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19 Heller Ehrman LLP

20 UNITED STATES BANKRUPTCY COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN FRANCISCO DIVISION

23 In re:  
24 Heller Ehrman LLP,  
25 Debtor

Case No.: 08-32514

Chapter 11

**DECLARATION OF PETER J.  
BENVENUTTI IN SUPPORT OF  
FIRST-DAY MOTIONS**

Date: December 29, 2008 [Requested]  
Time: 2:30 p.m. [Requested]  
Place: U. S. Bankruptcy Court  
235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, CA  
Judge: Honorable Dennis Montali

26 I, Peter J. Benvenuti, declare under penalty of perjury:

**I.**

**General Background**

27 1. Heller Ehrman, LLP, a California limited liability partnership (the “Debtor”), recently  
28 adopted a Plan of Dissolution as of September 26, 2008 (the “Plan”). The Plan was adopted by the

1 affirmative vote of at least two-thirds (2/3) of the shareholders of the Debtor's limited partners who  
2 were eligible to vote. Prior to the adoption of the Plan, I was an attorney at, and a shareholder of a  
3 professional corporation that is a member of, the Debtor.

4 2. Since the adoption of the Plan, I have been a member of the Dissolution Committee  
5 (as provided in the Plan), along with Jonathan P. Hayden, Lynn J. Loacker and Paul W. Sugarman  
6 (collectively, the "Dissolution Committee"). Pursuant to the Plan, the Dissolution Committee is  
7 authorized to, among other things, wind up the Debtor's business and affairs and to cause the  
8 ultimate dissolution of the Debtor, including through the filing of a voluntary petition under the  
9 Bankruptcy Code. Pursuant to the Plan, the members of the Dissolution Committee shall be  
10 compensated at a rate of no more than \$450 per hour.

11 3. The Debtor's predecessor law firm was founded in San Francisco, California roughly  
12 118 years ago, in 1890. Over the following years, the Debtor expanded by adding attorneys to the  
13 firm and by adding additional office locations. Ultimately, the Debtor grew to more than 730  
14 attorneys in offices all across the United States and in Europe and Asia, including offices in New  
15 York City, Los Angeles, Washington, D.C., London, Hong Kong, Beijing and Singapore. The  
16 Debtor adopted its current form of organization – a limited liability partnership, the partners of  
17 which are professional corporations – in 2000.

18 4. After experiencing financial difficulties and following unsuccessful merger attempts  
19 with several other law firms, and as a result of its lenders declaring a default under the Debtor's line  
20 of credit triggered by shareholder departures that triggered a breach of lending covenants, the Debtor  
21 decided it was in the best interests of its creditors, equity interest holders and other parties in interest  
22 for the Debtor to wind down the business of the firm, leading to the adoption of the Plan. Following  
23 adoption of the Plan, the Debtor immediately began to wind down operations. Among other things,  
24 the Debtor focused on billing and collecting accounts receivable, and began selling or otherwise  
25 disposing of the Debtor's other assets, paying or otherwise discharging claims against the Debtor,  
26 vacating leased premises, and transitioning and securing client files and business records. Through  
27 this process, the Debtor paid off substantially all of its secured debt, negotiated settlements with  
28 landlords, and made other substantial progress in winding down the Debtor's business and affairs.

1 **A. The Debtor's Pre-Petition Credit Facility**

2 5. Bank of America, N.A., as agent for itself and CitiBank (the "Agent"), is the Debtor's  
3 only prepetition secured creditor. Bank of America, N.A. is the Administrative Agent, Swing Line  
4 Lender and L/C Issuer under that certain prepetition Credit Agreement (the "Prepetition Credit  
5 Agreement") by and among the Debtor, certain other lenders and Banc of America Securities LLC as  
6 Sole Lead Arranger and Sole Book Manager. These same parties also entered into and executed  
7 various other agreements and documents, which together with the Prepetition Credit Agreement, are  
8 referred to herein as the "Prepetition Loan Documents."

9 6. Through the Prepetition Credit Agreement, the Debtor obtained a revolving line of  
10 credit up to the amount of \$50 million (the "Line of Credit") and letter of credit commitments of \$20  
11 million (the "L/C Commitment"). On July 30, 2008, the parties executed an amendment to the  
12 Prepetition Credit Amendment that, among other things, provided for a term loan of \$10 million (the  
13 "Term Loan"). The obligations to the Agent under the Prepetition Loan Documents are purportedly  
14 secured by a security interest in and lien upon all or substantially all of the Debtor's personal  
15 property.

16 7. The Agent attempted to perfect its security interest by filing a UCC Financing  
17 Statement with the California Secretary of State on January 3, 1991 (the "Original Financing  
18 Statement"), which was amended and continued by subsequent UCC filings. However, the Agent  
19 terminated the Original Financing Statement pursuant to a UCC Financing Statement Amendment  
20 filed on August 3, 2007 (the "Termination Statement"). Over a year later, apparently recognizing  
21 that its security interest had or may have become unperfected, the Agent filed a UCC Correction  
22 Statement on October 1, 2008 (the "Correction Statement"), which stated that the Termination  
23 Statement "was filed in error and as a result of a clerical error" and purported to continue the  
24 Original Financing Statement. The Agent then filed a new UCC Financing Statement covering the  
25 Debtor's assets on October 2, 2008 (the "New Financing Statement"), which purported to "reaffirm"  
26 the Original Financing Statement and set forth the collateral covered by its security interest. In order  
27 for the filing of the New Financing Statement to fall within the 90-day preference period under  
28 Section 547 of the Bankruptcy Code, the Debtor was required to file this Chapter 11 case on or

1 before December 31, 2008. During the 90-day period preceding the Petition Date, the Agent  
2 received approximately \$51 million in payments from the Debtor on account of the Debtor's  
3 principal obligations under the Prepetition Loan Documents.

4 **B. Events Precipitating the Debtor's Filing**

5 8. It is important to note that the Dissolution Committee's decision to file this case was  
6 not prompted by the Debtor running out of money. Through the hard work and dedication of the  
7 Debtor's former shareholders and remaining employees, the Debtor has had great success in  
8 collecting outstanding receivables. Further, the Debtor anticipates that it will be able to continue  
9 having success collecting tens of millions of dollars in outstanding receivables during the post-  
10 petition period. Notwithstanding this success, the Dissolution Committee decided that a Chapter 11  
11 filing is in the best interests of the Debtor, its creditors and other parties in interest, for the reasons  
12 discussed next.

13 9. In November 2008, the Debtor became aware of the Termination Statement and the  
14 Agent's attempt to "correct" the termination of its perfected security interests through the Correction  
15 Statement and New Financing Statement. The Debtor subsequently informed the Agent that the  
16 Debtor believes the Correction Statement and New Financing Statement purport to perfect new liens  
17 on the Debtor's assets, which under the Bankruptcy Code, could be avoidable transfers. If the  
18 Agent's liens are avoidable, then it would not be entitled to receive distributions on its claims any  
19 greater than the pro rata amount distributed to the Debtor's general unsecured creditors. The Debtor  
20 attempted to reach a settlement with the Agent that would fund treatment of the Debtor's unsecured  
21 creditors comparable to the treatment they would likely receive in a bankruptcy case, and potentially  
22 avoid the need to file this case, but was unable to reach a satisfactory agreement that would be in the  
23 best interests of the Debtor and its creditors.

24 10. A second circumstance contributing to the decision to file this case relates to the  
25 Debtor's San Francisco landlord, 333 Bush Associates. Over the past several months, the  
26 Dissolution Committee has successfully concluded negotiations with (or otherwise successfully  
27 disposed of claims of) nine of the Debtor's landlords. The Debtor believes that these resolutions are  
28 in the best interests of the Debtor's estate, in that the settling landlords will likely receive less under

1 the settlements than they otherwise would receive under the Bankruptcy Code. The Dissolution  
2 Committee and the Debtor's professionals have devoted extensive efforts in attempting to negotiate  
3 a settlement with its San Francisco landlord. The San Francisco landlord filed suit against the  
4 Debtor in San Francisco Superior Court and, over the Debtor's objection, was able to obtain a Writ  
5 of Attachment from the Court on December 19, 2008. Although the Debtor was nevertheless able to  
6 negotiate settlement terms with the San Francisco landlord over the past week that would, in the  
7 view of the Dissolution Committee, have permitted equitable treatment of other creditors, a  
8 requirement of this settlement was an immediate cash payment to the San Francisco landlord. As a  
9 result of the levy of the landlord's writ of attachment and internal bank procedures that (according to  
10 the Agent) were triggered by that levy, the Debtor was unable to make this payment before it became  
11 apparent that this Chapter 11 case would have to be filed in any event due to the intransigence of the  
12 Agent in the Debtor's settlement negotiations as described in paragraphs 9 and 11. Hence, an added  
13 consequence of this Chapter 11 case is to cancel the lien of the San Francisco landlord's attachment.

14 11. The Dissolution Committee had hoped that it would be able to wind down the  
15 Debtor's business and treat all creditor claims outside of the jurisdiction of the Bankruptcy Court.  
16 Among other things, an out-of-court dissolution (assuming resolution of the issues with the Agent  
17 and the San Francisco landlord) may have ultimately led to larger distributions to creditors because  
18 the Debtor would have been able to avoid administrative and other bankruptcy-related expenses.  
19 Until literally hours before this filing, the Dissolution Committee continued to negotiate for an  
20 acceptable resolution with the Agent on a basis that would have been fair and reasonable to all of the  
21 Debtor's creditors. Despite extensive efforts, the Dissolution Committee was unable to reach an  
22 agreement that, in its business judgment, would have been fair and equitable to all of the Debtor's  
23 creditors.

24 12. Based on these facts and circumstances, the Debtor believes that filing this case will,  
25 among other things, ensure the Debtor will have access to the cash it needs to effectively and  
26 efficiently wind down operations and administer the estate, and also preserve whatever rights and  
27 claims the Debtor may have with respect to the perfection of the Agent's security interests and the  
28 rights and claims of the San Francisco landlord. In short, the Debtor believes that this filing is

1 consistent with its fiduciary obligations, and will maximize the value of the Debtor's estate and the  
2 ultimate distribution to the Debtor's unsecured creditors.

3 13. After this case is commenced, the Debtor intends to continue to aggressively collect  
4 its accounts receivable and to work quickly on all matters affecting the administration of the estate.  
5 The Debtor hopes to soon propose for confirmation a Chapter 11 plan that will maximize the value  
6 of the Debtor's assets and the distributions to creditors pursuant to the applicable provisions of the  
7 Bankruptcy Code.

8 **C. The Debtor's Assets and Liabilities**

9 14. As of the Petition Date, the Debtor's assets consist principally of \$3.7 million in cash,  
10 accounts receivable with a face amount of over \$52 million and, in the view of the Dissolution  
11 Committee in consultation with the Debtor's collection staff, an estimated recoverable value of  
12 approximately \$35 million (or more), as well as various office fixtures, furniture and equipment and  
13 other receivables, and a \$7 million equity investment in the Debtor's errors and omissions insurer.

14 15. As of the Petition Date, the Debtor's liabilities consist primarily of the \$5.7 million in  
15 remaining obligations to the Agent under a pre-petition secured credit facility; approximately \$10  
16 million in accounts payable; \$4 million in taxes; and pension and deferred compensation claims and  
17 claims by former employees for accrued vacation time. The Debtor also has outstanding and  
18 potential obligations to landlords and other creditors, and claims of former employees (including  
19 shareholders) under employment-related agreements. With the exception of the security interest  
20 claimed by the Agent (which the Debtor believes is avoidable for the reasons described above), and  
21 the attachment lien in favor of the Debtor's San Francisco landlord (which is automatically avoided  
22 under California law as a result of the filing of this bankruptcy case), to the best of my knowledge  
23 there are no liens or security interests on the Debtors accounts receivable or proceeds thereof.

24 **II.**

25 **First-Day Motions**

26 16. At the outset of this case, the Debtor believes that the following three motions require  
27 immediate attention of the Court as a "first-day" matter: (i) motion to approve use of cash collateral  
28 (the "Cash Collateral Motion"), (ii) motion to authorize the Debtor to honor pre-petition and post-

1 petition obligations to employees in the ordinary course of business (the “Employee Obligation  
2 Motion”), and (iii) motion to approve the continued use of the Debtor’s cash management system  
3 (the “Cash Management Motion”). I have read each of these motions and verify that the facts stated  
4 therein are true and correct to the best of my personal knowledge and/or based on my review of  
5 business records or other documents prepared by, or consultation with, employees or professionals  
6 retained on behalf of the Debtor.

7 **A. Cash Collateral Motion**

8 17. As noted above, the Debtor is party to the Prepetition Loan Documents with the  
9 Agent and various other parties. As of the Petition Date, the Debtor owes approximately \$5.7  
10 million to the Agent under the Prepetition Loan Documents. This balance consists of approximately  
11 \$1.5 million under the Term Loan and approximately \$4.2 million in L/C Commitment Obligations  
12 (a substantial portion of which is contingent because the letters of credit have not yet been drawn).  
13 The Agent asserts a first-priority security interest upon the Debtor’s assets to secure these  
14 obligations. The Agent’s claimed collateral includes various accounts receivable, which the Debtor  
15 estimates to have a value of approximately \$35 million or more as of the Petition Date.

16 18. The Debtor has no access to cash -- other than cash collateral -- to satisfy its ongoing  
17 payroll and other business obligations which will continue to become due during this Chapter 11  
18 case. Most critically, the Debtor’s payroll for the two-week period ending December 28, 2008 is due  
19 on Friday, January 2, 2009 and the Debtor will have other obligations as set forth in the Budget  
20 attached to the Cash Collateral Motion as Exhibit 2. Missing these payments poses a substantial  
21 threat to the Debtor’s ability to continue to effectively and efficiently collect assets and wind down  
22 the Debtor’s affairs. Consequently, absent immediate authority to use cash collateral on an interim  
23 basis, the Debtor’s estate would suffer irreparable harm and it might have no meaningful option  
24 other than to convert this case to one under chapter 7, which the Debtor believes would result in  
25 substantially diminished asset values.

26 19. If the Agent’s security interest is not avoidable, it is substantially oversecured. As of  
27 the Petition Date, the Debtor’s accounts receivable are estimated to be worth \$35 million or more.  
28 The Agent purportedly has a lien on the Debtor’s other assets. This leaves the Agent with an “equity

1 cushion” of approximately \$30 million or more, representing more than 600% of its outstanding  
2 claim. Subject to a reservation of all of the Debtor’s rights against the Agent (including preference  
3 claims), the Debtor intends to provisionally (a) pay off the remainder of the Term Loan, and (b) cash  
4 collateralize the L/C Commitment Obligations, should they become due and payable under the  
5 Prepetition Loan Documents. Based on the availability of excess cashflow, the Debtor estimates that  
6 those events will occur within the next three (3) to four (4) weeks.

7 **B. Employee Obligation Motion**

8 20. In order to retain and avoid a mass departure of the Debtor’s remaining employees,  
9 each of whom is critical to the continued winding down of the Debtor’s business and affairs, it is  
10 absolutely essential that the Debtor be authorized to honor pre-petition wages and other obligations  
11 to employees in the ordinary course of business. In particular, the Debtor’s employees have earned,  
12 but have not been paid, wages for the period December 15, 2008 through December 28, 2008. This  
13 payroll is due on Friday, January 2, 2009 and should be funded by December 30 to permit payment  
14 to employees to be made on January 2. A breakdown of the January 2, 2009 payroll is attached to  
15 the Employee Obligation Motion as Exhibit 2.

16 21. Next, the Debtor expects that nine (9) employees will no longer be employed by the  
17 Debtor after December 31, 2008. As such, those employees will need to be paid all of their accrued  
18 and unpaid wages as of December 31, 2008 as well as their accrued vacation. A breakdown of the  
19 payments due to the employees ending their employment on December 31, 2008 is attached to the  
20 Employee Obligation Motion as Exhibit 3.

21 22. Finally, since the adoption of the Plan, the Debtor has continued providing certain  
22 employee benefits as described in the Employee Obligation Motion, including benefits relating to  
23 health care, vision care and other insurance, which were in effect prior to the adoption of the Plan;  
24 for most remaining employees, due to the termination of the Debtor’s primary group health  
25 insurance provided by CIGNA, these benefits are now provided through reimbursement of  
26 individual employee expenditures for such benefits. The Debtor also adopted new employee  
27 benefits after the Plan in order to induce the Debtor’s critical staff to remain with the Debtor despite  
28

1 it becoming apparent that their continued employment would be of a short tenure. The primary such  
2 benefit is a retention bonus program, described below.

3 23. As part of the Dissolution process, the Dissolution Committee approved a retention  
4 bonus program in order to retain key employees that are needed to perform the critical functions  
5 necessary to wind down the Debtor's affairs and to maximize the value of the Debtor's assets. The  
6 retention bonus program was submitted to and approved by the Agent, which after critical oversight  
7 of the development of the bonus plan, provided repeated assurances that funds would be available to  
8 pay these bonuses to employees when and if they became due. The retention bonus program became  
9 effective as of October 11, 2008. Under the program, employees entered into individual  
10 employment agreements with the Debtor by which they are entitled to be paid a bonus in an amount  
11 of up to 100% of the regular salary and wages they earn from a commencement date of the  
12 employment agreement through a specified "termination date" (which varies among individual  
13 employees).

14 24. Under the various employment contracts, the Debtor agreed to pay the retention  
15 bonuses on the agreed "termination date," so long as the employee has neither (i) resigned  
16 voluntarily without "good reason," nor (ii) been terminated involuntarily for "good cause."  
17 Examples of "good reason" why an employee may voluntarily resign and still earn the retention  
18 bonus include (i) reduction of the employee's salary to an amount less than what was in place  
19 immediately prior to the date of the employment agreement, (ii) relocating the employee's principal  
20 place of employment to a location that is more than thirty-five (35) miles farther in distance than the  
21 employee's original place of employment under the agreement, and (iii) material breach of the  
22 employment agreement by the Debtor. Examples of "good cause" for why the Debtor may terminate  
23 an employee (and no bonus would be payable) include: (i) conviction of a felony, (ii) commission of  
24 an act involving moral turpitude, fraud, misappropriation, embezzlement or other materially  
25 dishonest conduct, (iii) failure to comply in any material respect with the terms of any applicable  
26 employment agreement or any written policies or directives of the Debtor, which failure has not been  
27 corrected within 48 hours after written notice from the Debtor of such failure, and (iv) the  
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1 employee's failure in any material respect to properly perform his or her employment duties, which  
2 failure has not been corrected within 48 hours after written notice from the Debtor of such failure.

3 25. The Debtor currently does not seek to assume the employment agreements as part of  
4 the Employee Obligation Motion. However, the Debtor does seek authority to honor and pay any  
5 retention bonuses that may become due to employees pursuant to the terms of their individual  
6 agreements. A list of the initial retention bonus plans currently in effect is attached to the Employee  
7 Obligation Motion as Exhibit 4 (totaling maximum bonuses of \$535,984.46 in the aggregate).  
8 Exhibit 4 provides the name of each employee, his or her job description, the beginning date of the  
9 retention plan currently in effect for each employee (the "Commencement Date"), the initial  
10 termination date of the retention plan in effect for each employee (the "Termination Date"), and the  
11 retention bonus due if the employee is still employed on the Termination Date (unless the employee  
12 was terminated without cause or resigns for good reason).

13 26. The Commencement Date for most employees is December 20, 2008 because, on or  
14 about December 22, 2008, those employees were paid the portion of retention bonuses under their  
15 employment agreements accrued through December 19, 2008. The Dissolution Committee decided,  
16 in its business judgment, to pay retention bonuses accrued through December 19, 2008 after the  
17 Agent swept all of the cash (approximately \$6.5 million) from the Debtor's accounts on December 9,  
18 2008, without advance notice to the Debtors and in violation of the procedures that had been applied  
19 previously during the dissolution process, solely because (on information and belief) the Agent  
20 concluded – incorrectly – that the Debtor was about to file a Chapter 11 case and the Agent wanted  
21 to deprive the Debtor of funds in that Chapter 11 case. This event caused tremendous disruption in  
22 the Debtor's ability to manage the dissolution process and in its relationships with vendors which  
23 were providing necessary goods and services to the dissolution effort due to the dishonoring of  
24 checks given to them by the Debtor in payment for their goods and services. In addition, and of  
25 particular significance to the subject of retention bonuses, it caused substantial amounts of fear and  
26 concern to the employees that the Agent would not honor the bonus payments when they became  
27 earned, even though the Agent had previously provided repeated assurances that it would honor  
28 those payments. In order to calm the significant employee anxiety that resulted from the Agent's

1 sweep of funds, and to prevent a possible mass departure of the Debtor's critical workforce, the  
2 Dissolution Committee authorized paying most of the employees their accrued bonuses through  
3 December 19, 2008 from a contingency fee that was collected and deposited by the Debtor into a  
4 non-Agent trust account and not disclosed to the Agent. These accrued bonus payments totaled  
5 roughly \$935,000.<sup>1</sup> The Dissolution Committee believes that paying these accrued bonuses was  
6 critical to preserving employee morale and retaining the Debtor's vital workforce. In light of these  
7 payments, the Debtor seeks authority in the Employee Obligation Motion to make the remaining  
8 retention bonus payments to the applicable employees on the applicable Termination Date, as set  
9 forth on Exhibit 4, as and when they may become due under their applicable employment  
10 agreements.

11 27. It is now clear that the Debtor will continue to require the services of certain  
12 employees after their applicable Termination Date (or to re-hire previously terminated employees).  
13 To that end, and in order to induce such employees to remain with (or return to) the Debtor beyond  
14 their Termination Date, the Debtor also seeks authority to agree to pay additional retention bonuses  
15 to employees. The Debtor already has begun the process of extending the employment terms of  
16 various employees and documenting such extension in amended employment agreements. The  
17 amount of the retention bonuses under these new or extended agreements will not exceed 50% of the  
18 salaries and wages earned by the employee during such new or extended term. As with the bonuses  
19 relating to an employees' initial terms, the bonuses for extended and new terms will not be payable if  
20 the employee resigns voluntarily without "good reason" or is terminated involuntarily for "good  
21 cause." These new and additional bonuses would be in addition to those set forth on Exhibit 4, but  
22 none would exceed 50% of the employee's salary during the new extended term.

23 28. The Debtor believes that honoring pre-petition retention bonus commitments, and  
24 having the authority to continue to provide retention bonuses to employees on a post-petition basis,  
25 is critical to employee retention, performance and morale. As such, the retention bonus program is  
26 necessary, reasonable, in the best interests of the estate, and is otherwise warranted by the facts and  
27

28 <sup>1</sup> The total contingency fee collected was approximately \$1.8 million. The remaining funds were paid to the Debtor's professionals as retainers for professional services required by the Debtor during this critical time period.

1 circumstances of this case. The Debtor believes that none of the employees entitled to receive  
2 retention bonuses is an “insider” of the Debtor, as that term is defined in the Bankruptcy Code.

3 **C. Cash Management Motion**

4 29. Prior to the commencement of this Chapter 11 case, the Debtor maintained  
5 approximately fifteen (15) bank accounts (the “Bank Accounts”). A list of the Bank Accounts is  
6 attached to the Cash Management Motion as Exhibit 2. A chart showing the Debtor’s existing cash  
7 management is attached to the Cash Management Motion as Exhibit 3.

8 30. The Debtor maintains three (3) operating accounts, eleven (11) escrow accounts and  
9 one (1) staff flexible spending account. The operating accounts are maintained at Bank of America,  
10 and consist of a main operating account (the “Concentration Account”), a controlled disbursement  
11 account and a payroll account. The staff flexible spending account is also maintained at Bank of  
12 America. The escrow accounts are maintained at various institutions and consist of ten (10) client  
13 trust accounts and one (1) escrow account (for proceeds from the liquidation of the Debtor’s assets  
14 located in the city of Seattle, Washington).

15 31. The Concentration Account and the controlled disbursement account comprise the  
16 core of the Debtor’s cash management system. Bank of America maintains a lockbox account  
17 through which it processes the majority of the Debtor’s accounts receivable collections, then  
18 deposits the receipts into the Concentration Account. Wire receipts, automated clearinghouse  
19 transfers and checks not processed through the lockbox account are also credited to the  
20 Concentration Account on a daily basis. The Debtor draws on the Concentration Account for all  
21 outgoing wires and automated clearinghouse transfers, including transfers to ADP, a third-party  
22 payroll services provider, to fund the regular payroll.

23 32. The Concentration Account funds the controlled disbursement account as accounts  
24 payable checks are presented for payment, usually on a daily basis. The controlled disbursement

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1 account is a zero-balance account upon which the Debtor draws to satisfy accounts payable checks  
2 only. The Concentration Account also funds the staff flexible spending account. The Debtor funds  
3 the payroll account for manual payroll checks processed, i.e., payroll disbursements that are not  
4 made through the regular ADP payroll. The staff flexible spending account holds amounts withheld  
5 from paychecks at the election of employees pursuant to the Debtor's flexible spending program.

6 33. The Debtor requests authority to maintain and continue to use its existing Bank  
7 Accounts in the name and with the account numbers existing immediately prior to the Petition Date.  
8 The Debtor's primary assets are accounts receivable and it is critical to maximizing the value of  
9 these assets that the receivables be collected quickly. Closing the existing Bank Accounts and  
10 reopening debtor in possession accounts would only cause confusion to the Debtor's clients and may  
11 result in funds being deposited into the wrong account, misapplied, held in limbo or otherwise  
12 delayed or lost. Further, the Debtor does not believe that maintaining existing Bank Accounts will  
13 prejudice any party-in-interest or the estate. If the relief requested herein is granted, the Debtor will  
14 not pay any debts incurred before the Petition Date other than as authorized by this Court.

15 I declare under penalty of perjury according to the laws of the United States that the  
16 foregoing is true and correct and that this Declaration was executed in San Francisco, California on  
17 December 28, 2008.

18 /s/ Peter J. Benvenuti  
19 Peter J. Benvenuti  
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