expenses in the investigation, adjustment, settlement, defense and appeal of any claim and
22 shall include all fees, costs and expenses in the investigation, adjustment, settlement or defense of
23 any claim which includes a request for fines, penalties or punitive damages, whether or not
24 compensatory in nature; but does not include salaries nor office overhead expenses nor the costs of
25 supervisory counsel retained by Liquidating Debtor or the Plan Administrator. If paid, Malpractice
26 Claim Expenses are applied to the SIR Amount. However, the Liquidating Debtor and the Plan
27 Administrator are not obligating themselves to incur any Malpractice Claim Expenses or pay the Self
28 Insured Retention.

1 1.81 **“Malpractice Policy” or “Policies”** shall mean the policies of professional liability
2 insurance issued to the Debtor, as such policies have been amended, modified, renewed or
3 supplemented, from time to time set forth in **Exhibit I**.

4 1.82 **“Main Special Counsel Agreement for Legal Services”** shall mean the agreement
5 attached hereto as **Exhibit G**.

6 1.83 **“Model Former Shareholder Settlement Agreement”** shall mean the form
7 agreement enclosed with the Former Shareholder Settlement Letter pursuant to which the Estate’s
8 claims against Former Shareholders shall be settled under the Plan. A copy of the Model Former
9 Shareholder Agreement is attached to the Plan as **Exhibit L**.

10 1.84 **“MPC”** shall mean MPC Insurance, Ltd.

11 1.85 **“MPC Equity”** shall mean the Debtor’s equity interest in MPC.

12 1.86 **“Net Available Cash”** shall mean the aggregate amount of all Available Cash held
13 by the Liquidating Debtors after the payment of (or appropriate reserve for) Allowed Administrative
14 Claims, Allowed Priority Tax Claims, Allowed Professional Fee Claims and net of amounts reserved
15 for Disputed Claims, Professional Fees and Plan Expenses.

16 1.87 **“New Plan Documents”** shall mean the First Amendment to Plan of Dissolution, and
17 such other documents as are deemed necessary to confirmation, to be filed with the Bankruptcy
18 Court and served upon each of party requesting special notice and the Office of the United States
19 Trustee, no later than ten (10) days prior to the date the Bankruptcy Court sets for objections to
20 Confirmation.

21 1.88 **“Non-Debtor Biggers Defendants”** means the Heller Ehrman PCs.

22 1.89 **“Petition Date”** shall mean December 28, 2008, which is the date when the Debtor
23 filed its voluntary petition pursuant to chapter 11 of the Bankruptcy Code.

24 1.90 **“Plaintiff Class Members”** means the Class Representatives and the persons listed
25 on Exhibit A to the Biggers Settlement Agreement.

26 1.91 **“Plaintiff Class Representatives”** means Debora K. Biggers, Carl Goodman, Anna
27 Scarpa, and Marjorie Norris, on behalf of themselves and on behalf of the individuals named on
28 Exhibit A to the Biggers Settlement Agreement.

1 1.92 “**Plan**” shall mean this joint chapter 11 plan of liquidation and any exhibits and
2 schedules hereto and any documents incorporated herein by reference, as the same may from time to
3 time be amended or modified as and to the extent permitted herein or by the Bankruptcy Code.

4 1.93 “**Plan Administrator**” shall mean Michael Burkart, whose curriculum vitae is set
5 forth at **Exhibit J** hereto and who shall file a further statement setting forth his qualifications and
6 affiliations, including a disclosure of any potential conflicts of interest, pursuant to Bankruptcy Code
7 section 1129(a)(5)(A)(i) not less than ten days prior than the last day to object to Confirmation.

8 1.94 “**Plan Expenses**” shall mean all actual and necessary costs and expenses incurred
9 after the Effective Date in connection with the administration of the Plan, including, but not limited
10 to, (i) costs, expenses and legal fees incurred related to filing and prosecuting objections to Claims,
11 (ii) the costs, expenses and legal fees incurred to investigate, litigate, estimate and settle the Retained
12 Claims and Defenses (which shall include the Avoidance Actions), including, but not limited to,
13 attorneys' fees, accounting fees, expert witness fees, consultants' fees, and all costs relating to
14 obtaining and distributing such recoveries, incurred by the Liquidating Debtor, (iii) the costs and
15 expenses of administration of the Liquidating Debtor, including without limitation the fees and costs
16 of the Plan Administrator; (iv) amounts necessary to compensate members of the Dissolution
17 Committee and the Debtor's Professionals after Confirmation for services rendered at the request of
18 the Plan Administrator regarding, *inter alia*, the Debtor's dissolution or the Bankruptcy Case; (v) all
19 costs to manage, store, transport, transfer and destroy client and administrative records up to 150%
20 of the budgeted amounts, and (vi) all fees payable pursuant to section 1930 of Title 28 of the United
21 States Code.

22 1.95 “**Plan of Dissolution**” shall mean that certain Plan of Dissolution of Heller Ehrman
23 LLP, dated as of September 26, 2008.

24 1.96 “**Post-Confirmation Budget**” shall mean the budget for Plan Expenses the
25 Liquidating Debtor projects on the Effective Date to be necessary and appropriate, in the exercise of
26 its business judgment, to carry out the provisions of this Plan. A copy of the Post Confirmation
27 Budget is attached hereto as **Exhibit K**.

28

1 1.97 **“Post-Confirmation Motion and Opportunity for Hearing”** shall mean the
2 procedures to be utilized after the Effective Date by any party seeking approval from the Court
3 respecting matters requiring approval under this Plan which procedures are more fully described in
4 Article 5.35 herein.

5 1.98 **“Post-Confirmation Service List”** shall mean a service list comprised of names and
6 email addresses for all members of the Committee as of the Effective Date, the Office of the United
7 States Trustee, counsel for Citibank and Bank of America, counsel for the Heller Ehrman PCs, and
8 any other creditor or party in interest that files a request for post confirmation notice after the
9 Effective Date with the Court and serves it on the Post Confirmation Service List.

10 1.99 **“Priority Employee Claim”** shall mean that portion of an Allowed Claim that is
11 unsecured and that is entitled to priority under section 507(a)(4) of the Bankruptcy Code that is not a
12 Biggers Priority Employee Claim.

13 1.100 **“Priority Employee Benefit Claim”** shall mean that portion of an Allowed Claim
14 that is unsecured and that is entitled to priority under section 507(a)(5) of the Bankruptcy Code.

15 1.101 **“Priority Tax Claim”** shall mean that portion of a Tax Claim, if any, entitled to
16 priority in payment under section 507(a)(8) of the Bankruptcy Code.

17 1.102 **“Professional Fees”** shall mean all amounts allowed and awarded by the Bankruptcy
18 Court for compensation for services rendered and reimbursement of expenses incurred by
19 Professionals pursuant to sections 330(a) and 503(b) of the Bankruptcy Code.

20 1.103 **“Professionals”** shall mean those attorneys, accountants and other financial advisors
21 employed by the Debtor (pursuant to section 327 of the Bankruptcy Code) or the Committee
22 (pursuant to section 1103 of Bankruptcy Code) in the Chapter 11 Case and to be compensated for
23 services rendered and reimbursed for expenses incurred pursuant to sections 330(a) and 503(b) of the
24 Bankruptcy Code.

25 1.104 **“Pro Rata” or “Pro Rata Share”** shall mean, with respect to distributions on
26 account of Allowed Claims, in the same ratio of an Allowed Claim in a particular Class to the
27 aggregate of all Allowed Claims in that Class.
28

1 1.105 **“Rejected Contract(s)”** shall mean those Executory Contracts which are rejected by
2 the Debtor pursuant to section 365 or 1123(b)(2) of the Bankruptcy Code.

3 1.106 **“Rejection Claim”** shall mean any Allowed Claim under Bankruptcy Code section
4 502(g) that arises under Bankruptcy Code section 365(g)(1) in favor of the non-debtor party to any
5 Executory Contract that is rejected by the Debtor pursuant to Bankruptcy Code sections 365(a) or
6 1123(b)(2).

7 1.107 **“Rejection Claim Bar Date”** shall mean the last date established by the Bankruptcy
8 Court by which entities asserting a Rejection Claim against the Debtor must have filed a proof of
9 Claim with respect to such Rejection Claim or be forever barred from asserting such Claim and/or
10 sharing in any distribution hereunder in respect of such Claim. For contracts or leases for which no
11 rejection claim bar date was previously established, or for contracts and leases rejected pursuant to
12 the Plan, the Rejection Claims Bar Date shall be thirty (30) days following the date upon which the
13 Confirmation Order is entered.

14 1.108 **“Reserved Claims Pool”** shall mean the amounts which shall be funded on or after
15 the Effective Date pursuant to Article 5.1 of this Plan for the purpose of holding as reserves the
16 amounts of Administrative Claims (including amounts due for Professional Fees) which have not
17 become Allowed Claims.

18 1.109 **“Reserved Claims Pool Account”** shall mean the bank account established by the
19 Liquidating Debtor into which the Plan Administrator shall deposit the amounts which constitute the
20 Reserved Claims Pool.

21 1.110 **“Retained Claims and Defenses”** shall mean all claims, rights, interests, causes of
22 action, defenses, counterclaims, cross-claims, third-party claims, or rights of offset, recoupment,
23 subrogation or subordination held by the Debtor or its Estate against any party whether or not
24 pending on the Effective Date, not otherwise released or settled before the Effective Date, including
25 but not limited to those specifically set forth in Section III of the Disclosure Statement.

26 1.111 **“Schedules”** shall mean the schedules of assets and liabilities and the statement of
27 financial affairs filed by the Debtor with the Bankruptcy Court pursuant to section 521 of the
28 Bankruptcy Code and Bankruptcy Rule 1007, as amended from time to time.

1 1.112 **“Secured Claim”** shall mean a Claim secured by a Lien on property of the Debtor, or
2 the Estate, or secured by an amount subject to setoff under section 553 of the Bankruptcy Code, to
3 the extent of the value of such Lien or right of setoff as determined under sections 506(a) or 1129(b)
4 of the Bankruptcy Code, as applicable.

5 1.113 **“Self Insured Retention”** shall mean the amount retained for the insured’s own
6 account in any applicable Malpractice Policy (“SIR”), which when exceeded, triggers for the
7 applicable Malpractice Policy, the insurer’s obligation to fund a defense of a Malpractice Claim or to
8 pay the amount in excess of the SIR which is agreed to or adjudged to be owing on account of being
9 classified as an Insured Malpractice Claim.

10 1.114 **“Settling Former Shareholder”** shall mean any Former Shareholder who timely
11 executes the Model Former Shareholder Agreement (or other form of settlement agreement approved
12 by the Bankruptcy Court), and makes the Former Shareholder Settlement Payment, or other payment
13 agreed upon by the Committee.

14 1.115 **“SIR Amount”** shall mean the amount retained for the insured’s own account under
15 any applicable Malpractice Policy, less the Malpractice Claims Expenses incurred.

16 1.116 **“Subordinated Former Shareholders”** shall mean (a) the payees under the
17 Subordinated Former Shareholder Notes; (b) all Former Shareholders who did not retire, depart or
18 withdraw from their respective Heller Ehrman PC prior to the adoption of the Plan of Dissolution on
19 September 26, 2008, and (c) any Former Shareholder whose Claim is based (to the extent so based),
20 in whole or in part, upon return of capital. The names of the Subordinated Former Shareholders are
21 set forth on **Exhibit E** to this Plan.

22 1.117 **“Subordinated Former Shareholder Notes”** shall mean those certain Promissory
23 Notes made by the Debtor in connection with the departure of shareholders from one of the Debtor’s
24 partners (which notes are described in **Exhibit C** to this Plan).

25 1.118 **“Substantial Contribution Payment”** shall mean those certain payments to Blum &
26 Collins LLP to be made as contemplated in the Biggers Settlement Agreement attached hereto as
27 **Exhibit D** in the event the Biggers Approval Order becomes a Final Order.
28

1 1.119 “**Top Thirty Former Shareholders**” shall mean each of the individuals named on
2 **Exhibit F**, attached hereto.

3 1.120 “**Uninsured Malpractice Claim**” shall mean any timely filed Malpractice Claim
4 which seeks an amount or is Allowed in an amount that more than the SIR Amount but which cannot
5 be more than the SIR of the applicable Malpractice Policy or Malpractice Policies.

6 1.121 “**Unliquidated Claim**” shall mean any Claim for which a proof of Claim has been
7 filed with the Bankruptcy Court but was not filed in a sum certain, and which Claim has not been
8 estimated, fixed or liquidated by the Bankruptcy Court at a sum certain as of the Effective Date.

9 1.122 “**Unsecured Claim**” shall mean any Claim that is neither secured nor entitled to
10 priority or administrative status under sections 507 or 503, respectively, of the Bankruptcy Code.

11 1.123 “**WARN Act**” means Federal Worker Adjustment and Retraining Notification Act,
12 29 U.S.C. §§ 2101 *et seq.* and California Labor Code section 1400 *et seq.*

13 **ARTICLE II**

14 **CLASSIFICATION OF CLAIMS AND INTERESTS**

15 2.1 **Criterion of Class.** The following is a designation of Classes of Claims under the
16 Plan. Administrative Claims and Priority Tax Claims have not been classified and are excluded
17 from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim
18 is classified in a particular Class only to the extent that (i) the Claim qualifies within the description
19 of that Class, and is classified in a different Class to the extent that the remainder of the Claim
20 qualifies within the description of that different Class, and (ii) the Claim, or any portion or Allowed
21 amount of such Claim, is an Allowed Claim in that Class and has not been paid, released or
22 otherwise satisfied prior to the Effective Date. In the event of a controversy as to whether (a) any
23 Class of Claims is impaired, or (b) any Class of Claims is properly designated, the Bankruptcy Court
24 shall, after notice and a hearing, determine such controversy pursuant to applicable provisions of the
25 Bankruptcy Code and Bankruptcy Rule 3013.

26 2.2 **Classes of Claims and Interests.** All Claims and Interests are divided into the
27 following Classes, which Classes shall be mutually exclusive:

28 2.2.1 **Class 1 Claims.** Class 1 shall consist of all Priority Employee Claims.

- 1 2.2.2 **Class 2 Claims.** Class 2 shall consist of all Biggers Priority Employee Claims.
- 2 2.2.3 **Class 3 Claims.** Class 3 shall consist of all Priority Employee Benefit Claims.
- 3 2.2.4 **Class 4 Claims.** Class 4 shall consist of the Secured Claims of Bank of America
- 4 and Citibank.
- 5 2.2.5 **Class 5 Claims.** Class 5 shall consist of the Secured Claim of MPC.
- 6 2.2.6 **Class 6 Claims.** Class 6 shall consist of Insured Malpractice Claims.
- 7 2.2.7 **Class 7 Claims.** Class 7 shall consist of General Unsecured Claims.
- 8 2.2.8 **Class 8 Claims.** Class 8 shall consist of all Biggers Subordinated Unsecured
- 9 Claims.
- 10 2.2.9 **Class 9 Claims.** Class 9 shall consist of the claims of Subordinated Former
- 11 Shareholders.
- 12 2.2.10 **Class 10 Interests.** Class 10 shall consist of the Interests held by the Interest
- 13 Holders.

ARTICLE III

TREATMENT OF UNCLASSIFIED CLAIMS

16 3.1 **Administrative Claims.** Each Allowed Administrative Claim, unless the holder of

17 such Claim has agreed to a different treatment, shall be paid in full by the Liquidating Debtor from

18 Available Cash or the Reserved Claims Pool Account (as applicable) on the latest of: (a) the

19 Effective Date, or as soon thereafter as practicable; (b) such date as may be fixed by the Bankruptcy

20 Court, or as soon thereafter as practicable; (c) the tenth Business Day after such Claim is Allowed,

21 or as soon thereafter as practicable; and (d) such date as the holder of such Claim and the

22 Liquidating Debtor may agree.

23 3.2 **Administrative Claim Bar Date.** All requests for payment of Administrative

24 Claims, other than Claims for Professional Fees, must be filed by the applicable Administrative

25 Claim Bar Date or the holders thereof shall be forever barred from asserting such Administrative

26 Claims against the Debtor or the Liquidating Debtor or from sharing in any distribution under the

27 Plan. Holders of Administrative Claims based on liabilities incurred in the ordinary course of the

28 Debtor's business following the Petition Date shall not be required to comply with the

1 employee who is employed by the Liquidating Debtor on the Effective Date of the Plan. Holders of
2 Class 1 Claims who are members of the Biggers Class shall receive their distribution hereunder even
3 if they Opt-Out of the Biggers Settlement.

4 4.2 **Class 2 (Biggers Priority Employee Claims).** Class 2 shall consist of Biggers
5 Priority Employee Claims. Class 2 Claims are unimpaired. Each holder of an Allowed Biggers
6 Priority Employee Claim who is not employed with the Debtor as of the Effective Date of the Plan
7 shall receive full payment of the Allowed amount of such Claim from Available Cash only after the
8 Biggers Approval Order becomes a Final Order. Holders of Class 2 Claims who Opt-Out of the
9 Biggers Settlement will not receive any payment on account of such claim.

10 4.3 **Class 3 (Priority Employee Benefits Claims).** Class 3 shall consist of Priority
11 Employee Benefits Claims. Class 3 Claims are unimpaired. After payment in full of the Allowed
12 Claims of Classes 1 and 2, each holder of an Allowed Priority Employee Benefit Claim shall receive
13 full payment of the Allowed amount of such Claim from Available Cash on or as soon as practicable
14 after the later of (i) the Effective Date, or (ii) the date upon which the Bankruptcy Court enters a
15 Final Order determining or allowing such Claim.

16 4.4 **Class 4 (Claims of Bank of America and Citibank).** Class 4 consists of the
17 Disputed Secured Claims of Bank of America and Citibank. Class 4 Claims are impaired. On the
18 Effective Date, and subject to the right of the Estate to recover the funds in the Bank of America
19 Preference Action or in such other action as may subsequently be filed by the Estate, Bank of
20 America and Citibank shall effect a payment of \$1,609,752.26 (assuming a payment date of June 30,
21 2010, increasing or decreasing by \$253.30 daily), which represents the undisputed amounts of
22 principal and interest (but not attorneys' fees and costs) owing on the Class 4 Claim by applying
23 funds from the Cash Collateral Account thereto. Bank of America and Citibank shall then return to
24 the Liquidating Debtor the balance of the funds in the Cash Collateral Account, which as of June 30,
25 2010 are estimated to be \$93,936.73. Funds returned to the Liquidating Debtor from the Cash
26 Collateral Account shall not be segregated nor otherwise accounted for to Class 4 Creditors. Also on
27 the Effective Date, the Liquidating Debtor shall grant Bank of America and Citibank a first-priority
28 security interest in any and all proceeds the Liquidating Debtor receives from the Retained Claims

1 and Defenses, provided, however, that the Liquidating Debtor shall first use any such proceeds to
2 pay its attorneys' fees and costs incurred in connection with the Retained Claims and Defenses. Any
3 such proceeds so used shall not be subject to any security interest of Bank of America or Citibank.
4 Such security interest shall secure payment of Bank of America and Citibank's attorneys' fees and
5 costs incurred in connection with the Bank of America Preference Action, in an amount (the
6 "Secured Amount") equal to the lesser of \$4 million or the total attorneys' fees and costs Bank of
7 America and Citibank estimate (in good faith on the Effective Date) they will incur in connection
8 therewith. From proceeds of the Retained Claims and Defenses, and prior to making a distribution
9 to Creditors in Classes 7, 8 and 9 pursuant to the Plan, the Liquidating Debtor shall segregate the
10 Secured Amount until, and shall not disburse any portion thereof before, the release of the security
11 interest therein. Notwithstanding the preceding sentence, the Liquidating Debtor may pay Plan
12 Expenses from Available Cash (including Available Cash consisting of proceeds of the Retained
13 Claims and Defenses). Such security interest shall continue in full force and effect unless and until a
14 court of competent jurisdiction enters a final judgment in the Bank of America Preference Action
15 which does not require the Liquidating Debtor to pay Bank of America and Citibank's attorneys'
16 fees and costs incurred in connection therewith. Notwithstanding the preceding sentence, such
17 security interest shall continue in full force and effect after entry of such final judgment if Bank of
18 America and Citibank post, and for so long as Bank of America and Citibank maintain, a bond for
19 the benefit of the Liquidating Debtor (in a form acceptable to the Liquidating Debtor in its
20 reasonable discretion) in an amount equal to the Secured Amount. Such bond shall be in addition to
21 any other bond or security Bank of America and/or Citibank may be required to post under
22 applicable law, including but not limited to any bond required as a condition to the appeal of a final
23 judgment entered in the Bank of America Preference Action. In the event Bank of America and
24 Citibank prevail in the Bank of America Preference Action and no stay is entered or bond posted,
25 Bank of America and Citibank shall be entitled to file a motion in that lawsuit seeking payment of
26 the attorneys fees they believe are due and payable in an amount not to exceed the Secured Amount.
27 The Liquidating Debtor, Bank of America and Citibank shall make such customary arrangements
28 and execute such customary documents, as mutually agreed upon, to effectuate a release of Bank of

1 America and Citibank's security interests or liens in the Liquidating Debtor's assets upon receipt of
2 the payments required hereunder; and shall also make such customary arrangements and execute
3 such customary documents, as mutually agreed upon, to effectuate a release of the security interest
4 described in the preceding paragraphs upon the termination of such security interest in accordance
5 with the Plan. The Bankruptcy Court shall retain jurisdiction to resolve any disputes which may
6 arise in connection with the foregoing matters. Notwithstanding the foregoing, nothing in the Plan
7 shall affect or diminish the Retained Claims and Defenses against Bank of America or Citibank, nor
8 shall anything in the Plan affect or diminish the Debtor's rights in the Bank of America Preference
9 Action. Because the Secured Claim of the Banks is the subject of a pending dispute, Class 4 is not
10 entitled to vote on the Plan.

11 **4.5 Class 5 Claims (Secured Claim of MPC).** Class 5 shall consist of the secured claim
12 of MPC. MPC filed proof of claim number 604 in the amount of \$57,881.94 plus contingent
13 amounts, which is allegedly secured by a right of offset and perfected by a filed UCC-1. Class 5 is a
14 Disputed Claim. To the extent that the Claim of MPC is an Allowed Secured Claim, MPC shall be
15 entitled to its legal and contractual rights as a secured claimant. MPC's Secured Claim is not
16 impaired and, therefore, not entitled to vote.

17 **4.6 Class 6 Claims (Insured Malpractice Claims).** Class 6 shall consist of Insured
18 Malpractice Claims. Such claims are impaired and shall be paid solely from the available insurance
19 proceeds of any applicable Malpractice Policy. No holder of an Allowed Class 6 Claim shall receive
20 any distribution from Available Cash on account of such Class 6 Claim. If any portion of the
21 Allowed amount of a Malpractice Claim is greater than the SIR, the Claim will be bifurcated and
22 treated in two different classes as follows: (a) the amount of the Allowed Claim that is greater than
23 the SIR will be a Class 6 Insured Malpractice Claim; and (b) the amount of the Allowed Claim that
24 is less than or equal to the SIR Amount will be a Class 7 General Unsecured Claim. For example,
25 assume the SIR equals \$2,000,000.00 and there are \$500,000.00 of Malpractice Claim Expenses
26 related to a Malpractice Claim that is ultimately allowed in the amount of \$6,000,000.00. The SIR
27 Amount is \$1,500,000.00 (i.e., the SIR - the Malpractice Claim Expenses). The Allowed amount of
28 the Claim that is greater than the SIR (i.e., \$6,000,000.00-\$ 2,000,000.00 =\$4, 000,000.00) is a Class

1 6 Insured Malpractice Claim. The amount of the claim that is equal to or less than the SIR Amount
2 (i.e., \$1,500,000.00) will be a Class 7 General Unsecured Claim. Any Malpractice Claim that is
3 Allowed in an amount that is less than the SIR shall not fall within Class 6, but shall be instead a
4 Class 7 General Unsecured Claim. For example assume the SIR equals \$2,000,000.00 and there are
5 \$500,000.00 of Malpractice Claim Expenses related to a Malpractice Claim that is ultimately
6 allowed in the amount of \$1,400,000.00. In this instance the SIR Amount is \$1,500,000.00 Since the
7 Allowed amount of the Claim is less than the SIR, the Claimant will have a Class 7 General
8 Unsecured claim for \$1,400,000.00. In no event shall a Malpractice Claim treated as a Class 7
9 General Unsecured claim be allowed in an amount in excess of the SIR. Any Malpractice Claim that
10 is Allowed in an amount that is less than the SIR shall not fall within Class 6, but shall be instead a
11 Class 7 General Unsecured Claim. (See Article 4.7).

12 4.7 **Class 7 (General Unsecured Claims).** Class 7 shall consist of Unsecured Claims,
13 including but not limited to Biggers Unsecured Claims and Uninsured Malpractice Claims. Class 7
14 does not include Biggers Subordinated Unsecured Claims (Class 8) or the Subordinated Former
15 Shareholder Claims (Class 9). Class 7 Claims are impaired. Any Malpractice Claim that is Allowed
16 in an amount that is less than the SIR shall not fall within Class 6, but shall be instead a Class 7
17 General Unsecured Claim. For example assume the SIR equals \$2,000,000.00 and there are
18 \$500,000.00 of Malpractice Claim Expenses related to a Malpractice Claim that is ultimately
19 allowed in the amount of \$1,400,000.00. In this instance the SIR Amount is \$1,500,000.00 Since the
20 Allowed amount of the Claim is less than the SIR, the Claimant will have a Class 7 General
21 Unsecured claim for \$1,400,000.00. In no event shall a Malpractice Claim treated as a Class 7
22 General Unsecured claim be allowed in an amount in excess of the SIR.

23 Each holder of an Allowed Class 7 Claim shall receive, a Pro Rata Share of Net Available
24 Cash after deductions for the payment (or appropriate reserve for) the Allowed Claims of senior
25 classes of Claims and reserves for Disputed Claims, Professional Fees and/or Plan Expenses.
26 Notwithstanding the preceding sentence, in the event Bank of America and Citibank become holders
27 of Allowed Unsecured Claims by virtue of Bankruptcy Code section 502(h), the Liquidating Debtor
28 shall not make any further disbursements to any other holder of an Allowed Unsecured Claim until

1 Bank of America and Citibank receive the Cash they would have received in the Chapter 11 Case
2 had they held Allowed Unsecured Claims on the Effective Date. For example, if Class 7 creditors
3 have received distributions totaling 20% of their Allowed Claims at the time that the Banks'
4 Allowed Unsecured Claim arises, the Banks will be paid 20% of their Allowed Unsecured Claims
5 before any further distributions to the other members of Class 7. To the extent that all Allowed Class
6 7 Claims have been paid in full, including post-petition interest at the annual rate of five per cent
7 (5%) simple interest per annum, any remaining funds in the Claims Reserve Account shall be used
8 by the Liquidating Debtor to fund the expense of claims in Class 8, as described below. Holders of
9 Class 7 Claims who are also members of the Biggers Class shall receive their distribution hereunder
10 for the portion of such Claim that is not a Biggers Unsecured Claim even if they Opt-Out of the
11 Biggers Settlement.

12 4.8 **Class 8 (Biggers Subordinated Unsecured Claims).** Class 8 shall consist of all
13 Biggers Subordinated Unsecured Claims. Class 8 Claims are impaired. Once Allowed Class 7
14 Claims are satisfied in full with interest as described above, each holder of an Allowed Class 8
15 Claim shall receive a Pro Rata Share of Net Available Cash after deductions for the payment (or
16 appropriate reserve for) the Allowed Claims of senior classes and reserves for Disputed Claims,
17 Professional Fees and/or Plan Expenses. To the extent that all Allowed Class 8 Biggers Subordinated
18 Unsecured Claims have been paid in full, including post-petition interest at the annual rate of five
19 per cent (5%) simple interest per annum, and funds remain in the Claims Reserve Account, such
20 funds shall be used by the Liquidating Debtor to fund the expense of claims in Class 9, as described
21 below.

22 4.9 **Class 9 (Subordinated Former Shareholder Claims).** Class 9 shall consist of all
23 Subordinated Former Shareholder Claims. Class 9 Claims are impaired. The Claims in this Class
24 are subordinated pursuant to the express subordination provision contained in the Subordinated
25 Former Shareholders Notes, which provides, "Payment of principal of and interest on this note is
26 subordinate to the prior payment of indebtedness of the [Debtor] for borrowed money; provided
27 however that the payments hereunder shall be payable when due if at such time the [Debtor] is not in
28 default with respect to any such indebtedness." The Claims in this Class are also subordinated

1 pursuant to the express subordination provision in the Debtor's Plan of Dissolution, which provides,
2 "There will be no return of capital to any Shareholder, recently departed Shareholder, or former or
3 retired Shareholder and no payment of any kind made to former and/or retired Shareholders until
4 such time as all of the legal obligations of the [Debtor] to third party creditors have been satisfied,
5 except if permitted by the [Debtor's] senior secured lenders, Shareholders may pursue claims for
6 compensation for services rendered prior to their departure or other expenses of contractual rights
7 arising from or related to their employment." Plan of Dissolution at XI(E). Claims of Former
8 Shareholders that are the subject of an agreement with the Debtor and/or the Committee to allow
9 such Claims are not in this Class, nor are Claims for compensation held by members of the
10 Dissolution Committee.

11 Once Allowed Class 7 and 8 Claims are satisfied in full with interest, as described above,
12 each holder of an Allowed Subordinated Former Shareholder Claim shall receive a Pro Rata Share of
13 Net Available Cash after deductions for the payment (or appropriate reserve for) the Allowed Claims
14 of senior classes and reserves for Disputed Claims, Professional Fees and/or Plan Expenses. To the
15 extent that all Allowed Class 9 Subordinated Shareholder Claims have been paid in full, including
16 post-petition interest at the annual rate of five per cent (5%) simple interest per annum, and funds
17 remain in the Claims Reserve Account, such funds shall be distributed to the Holders of Class 10
18 Interests, as described below.

19 4.10 **Class 10 (Interests).** Class 10 consists of the Interests held by the Interest Holders.
20 On the Effective Date, the Interest Holders shall have no ability to direct or control the affairs of the
21 Liquidating Debtor, but shall retain their status as partners of the Liquidating Debtor. Interest
22 Holders shall receive nothing under the Plan until the Allowed Claims of Classes 1 through 9 are
23 paid in full, with interest at the rate of five per cent (5%) simple interest per annum, at which point
24 all Net Available Cash, net of amounts reserved for Disputed Claims, Professional Fees and/or Plan
25 Expenses, shall be paid to the Interests Holders consistent with the extent of their Interests.

1 (vi) To the extent that Cash is available, the Liquidating Debtor will make the
2 Substantial Contribution Payment, to the extent the same has previously been authorized by the
3 Bankruptcy Court; and

4 (vii) Upon Confirmation, the Debtor shall execute the New Plan Documents, and
5 the Plan Administrator shall assume his responsibilities under the Plan.

6 5.2 **Revesting of Estate Assets.** Upon the Effective Date, the Liquidating Debtor shall
7 be vested with all right, title and interest in the Estate Assets free and clear of all Claims and Liens,
8 other than any obligations under this Plan.

9 5.3 **Replacement of Dissolution Committee/Continued Existence.** Upon the Effective
10 Date, the Plan of Dissolution shall be deemed amended to replace the Dissolution Committee with
11 the Plan Administrator, and the Dissolution Committee shall be relieved of its responsibilities for the
12 Debtor. Nothing contained herein shall affect the Dissolution Committee's responsibility to
13 administer the affairs of the Heller Ehrman PCs or their successors and assigns, which shall maintain
14 their separate existence for all purposes under this Plan. The Liquidating Debtor, as represented by
15 the Plan Administrator, shall be authorized to execute such other documents as are necessary and
16 appropriate to carry out the provisions of this Plan, without the necessity of filing such documents
17 with the Bankruptcy Court. In the event the Liquidating Debtor seeks and obtains the assistance of
18 any member of the Dissolution Committee or the Debtor's Professionals after Confirmation,
19 regarding, *inter alia*, the Debtor's dissolution or the Bankruptcy Case, the Liquidating Debtor shall
20 pay for such assistance at the regular hourly rates of the member of the Dissolution Committee or the
21 Debtor's Professionals.

22 5.4 **Management of Liquidating Debtor by Plan Administrator.** Subject to the
23 oversight and consent of the Committee which is required for certain Plan Administrator actions or
24 decisions that are set forth in Article 5.14, on and after the Effective Date, the Plan Administrator
25 shall be responsible for the implementation of the Plan, including with respect to the management,
26 control and operation of the Liquidating Debtor. The Liquidating Debtor and its counsel will
27 succeed to the Debtor's attorney-client privilege with the Debtor's former clients. The Plan
28 Administrator shall post a bond in favor of the Liquidating Debtor in an amount equal to not less

1 than 125% of the amount of Estate Assets which are held in Cash at any time, and the bond may be
2 proportionately reduced or increased from time to time, as required by the circumstances. The cost
3 of such bond shall be paid from Estate Assets. The Plan Administrator shall be compensated on an
4 interim basis at the rate of \$250 per hour, plus reasonable out of pocket expenses, including
5 reimbursement of the premium for a professional E&O policy, paid monthly from Estate Assets
6 without further order of the Bankruptcy Court. For time incurred prior to Confirmation in
7 preparation for a transfer of control, the Plan Administrator may be compensated Post-Confirmation
8 up to forty (40) hours of time. The Plan Administrator may petition the Court to modify the hourly
9 rate two years after the Effective Date. Upon completion of all duties and concurrent with a Post
10 Confirmation Motion and Opportunity for Hearing seeking closure of the Chapter 11 Case, the Plan
11 Administrator shall file a Post Confirmation Motion and Opportunity for Hearing seeking approval
12 of all fees and expenses previously paid as compensation by the Liquidating Debtor after the
13 Effective Date.

14 **5.5 Continued Business of Liquidating Debtor.** On and after the Effective Date, the
15 Liquidating Debtor shall continue to engage in its wind-down operations and may use, acquire,
16 dispose of and/or abandon Estate Assets without supervision by the Bankruptcy Court and free of
17 any restrictions under the Bankruptcy Code or the Bankruptcy Rules, except as set forth in this Plan.
18 The Liquidating Debtor will not continue or engage in the conduct of any trade or business, except to
19 the limited extent necessary to accomplish the liquidation and distribution of the Estate Assets. With
20 regard to the Debtor's client files, the Liquidating Debtor shall not abandon them and shall take all
21 measures necessary (and expend as Plan Expenses the amounts necessary) to abide by the Debtor's
22 obligations under all applicable ethical rules to preserve the confidentiality of client-related materials
23 as and until such files are destroyed, so long as the Debtor's cost to destroy the client files does not
24 exceed 150% of the budgeted amounts for file destruction.

25 **5.6 Continued Administrative Support for the Heller Ehrman PCs.** On and after the
26 Effective Date, the Liquidating Debtor shall continue to provide administrative services to the Heller
27 Ehrman PCs similar in kind and to the same extent as those provided prior to the Effective Date at
28 no cost to the Heller Ehrman PCs.

1 **5.7 Retained Claims and Defenses.** Except as otherwise limited by Article 5.14, on and
2 after the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidating
3 Debtor, acting through the Plan Administrator, shall retain and may enforce the Retained Claims and
4 Defenses with all powers and authority of a debtor in possession or trustee under the Bankruptcy
5 Code.

6 **5.7.1 Small Claims and Defenses.** With respect to any of the following having a net
7 value equal to or less than \$100,000.00: (a) Retained Claims and Defenses, (b) any accounts
8 receivable (whether or not contingent), or (c) any claims objections, the Plan Administrator may
9 investigate such claims, objections or defenses and may assert, settle or enforce any such claims,
10 objections or defenses without supervision by the Bankruptcy Court and free of any restrictions
11 under the Bankruptcy Code or the Bankruptcy Rules.

12 **5.7.2 Large Claims and Defenses.** With respect to any of the following having a net
13 value over \$100,000.00: (a) Retained Claims and Defenses, (b) any accounts receivable (whether or
14 not contingent), or (c) any claims objections, the Plan Administrator shall file and serve a Post
15 Confirmation Motion and Opportunity for seeking Court approval to settle or abandon any such
16 claims or defenses, as a condition to taking such action.

17 **5.7.3 Bankruptcy Rule 2004.** In the course of any ongoing investigations, the Plan
18 Administrator shall have the right post-confirmation to utilize Bankruptcy Rule 2004 examinations,
19 to be enforced pursuant to Bankruptcy Rule 2005.

20 **5.7.4 Standing.** To the extent any Retained Claims and Defenses are already pending
21 on the Effective Date, the Plan Administrator as successor to the Debtor may continue the
22 prosecution of such Retained Claims and Defenses. Without limiting the foregoing, the Plan
23 Administrator, acting on behalf of the Liquidating Debtor, shall accede to and become the holder of
24 all rights in and to any confidentiality agreements, joint defense agreements, and privilege
25 agreements, as well as rights pursuant to attorney-client privilege, attorney work product and any
26 other or similar doctrine, of the Debtor and the Committee. Any proceeds received from or on
27 account of the Retained Claims and Defenses shall constitute Estate Assets and shall vest entirely in
28 the Liquidating Debtor.

1 **5.8 Avoidance Actions.** On and after the Effective Date, the Liquidating Debtor, acting
2 through the Plan Administrator, shall retain and may enforce the Avoidance Actions with all powers
3 and authority of a debtor in possession or trustee under the Bankruptcy Code. The Plan
4 Administrator may investigate Avoidance Actions and may assert, settle or enforce any such claims
5 or defenses. To the extent any Avoidance Actions (including the Bank of America Preference
6 Action) are already pending on the Effective Date, the Plan Administrator as successor to both the
7 Debtor and the Committee, may continue the prosecution of such Avoidance Actions. Any
8 proceeds received from or on account of the Avoidance Actions shall constitute Estate Assets and
9 shall vest entirely in the Liquidating Debtor.

10 **5.9 Claims Reserve Account.** On or as soon as practical following the Effective Date,
11 the Claims Reserve Account shall be opened by the Plan Administrator and held by the Liquidating
12 Debtor and funded by all Cash not deposited in the Reserved Claims Pool Account, which funds
13 (minus Plan Expenses) shall be held for the benefit of holders of Claims in Classes 2, 7, 8 and 9.
14 Unless otherwise provided in the Confirmation Order, the Claims Reserve Account shall be invested
15 by the Plan Administrator in a manner consistent with the objectives of section 345(a) of the
16 Bankruptcy Code. All duties and obligations associated with the maintenance of the Claims Reserve
17 Account, including but not limited to, any fees, taxes, tax reporting or filings with any governmental
18 authority, shall be the sole responsibility of the Plan Administrator.

19 **5.10 Liquidating Debtor Litigation.** Upon the Effective Date, the Plan Administrator
20 shall fund the amounts required by counsel under the Main Special Counsel Agreement for Legal
21 Services. Confirmation of the Plan shall constitute Bankruptcy Court approval of the Main Special
22 Counsel Agreement for Legal Services. The Plan Administrator may or may not reserve additional
23 funds after Confirmation, in his discretion, as contemplated by the Main Special Counsel Agreement
24 for Legal Services.

25 **5.11 Liquidating Debtor Liquidation Budget.** Upon the Effective Date, the Plan
26 Administrator shall exercise his business judgment and reserve the estimated amount of two years'
27 U.S. Trustee fees and may reserve additional funds post confirmation based on information available
28 at the time in the exercise of his or her business judgment.

1 **5.12 Former Shareholder Settlement Mechanism.**The Committee (and not the Debtor)
2 has adopted the following two prong procedure for the resolution of certain claims against Former
3 Shareholders assigned to the Committee during the Chapter 11 case:

4 (a) As and when the Proponents solicit votes on the Plan, and excepting the Top
5 Thirty Former Shareholders, those Former Shareholders who have not previously agreed to
6 terms with the Committee may receive, at the Committee's discretion, a Former Shareholder
7 Settlement Letter outlining the terms (including the amount that must be paid to the Estate as
8 a Former Shareholder Settlement Payment) under which the Committee is prepared to settle
9 all of the estate's known and unknown claims against such Former Shareholder (except Jewel
10 Claims, for which the Settling Former Shareholder shall receive a conditional covenant not to
11 sue and excepting other specifically non-released claims). In order to participate in the
12 settlement process under section 5.12(a), a Settling Former Shareholder must: (i) Execute the
13 Model Former Shareholder Settlement Agreement (a copy of which is attached to the Plan as
14 **Exhibit L**, and (ii) Pay the Estate the Former Shareholder Settlement Payment -- such
15 payment to be received by the Estate on or before ten business days prior to the date first set
16 for a Plan Confirmation Hearing.

17 (b) The Top Thirty Former Shareholders shall receive a grouped settlement offer nine
18 business days prior to the date that the Plan is first set for a Confirmation Hearing, and this
19 offer shall be subject to an overall participation requirement of 90% in dollar amount of all
20 other Former Shareholders who received offers pursuant to section 5.12(a) above before any
21 Top Thirty Former Shareholder settlement will be deemed accepted and approved under the
22 Plan. Notwithstanding the foregoing, the Committee shall maintain the right to waive such
23 participation requirement on a blanket basis and/or negotiate individual settlements with
24 specific Former Shareholders in the Top Thirty. This participation requirement will not
25 affect those Former Shareholders who are not Top Thirty Former Shareholders.

26 **5.13 Limitation of Liability of Plan Administrator and the Committee.** The Plan
27 Administrator, the Committee (including its members individually) and their attorneys, accountants,
28 consultants, employees, agents and assignees, heirs, successors, and assigns, shall have no liability

1 for any error of judgment made in good faith other than as a result of gross negligence or willful
2 misconduct. The Plan Administrator and the Committee (including its members individually) shall
3 not be liable for any action taken or omitted in good faith and believed by them to be authorized
4 within the discretion or rights or powers conferred upon them by this Plan or the New Plan
5 Documents. In performing his duties hereunder, the Plan Administrator may consult with counsel
6 selected by him, at the expense of the Liquidating Debtor. No provisions of this Plan shall require
7 any employee, officer or director of the Plan Administrator or the Committee (including its members
8 individually) to expend or risk their own funds or otherwise incur personal financial liability in the
9 performance of any of duties under this Plan or in the exercise of any of the Plan Administrator's
10 rights and powers. The Liquidating Debtor shall indemnify and hold the Plan Administrator and the
11 Committee (including its members individually) harmless, from and against any damages, costs,
12 claims and other liabilities incurred in connection with their respective duties and responsibilities
13 hereunder, other than those damages, costs, claims and other liabilities that result from such party's
14 gross negligence or willful misconduct. Notwithstanding the above, nothing in this paragraph shall
15 shield a Professional employed by the Plan Administrator and/or the Committee from injuries caused
16 by his negligence in the performance of his or her duties.

17 **5.14 Continuation of and Powers of the Committee.** From and after the Effective Date,
18 the Committee shall remain in existence as currently constituted for as long as the Committee has at
19 least one active member. The Liquidating Debtor shall pay for post-confirmation liability insurance
20 as requested by the Committee. Any member may resign from the Committee by serving written
21 notice to all members of the Committee and to the Plan Administrator. Such written notice may
22 specify the date of resignation. The Plan shall amend the existing Committee bylaws to provide: (a)
23 in the event that there is a tie vote on a motion presented to the Committee, the motion shall be
24 decided based on the aggregate claim amounts of the voting members, and (b) to make the minimum
25 number of Committee members one (1). The Committee may utilize the Professionals of the
26 Liquidating Debtor or retain their own Professionals in the Committee's discretion. The Plan
27 Administrator shall send the Committee members monthly status reports regarding the status of the
28 Retained Claims and Defenses and quarterly reports on the status of the Liquidating Debtor's budget

1 to actual performance regarding the Post-Confirmation Budget. The Plan Administrator shall work
2 with the Chair of the Committee to schedule Committee meetings as needed.

3 As long as the Committee has one or more members remaining, the Plan Administrator may
4 not take the following actions without the written approval of the Committee:

5 (a) Settle asserted claims against third parties and/or Claims against the estate, where the
6 claim asserted exceeds \$250,000.00. For example, if Creditor A asserts a claim for \$100,000.00 in
7 the Chapter 11 Case, the Plan Administrator may settle the amount of Creditor's A's claim against
8 the estate without Committee approval. If the Estate asserts a claim against Defendant X for
9 \$260,000.00 and wishes to settle for a cash payment of \$200,000, Committee approval is required.

10 (b) Fund the second payment of \$3,000,000.00 pursuant to the Main Special Litigation
11 Counsel Agreement for Legal Services to McGrane Greenfield LLP;

12 (c) Expend funds in excess of 10% of the budgeted line items on the Post-Confirmation
13 Budget; or

14 (d) Hold Net Available Cash in excess of reasonably projected Plan Expenses that would
15 otherwise be available for distribution to Class 7, 8 or 9 Creditors for more than a six (6) month
16 period without distributing such funds pursuant to the provisions of the Plan.

17 The restrictions on the powers of the Plan Administrator set forth above in this Article 5.14
18 shall terminate when the Committee no longer has any members and ceases to exist. The Committee
19 may seek Court approval to remove the Plan Administrator if he or she fails to obtain Committee
20 approval for one or more of the foregoing described actions and/or for cause. The Plan
21 Administrator may only defend such a motion on the ground that (i) he or she did not take any
22 actions that were restricted by Article 5.14(a)-(e) above or (ii) if the motion is made for cause, that
23 no cause exists for removal. If the Plan Administrator is removed by the Bankruptcy Court or is no
24 longer able or willing to complete his or her duties, the Committee shall appoint a successor Plan
25 Administrator.

26 **5.15 Material Default Under the Plan.** Failure to make any payment required to be
27 made under the Plan by the Liquidating Debtor shall be considered a default under the Plan. If any
28 default is not cured within 30 days after service of written notice of such default to the Liquidating

1 Debtor, the U.S. Trustee, any affected Creditor, or any affected party in interest asserting such
2 default may seek to enforce its rights under the Plan.

3 5.16 **Cooperation.** Proponents of the Plan shall cooperate with one another in connection
4 with any matter related to the consummation or implementation of this Plan.

5 5.17 **Payment of Plan Expenses.** All Plan Expenses may be paid by the Liquidating
6 Debtor.

7 5.18 **Biggers Settlement Mechanism.** Pursuant to the Biggers Settlement Agreement,
8 holders of Biggers Priority Claims and Biggers Unsecured Claims who do not Opt Out will have
9 their Claims Allowed once the Biggers Settlement Order becomes a Final Order and a judgment is
10 entered and becomes final. The Proponents expect this will occur some time shortly after the
11 Effective Date.

12 Even if a member of the Biggers Class elects to Opt Out of the Biggers Settlement by the
13 Biggers Opt Out Deadline, such member shall still receive the treatment provided in the Plan for
14 their Class 1 and Class 7 Claims that are not related to the WARN Act or waiting time penalties.
15 Once the Biggers Settlement Order becomes a Final Order, the Substantial Contribution Payment
16 shall become owing, as set forth in the Biggers Settlement Agreement.

17 5.19 **Distribution Procedures.** Distributions to holders of Allowed Claims in Classes 7
18 through 9 shall be made as soon as practicable as determined by the business judgment of the Plan
19 Administrator based upon the amount of funds to be distributed relative to the administrative costs of
20 making a distribution. Because both the timing and the amount of distributions to Unsecured
21 Creditors are dependent on the proceeds from the prosecution of the Retained Claims and Defenses
22 and Avoidance Actions, it would be imprudent to provide an estimate as to when distributions will
23 be made under the Plan. To the extent not accomplished previously, the Plan Administrator shall
24 promptly move to file objections to Claims with the goal being that all objections be filed and served
25 not later than one hundred and eighty (180) days following the Effective Date, provided that such
26 date shall not bar later objections. Notwithstanding the preceding sentence, no distributions shall be
27 made on account of Class 7, 8, 9 or 10 Claims or Interests until all objections to Claims have been
28 filed. No payments or distributions shall be made by the Liquidating Debtor on account of Disputed

1 Claims unless and to the extent such Claims become Allowed Claims. The funds allocated to
2 Disputed Claims will not be distributed, but will be held in the Claims Reserve Account by the
3 Liquidating Debtor in accordance with this Plan pending resolution of such Disputed Claims.
4 Except as otherwise agreed by the holder of a particular Claim, or as provided in this Plan, all
5 amounts to be paid by the Liquidating Debtor under the Plan shall be distributed in such amounts
6 and at such times as is reasonably prudent, in the form of interim and/or final distributions, with
7 sufficient reserves established to satisfy the reserve requirements for Disputed Unsecured Claims,
8 Professional Fees and anticipated Plan Expenses. Unless otherwise provided in this Plan, all
9 distributions to Creditors shall be: (i) in U.S. dollars by check, draft or warrant, drawn on a domestic
10 bank, or by wire transfer from a domestic bank, and (ii) by first-class mail (or by other equivalent or
11 superior means as appropriate).

12 **5.20 Resolution of Disputed Claims** The Plan Administrator shall promptly move to file
13 objections to Claims that have not been previously objected to with the goal being that all objections
14 be filed and served not later than one hundred and eighty (180) days following the Effective Date,
15 provided that such date shall not bar later objections. Except as otherwise provided in the
16 Confirmation Order, the Liquidating Debtor shall be authorized to settle, or withdraw any objections
17 to, any Disputed Claim (including Malpractice Claims) following the Confirmation Date in
18 accordance with Articles 5.7.1 or 5.7.2 of the Plan, as applicable, and the Bankruptcy Court shall
19 retain jurisdiction to hear and adjudicate the allowance or disallowance of Claims, as provided for in
20 Article IX of this Plan. Settled Claims shall be deemed to be Allowed Claims in the amount
21 compromised for purposes of this Plan. Under no circumstances will any distributions be made on
22 account of Disallowed Claims.

23 **5.21 Reserve Provisions for Disputed Claims.** The Liquidating Debtor shall implement
24 the following procedures with respect to the allocation and distribution of Cash held in reserve for
25 the benefit of holders of Disputed Claims that may become Allowed Claims:

26 (i) Cash respecting Disputed Claims shall not be distributed, but shall be
27 withheld by the Liquidating Debtor, in an amount equal to the amount of the distributions that would
28 otherwise be made to the holders of such Claims if such Claims had been Allowed Claims;

1 (ii) All holders of Allowed Claims shall be entitled to receive, if available, interim
2 distributions under the Plan. No distributions may be made to the holders of Allowed Claims unless
3 adequate reserves are established for the payment of Disputed Claims and sufficient funds are also
4 reserved for expected Professional Fees and Plan Expenses;

5 (iii) For the purposes of effectuating the provisions of this Article 5.21, the
6 Bankruptcy Court may estimate the amount of any contingent or unliquidated Claim pursuant to
7 section 502(c) of the Bankruptcy Code, which provides, “There shall be estimated for the purpose of
8 allowance under this section—(1) any contingent or unliquidated claim, the fixing or liquidation of
9 which, as the case may be, would unduly delay the administration of the case; or (2) any right to
10 payment arising from a right to an equitable remedy for breach of performance.” The amounts so
11 fixed or liquidated by the Bankruptcy Court shall be deemed to be Allowed Claims for purposes of
12 distribution under this Plan, or alternatively, until such time as the Claim becomes Allowed, the
13 amount so fixed by the Bankruptcy Court shall serve as the basis to calculate the appropriate
14 Disputed Claim reserve;

15 (iv) When a Disputed Claim becomes an Allowed Claim, there shall be distributed
16 to the holder of such Allowed Claim, in accordance with the provisions of this Plan, Cash equal to
17 the holder’s Pro Rata Share of the Distributions that have previously been made on account of the
18 Claims in the same class. In no event shall such holder be paid more than the amount that would
19 otherwise have been paid to such holder if the Disputed Claim (or the Allowed portion of the
20 Disputed Claim) had not been a Disputed Claim;

21 (v) Interim distributions may be made from time to time to the holders of
22 Allowed Claims prior to the resolution by Final Order or otherwise of all Disputed Claims, provided
23 that, such distributions are otherwise consistent with the terms of this Plan and the aggregate amount
24 of Cash to be distributed at such time is practicable in comparison to the anticipated costs of such
25 interim distributions;

26 (vi) No holder of a Disputed Claim shall have any Claim against the Cash reserved
27 with respect to such Claim until such Disputed Claim shall become an Allowed Claim. In no event
28 shall any holder of any Disputed Claim be entitled to receive (under the Plan or otherwise) any

1 payment (x) which is greater than the amount reserved for such Claim pursuant to this Article 5.21
2 (unless the Claim is otherwise allowed in a greater amount by the Bankruptcy Court) or (y) except as
3 otherwise permitted under this Plan, of interest or other compensation for delays in distribution. In
4 no event shall the Plan Administrator have any responsibility or liability for any loss to or of any
5 amount reserved under these provisions of this Plan unless the loss is caused by the Plan
6 Administrator's gross negligence or willful misconduct;

7 (vii) To the extent a Disputed Claim ultimately becomes an Allowed Claim in an
8 amount less than the Disputed Claims Amount reserved for such Disputed Claim, then the resulting
9 surplus of cash shall be made available for redistribution to other holders of Allowed Claims of like
10 class until such time as each holder of an Allowed Claim has been paid the Allowed amount of its
11 Claim.

12 **5.22 Allocation of Distributions.** Distributions to any holder of an Allowed Claim shall
13 be allocated first to the principal amount of any such Allowed Claim, as determined for federal
14 income tax purposes, and then, to the extent the consideration exceeds such amount, to the remainder
15 of such Claim comprising interest, if any (but solely to the extent that interest is an allowable portion
16 of such Allowed Claim).

17 **5.23 Exit Financing and Exit Financing Collateral.** Provided that the Plan is confirmed,
18 Heller Ehrman (California), on its own behalf and as agent on behalf of the other Heller Ehrman
19 PCs, shall lend to the Debtor \$3,000,000.00 as Exit Financing, plus additional amounts as the parties
20 may thereafter agree based on the needs of the Debtor's Estate and the resources of the Exit
21 Financing Lender. The Exit Financing shall accrue interest at 5% per annum, simple, and will be
22 secured by a first priority security interest in the Debtor's claims against Bank of America and
23 Citibank. Payment of principal and interest shall be deferred for a period of three years, and the
24 entire obligation may be cancelled upon the occurrence of certain conditions. Repayment of the Exit
25 Financing is subordinate to: (a) the pre-existing liens of Bank of America and Citibank; (b)
26 Administrative Claims in the Chapter 11 Case; and (c) the attorneys' fee lien or claims of attorneys
27 retained to pursue the Debtor's claims against Bank of America and Citibank to the extent of
28 attorneys' fees attributable to the recovery on such claims (but not on claims against entities other

1 than Bank of America or Citibank). Notwithstanding any other terms, the Exit Financing shall
2 become due and payable upon the occurrence of any of the following: (a) conversion of the Debtor's
3 Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; (b) the appointment of a trustee;
4 (c) dismissal of the Chapter 11 Case; or (d) the filing of a motion or adversary proceeding
5 challenging the validity of the lien granted to the Exit Financing Lender which is not dismissed or
6 withdrawn within 20 days of its filing. Additional terms are set forth in the term sheet attached to the
7 Plan as **Exhibit H**.¹

8 Upon the Effective Date, the Exit Financing shall become an obligation of the Liquidating
9 Debtor, subject to the exact same terms and conditions as those imposed upon the Debtor and its
10 property by the Exit Financing documents, without altering or affecting the Exit Financing
11 Collateral. Notwithstanding Confirmation, no further steps need be taken by the Exit Financing
12 Lender to maintain the perfection or priority of its lien position with respect to the Exit Financing
13 Collateral after the Effective Date.

14 **5.24 Rounding.** Whenever any payment of a fraction of a cent would otherwise be called
15 for the actual distribution shall reflect a rounding of such fraction down to the nearest cent.

16 **5.25 De Minimis Distributions.** Notwithstanding any other provision of this Plan,
17 distributions of less than \$50.00 need not be made by the Liquidating Debtor on account of any
18 Allowed Claim, provided that, distributions that would otherwise be made but for this provision shall
19 carry over until the next date of a distribution until the cumulative amount to which any holder of an
20 Allowed Claim is entitled is more than \$50.00, at which time the cumulative amount of such
21 distributions shall be paid to such holder. Distributions that will not be made as of the date of a final
22 distribution shall be treated as unclaimed distributions as provided in Article 5.27 of this Plan.

23 Notwithstanding any other provision of this Plan, at the point when the remaining funds in
24 the Claims Reserve Account consist of an amount impracticable to distribute, the Liquidating Debtor
25 may donate (or authorize the Plan Administrator to donate) such Cash to a nonprofit organization or
26

27 _____
28 ¹ The Debtor shall provide copies of the Exit Financing documents to the Bankruptcy Court, counsel to Bank of
America and Citibank, the Office of the United States Trustee and counsel to the Creditors' Committee prior to the
Confirmation Hearing.

1 organizations in this judicial district that are exempt pursuant to section 501(c) of the Internal
2 Revenue Code (Title 26 of the United States Code).

3 **5.26 Disputed Payments.** In the event of any dispute between and among Creditors as to
4 the right of any entity to receive or retain any payment or distribution to be made to such entity
5 under the Plan, the Liquidating Debtor may, in lieu of making such payment or distribution to such
6 entity, instead hold such payment or distribution until the disposition thereof shall be determined by
7 the Bankruptcy Court.

8 **5.27 Unclaimed Property.** Creditors have the obligation to file change of address forms
9 with the Court and to serve such changes of address on the Plan Administrator and his counsel. If a
10 Claimant fails for the second consecutive time to claim any Cash within 90 days from the date upon
11 which a distribution is made, such Claimant shall be subject to having its claim excluded from future
12 distributions. The Plan Administrator shall file an omnibus Post Confirmation Motion and
13 Opportunity for Hearing seeking to exclude such Claimants from future distributions and shall serve
14 such Claimants at the address on Claimants proof of claim, if any, on the address scheduled by the
15 Debtor for such Claimants, on any addresses supplied by Claimants in any and all change of address
16 filings filed with the Court, and if available on any agents for service of process addresses that are
17 available from the California Secretary of State and any other states in which the Debtor did business
18 (but only to the extent that such agents for service of process are available from the Secretary of
19 State's web sites without charge). Upon Court approval of the subject Claimants' forfeiture, such
20 Cash (including interest thereon) shall be made available for re-distribution to other holders of
21 Allowed Claims of like Class. Entities which fail to claim Cash shall forfeit their rights thereto and
22 shall have no claim whatsoever against the Liquidating Debtor or the Plan Administrator, as
23 applicable, or any holder of an Allowed Claim to whom distributions are made under this Plan,
24 provided, however, that the Plan Administrator may but is not required to undertake reasonable
25 efforts, in his business judgment, to locate creditors whose distributions are returned.

26 **5.28 Successor Plan Administrator.** If the Plan Administrator resigns, dies, is removed
27 by the Committee pursuant to Article 5.14 of the Plan, or is otherwise unable or unwilling to perform
28 his or her duties under this Plan, the Committee shall name the successor Plan Administrator. If the

1 Committee no longer exists, the successor Plan Administrator shall be Paul D. Menzies. If Mr.
2 Menzies is unable or unwilling to serve, the successor Plan Administrator shall be selected by the
3 Creditor holding the largest undisputed Allowed Claim, after consultation with parties in interest,
4 including Unsecured Creditors and Interest Holders or their successors, as appropriate.

5 **5.29 Setoffs.** Nothing contained in this Plan shall constitute a waiver or release by the
6 Debtor of any right of setoff or recoupment that the Debtor or the Liquidating Debtor may have
7 against any Creditor or Interest Holder.

8 **5.30 No Distributions on Late-Filed Claims.** Except as otherwise provided in a Final
9 Order of the Bankruptcy Court, any Claim as to which a proof of Claim was first filed after the Bar
10 Date shall be a Disallowed Claim, and no distribution shall be made to a holder of such a Claim,
11 provided that, to the extent such Claim was listed in the Schedules (other than as contingent,
12 disputed, or unliquidated), such Claim shall be treated as an Allowed Claim in the amount in which
13 it was so listed.

14 **5.31 Withholding Taxes.** Pursuant to section 346(f) of the Bankruptcy Code, the
15 Liquidating Debtor shall be entitled to deduct any federal, state or local withholding taxes from any
16 Cash payments made with respect to Allowed Claims, as appropriate. The Liquidating Debtor shall
17 comply with all reporting obligations imposed on it by any governmental unit.

18 **5.32 Post-Effective Date Reports.** Following the Effective Date, the Liquidating Debtor
19 shall prepare and submit to the Bankruptcy Court and the Office of the United States Trustee,
20 post-confirmation reports for a revested debtor in the form suggested by the Office of the United
21 States Trustee for Region 17. The first post-confirmation report shall be due within thirty (30) days
22 following the end of the first calendar quarter from the Effective Date and shall be filed on a
23 quarterly basis thereafter, unless otherwise agreed by the Liquidating Debtor and the Office of the
24 United States Trustee. Twice yearly, the Plan Administrator shall also provide oral reports to
25 Claimants to be held at a convenient location in San Francisco (the “Plan Administrator Meetings
26 with Claimants”), or by conference call. Claimants can participate in the Plan Administrator
27 Meetings with Claimants by executing a disclosure of potential conflicts form, and a confidentiality
28 and common interest agreement and returning it to the Plan Administrator or his Counsel at or prior

1 to the commencement of any meeting. The Plan Administrator in the exercise of his business
2 judgment may exclude any Claimant who presents a conflict that makes participation in such
3 meeting inappropriate from any relevant portion of such meeting. The Plan Administrator shall
4 serve on all members of the Post Confirmation Service List a notice of each meeting at least thirty
5 days prior to each Plan Administrator Meetings with Claimants. Claimants that elect to participate
6 in these meetings, shall have no fiduciary duty to any other Claimant to act on or respond to any
7 information provided by the Plan Administrator at the meetings, and shall have no liability to any
8 Claimant or party for any opinions expressed by a Claimant at any Plan Administrator Meetings with
9 Claimants.

10 **5.33 Post-Effective Date Employment and Compensation of Professionals.** After the
11 Effective Date, the Plan Administrator may retain any existing Professionals of the Committee or the
12 Debtor without further employment agreements or orders. Additionally, after the Effective Date, the
13 Plan Administrator may hire other professionals without the requirement that such professionals file
14 employment applications for Bankruptcy Court approval of their employment, whether on an hourly,
15 contingency fee or other basis, and without requirement that such professionals file applications for
16 payment of post-Effective Date fees and expenses on an interim basis; provided, however, that no
17 less frequently than every 180 days, such post-confirmation professionals, and the Plan
18 Administrator shall file Post Confirmation Motions and Opportunity for Hearings seeking final
19 approval of their respective fees and expenses as previously invoiced or paid on an interim basis, as
20 the case may be. Such applications need not be in the format required by the Local Rules of the
21 Bankruptcy Court or the United States Trustee's Guidelines, but shall be sufficiently detailed to
22 identify the hours worked, the rates charged and the work performed. In the case of fees or expenses
23 paid on a basis which is not by billable hours, the application shall include such other, sufficiently
24 specific information so that the Bankruptcy Court can otherwise determine the reasonableness of
25 such fees and expenses. The Court may *sua sponte* make determinations and rulings with respect to
26 the reasonableness of any specific fee request whether an objection is filed and/or a hearing is held
27 or not.
28

1 assumed. The Debtor reserves the right to make additions to Exhibit A up to 10 days prior to the
2 date on which objections must be filed to the Plan with respect to the Confirmation Hearing. The
3 Liquidating Debtor shall be responsible for all Cure Obligations with respect to the Assumed
4 Contracts as set forth in **Exhibit A** or as determined by the Bankruptcy Court.

5 **6.1.2 Rejection.** Nothing contained herein shall constitute a waiver by the Debtor or
6 the Liquidating Debtor of the right to contend that some or all of a Rejected Contract is not
7 executory, or that it was not terminated earlier by agreement or operation of law. Any Rejection
8 Claim arising from the rejection of an Executory Contract pursuant to the Plan shall be filed within
9 thirty (30) days of entry of the Confirmation Order, provided that such deadline is not applicable to
10 any Executory Contract rejected prior to the Effective Date and for which a different Rejection
11 Claim Bar Date was previously fixed by the Bankruptcy Court pursuant to Bankruptcy Rule
12 3002(c)(4). The notice of entry of the Confirmation Order shall provide the Rejection Claim Bar
13 Date for agreements rejected pursuant to the Plan. Any Rejection Claim not filed by the applicable
14 Rejection Claims Bar Date shall be a Disallowed Claim and shall be forever barred as a Claim
15 against the Debtor, the Liquidating Debtor, the Committee or any property of the Debtor and from
16 sharing in any distribution under this Plan.

17 **6.2 Satisfaction of Cure Obligations.** The Liquidating Debtor shall satisfy any Cure
18 Obligations for the Assumed Contracts by making a Cash payment equal to the lesser of the amount:
19 (a) set forth on Exhibit A hereto, (b) set forth in any other notice, motion or supplement to the Plan
20 filed and served in connection with the Confirmation Hearing or as may be determined in an
21 Assumption and Cure Order, or (c) agreed to in writing between the Liquidating Debtor and the non-
22 debtor parties to such contracts or leases. The Debtor has attached a schedule of proposed Cure
23 Obligations to the Disclosure Statement approved by the Court pursuant to section 1125 of the
24 Bankruptcy Code. Objections, if any, to the Cure Obligations must be filed fourteen (14) days prior
25 to the Confirmation Hearing. The Liquidating Debtor shall satisfy the Cure Obligations within ten
26 (10) days from the date from which an Assumed Contract is assumed pursuant to section 365(b) of
27 the Bankruptcy Code.
28

1 preserved and retained for enforcement solely and exclusively by and at the discretion of the
2 Liquidating Debtor.

3 **8.3 Injunction.** On the Effective Date, and except as otherwise provided by the Plan, all
4 entities who have held, hold or may hold Claims against or Interests in the Debtor or the Debtor's
5 estate that arose prior to the Effective Date are permanently enjoined from taking legal action against
6 the Debtor or the Liquidating Debtor for the purpose of directly or indirectly collecting, recovering,
7 or receiving payment or recovery with respect to any Claim or demand against the Debtor or the
8 Liquidating Debtor. In addition to the foregoing, on the Effective Date, and except as otherwise
9 provided by the Plan, Bank of America and Citibank and their successors and assigns shall be
10 temporarily enjoined pursuant to Bankruptcy Code section 105 from taking legal action against any
11 Settling Former Shareholder for the purpose of directly or indirectly collecting, recovering, or
12 receiving payment or recovery with respect to any claim or demand against Settling Former
13 Shareholder predicated in whole or in part on Settling Former Shareholder's former employment or
14 shareholder status with the Debtor or any of the Heller Ehrman PCs, with such injunction to remain
15 in effect until the final resolution of the Bank of America Preference Action, whether by settlement
16 or judgment no longer subject to any pending or possible appeal.

17 **8.4 Limitation of Liability.** The Debtor, the Liquidating Debtor, the Dissolution
18 Committee and each of its members, and the Committee and each of its past and present members,
19 and their respective officers, directors, managers, employees, agents, and representatives
20 (collectively, the "Exculpated Parties"), will neither have nor incur any liability to any entity for any
21 action in good faith taken or omitted to be taken in connection with or related to the Chapter 11
22 Case, the investigations of potential claims or the formulation, preparation, dissemination,
23 implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any
24 agreement created or entered into in connection with the Plan or incident to the Chapter 11 Case,
25 provided that, this limitation will not affect or modify the rights of any holder of an Allowed Claim
26 to enforce its rights under the Plan or the non-debtor party to an Assumed Contract to enforce its
27 rights under the Assumed Contract, nor shall the foregoing exonerate any of the Exculpated Parties
28 from any liability that results from an act or omission to the extent such act or omission is

1 determined by Final Order to have constituted gross negligence or willful misconduct. In addition,
2 notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no other party in
3 interest, none of their respective agents, employees, representatives, financial advisors, attorneys or
4 affiliates, and no successors or assigns of the foregoing, shall have any right of action against any
5 Exculpated Party for any act or omission from and after the Petition Date in connection with,
6 relating to or arising out of the Chapter 11 Case or the consideration, formulation, preparation,
7 dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure
8 Statement, or any transaction or document created or entered into, or any other act taken or omitted
9 to be taken, in connection therewith, except for: (a) the liability of any entity that would otherwise
10 result from the failure to perform or pay any obligation or liability under the Plan or any contract,
11 instrument, release or other agreement or document to be entered into or delivered in connection
12 with the Plan, or (b) the liability of any entity that would otherwise result from any such act or
13 omission to the extent that such act or omission is determined in a Final Order to have constituted
14 gross negligence or willful misconduct. The Exculpated Parties do not include any Professionals.

15 **ARTICLE IX**

16 **RETENTION OF JURISDICTION**

17 From and after the Confirmation Date, the Bankruptcy Court shall retain such jurisdiction
18 as is legally permissible, including, but not limited to, for the following purposes:

- 19 (i) To hear and determine any and all objections to the allowance of a Claim,
20 actions to equitably subordinate a Claim, or any controversy as to the classification of a Claim in a
21 particular Class under the Plan;
- 22 (ii) To administer or enforce the Plan;
- 23 (iii) To liquidate any Disputed Claims;
- 24 (iv) To hear and determine any and all adversary proceedings, contested matters or
25 applications pending on the Effective Date;
- 26 (v) To hear and determine any and all motions for the rejection of Executory
27 Contracts and to fix and allow any Claims arising therefrom;
- 28

1 (vi) To hear and determine any and all applications by Professionals for an award
2 of pre-Effective Date Professional Fees, and to consider and rule upon the periodic and final fee
3 applications of the Plan Administrator, Professionals, or other professionals retained Post
4 Confirmation post-Confirmation as provided in this Plan, and/or to resolve any disputes concerning
5 payment of such post-Effective Date fee requests.

6 (vii) To interpret and/or enforce the provisions of the Plan, and the injunction
7 provided for in the Plan and to determine any and all disputes arising under or regarding
8 interpretation of the Plan, or any other agreement, document or instrument contemplated by the Plan,
9 including, without limitation, and claims asserted against the Plan Administrator or against any
10 professionals engaged by him or claims asserted against the Committee, the Dissolution Committee
11 and either of their members and/or professionals;

12 (viii) To enter and implement such orders as may be appropriate in the event
13 Confirmation is for any reason stayed, reversed, revoked, modified or vacated;

14 (ix) To modify any provision of the Plan to the extent permitted by the Bankruptcy
15 Code and to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in
16 the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

17 (x) To approve applications for Bankruptcy Rule 2004 Examinations and any
18 enforcement orders necessary, including but not limited to pursuant to Bankruptcy Rule 2005;

19 (xi) To approve any compromise and settlements and/or abandonments of claims
20 against third parties, and/or the abandonment of any Asset of the Estate, which either the Plan
21 Administrator in his sole discretion believes should be noticed to creditors, or which is the subject of
22 an objection by the Committee;

23 (xii) To approve any sales of assets or claims pursuant to section 363 of the
24 Bankruptcy Code, which the Plan Administrator in his sole discretion believes should be noticed to
25 creditors;

26 (xiii) To approve interim and/or final distributions to creditors, including the
27 approval of any publication notices, which the Plan Administrator in his sole discretion believes
28 should be noticed to creditors;

1 (xiv) To issue an injunction or injunctions post-confirmation pursuant to
2 Bankruptcy Code section 105 upon a proper showing; and

3 (xv) To close the Chapter 11 Case when administration of the case has been
4 completed.

5 **ARTICLE X**

6 **MISCELLANEOUS**

7 10.1 **Severability of Plan Provisions.** In the event that, prior to the Confirmation Date,
8 any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or
9 unenforceable, the Bankruptcy Court shall, have the power to alter and interpret such term or
10 provision to make it valid or enforceable to the maximum extent practicable, consistent with the
11 original purpose of the term or provision held to be invalid, void or unenforceable, and such term or
12 provision shall then be applicable as altered or interpreted. Notwithstanding any such holding,
13 alteration or interpretation, the remainder of the terms and provisions hereof shall remain in full
14 force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration
15 or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide
16 that each term and provision hereof, as it may have been altered or interpreted in accordance with the
17 foregoing, is valid and enforceable pursuant to its terms.

18 10.2 **Governing Law.** Except to the extent that the Bankruptcy Code or other federal law
19 is applicable, the rights, duties and obligations arising under this Plan shall be governed by, and
20 construed and enforced in accordance with, the laws of the State of California.

21 10.3 **Headings.** The headings contained in this Plan are for convenience of reference only
22 and shall not limit or otherwise affect in any way the meaning or interpretation of this Plan.

23 10.4 **Language Interpretation.** In the interpretation of this Plan, unless the context
24 otherwise requires, references in this Plan to the singular shall be construed to include references to
25 the plural and vice versa; words importing the singular shall be deemed to import the plural and vice
26 versa; words denoting gender shall include all genders; references to sections, schedules, and
27 exhibits shall mean sections, schedules, and exhibits of and to this Plan; references to part includes
28 the whole, except where the context clearly requires otherwise “or” has the inclusive meaning

1 represented by the phrase “and/or,” and the words “hereof,” “herein,” “hereunder,” and similar terms
2 in this Plan refer to this Plan as a whole and not to any particular provision of this Plan.

3 **10.5 Exhibits.** All exhibits attached to this Plan or the Disclosure Statement are, by this
4 reference, hereby incorporated into the Plan. The final version of all exhibits to the Plan and the
5 Disclosure Statement will be substantially in the forms attached hereto or thereto. The Proponents
6 reserve the right to make non-substantive changes and corrections to such exhibits in advance of the
7 Confirmation Hearing. If any exhibits are changed or corrected, the replacement exhibits will be
8 filed with the Bankruptcy Court prior to the commencement of the Confirmation Hearing.

9
10 **10.6 Exemption from Transfer Taxes:** The Debtor and the Liquidating Debtor shall
11 have all the rights and benefits granted pursuant to Bankruptcy Code section 1146(c) under this Plan.

12 **10.7 Notices.** All notices required or permitted to be made in accordance with the Plan
13 shall be in writing and shall be delivered personally or by nationally recognized overnight or
14 next-day courier service, first class mail or via facsimile with electronic confirmation of receipt as
15 follows:

16 If to the Debtor:
17 (By Mail or Facsimile)

18 Shelley Salinero
19 Heller Ehrman LLP
20 333 Bush Street, 10th Floor
21 San Francisco, CA 94104
22 (415) 772-6463
23 (415) 772 6268 (Facsimile)

24 With a copy to:

25 John D. Fiero, Esq.
26 Teddy M. Kapur, Esq.
27 Pachulski Stang Ziehl & Jones LLP
28 150 California Street, Suite 1500
 San Francisco, CA 94111
 (415) 263-7000
 (415) 263-7010 (Facsimile)

1 If to the Committee:

2 Theresa Hoyt
3 BREF 333, LLC
4 Three World Financial Center
5 New York, New York 10281
6 (212) 417 7286
7 Email: thoyt@brookfield.com

8 With a copy to:

9 (By Mail or Facsimile)
10 Steven H. Felderstein, Esq.
11 Thomas A. Willoughby, Esq.
12 Felderstein, Fitzgerald, Willoughby & Pascuzzi, LLP
13 400 Capital Mall, Suite 1450
14 Sacramento, CA 95814
15 (916) 329-7400
16 (916) 329-7435 (Facsimile)
17 Email: twilloughby@ffwplaw.com

18 **10.8 Computation of Time Periods.** In computing any period of time prescribed or
19 allowed by the Plan, the day of the act, event, or default from which the designated period of time
20 begins to run shall not be included. The last day of the period so computed shall be included unless
21 it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in the
22 Bankruptcy Court, a day on which weather or other conditions have made the clerk's office
23 inaccessible, in which event the period runs until the end of the next day which is not one of the
24 aforementioned days.

25 **10.9 Defects, Omissions and Amendments.** The Proponents, with the approval of the
26 Bankruptcy Court and without notice to all holders of Claims or Interests, insofar as it does not
27 materially and adversely affect holders of Claims, may correct any defect, omission or inconsistency
28 in the Plan in such manner and to such extent as may be necessary or desirable to expedite the
execution of the Plan. The Plan may be altered or amended before or after Confirmation as provided
in section 1127 of the Bankruptcy Code.

10.10 Filing of Additional Documents. The Proponents shall file with the Bankruptcy
Court such agreements or other documents as may be necessary or appropriate to effectuate and
further evidence the terms and conditions of the Plan.

1 10.11 **Successors and Assigns.** The rights, benefits and obligations of any entity named or
2 referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs, executors,
3 administrators, successors and/or assigns of such entity.

4 10.12 **Implementation.** Upon Confirmation, the Debtor and the Committee shall be
5 authorized to take all steps and execute all documents necessary to effectuate the provisions
6 contained in the Plan.

7 10.13 **Certain Actions.** By reason of entry of the Confirmation Order, prior to, on or after
8 the Effective Date (as appropriate), all matters provided for under the Plan that would otherwise
9 require approval of the owners, stockholders, shareholders, members, directors, managers, or
10 officers of the Debtor under the Plan, including, without limitation, (i) the distribution of Cash
11 pursuant to the Plan, (ii) the adoption, execution, delivery, and implementation of all contracts,
12 leases, instruments, releases, and other agreements or documents related to the Plan, and (iii) the
13 adoption, execution, and implementation of other matters provided for under the Plan involving the
14 company or organizational structure of the Debtor, shall be deemed to have occurred and shall be in
15 effect prior to, on or after the Effective Date (as appropriate), pursuant to the applicable general
16 corporation, limited liability, or partnership law of the state in which the Debtor or the Liquidating
17 Debtor is chartered, organized or incorporated, without any requirement of further action by the
18 owners, stockholders, shareholders, members, directors, managers, or officers of the Debtor.

19
20
21
22
23
24
25
26 ///

27 ///

28 ///

1 10.14 **Waiver of Fourteen (14) Day Stay.** The Proponents request as part of the
2 Confirmation Order a waiver from the Bankruptcy Court of the fourteen (14) day stay of Bankruptcy
3 Rule 3020(e) and, to the extent applicable, a waiver of the fourteen (14) day stay of Bankruptcy
4 Rule 6004(h).

5 Dated: May 21, 2010

HELLER EHRMAN LLP

6
7 By /s/ Peter J. Benvenuti
Peter J. Benvenuti
Chair of the Dissolution Committee

8
9
10 Dated: May 21, 2010

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

11
12 BY: BREF 333, LLC

13 By /s/ Theresa A. Hoyt
Theresa A. Hoyt, its Authorized Signatory,
as the Chair of the Committee

14
15 Dated: May 21, 2010

PACHULSKI STANG ZIEHL & JONES LLP

16
17 By /s/ John D. Fiero
John D. Fiero (CA Bar No. 136557)
Kenneth H. Brown (CA Bar No. 100396)
Teddy M. Kapur (CA Bar No. 242486)
Attorneys for Heller Ehrman LLP, Debtor and
Debtor in Possession

18
19
20
21 Dated: May 21, 2010

FELDERSTEIN FITZGERALD WILLOUGHBY &
PASCUZZI LLP

22
23 By /s/ Steven H. Felderstein
Steven H. Felderstein (CA Bar No. 56978)
Thomas A. Willoughby (CA Bar No. 137579)
Christopher Crowell (CA Bar No. 253103)
Attorneys for The Official Committee of
Unsecured Creditors