

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HELLER EHRMAN LLP,  
Plaintiff,

Nos. C 14-01236 CRB  
C 14-01237 CRB  
C 14-01238 CRB  
C 14-01239 CRB

v.

**ORDER RE SUMMARY JUDGMENT**

DAVIS, WRIGHT, TREMAINE, LLP,  
Defendant.

HELLER EHRMAN LLP,  
Plaintiff,

v.

JONES DAY,  
Defendant.

HELLER EHRMAN LLP,  
Plaintiff,

v.

FOLEY & LARTNER LLP,  
Defendant.

HELLER EHRMAN LLP,  
Plaintiff,

v.

ORRICK, HERRINGTON & SUTCLIFFE  
LLP,  
Defendant.

/

1 **I. INTRODUCTION**

2 A law firm—and its attorneys—do not own the matters on which they perform their  
3 legal services. Their clients do. A client, for whatever reason, may summarily discharge  
4 counsel and hire someone else. At that point, the client owes fees only for services  
5 performed to the date of discharge, and his former lawyer must, even if fees are in dispute,  
6 cease working on the matter and immediately cooperate in the transfer of files to new  
7 counsel.

8 It is in this context that the Court is asked to address a question of first impression:  
9 namely, whether a law firm—which has been dissolved by virtue of creditors terminating  
10 their financial support, thus rendering it impossible to continue to provide legal services in  
11 ongoing matters—is entitled to assert a property interest in hourly fee matters pending at the  
12 time of its dissolution.

13 This issue was presented to the Bankruptcy Court, which this Court reviews de novo.  
14 See Executive Benefits Insurance Agency v. Arkinson, No. 12-1200 Slip op. at 1 (U.S. June  
15 9, 2014) citing Stern v. Marshall, 131 S. Ct. 2594 (2011). In doing so, the Court concludes  
16 that under the facts presented here, neither law, equity, nor policy recognizes a law firm’s  
17 property interest in hourly fee matters.<sup>1</sup> First, as to the law, the Court finds that Jewel v.  
18 Boxer, 156 Cal. App. 3d 171 (1984), an intermediate state appellate court decision, is not  
19 controlling under these facts and that no California Supreme Court decision supports such a  
20 result.<sup>2</sup> Second, the equities clearly favor the Defendants (third-party law firms which earned  
21 the compensation paid to them) over Heller (which received full payment for its services).  
22 And finally, considering the policies favoring the primacy of the rights of clients over those  
23 of lawyers, it is essential to provide a market for legal services that is unencumbered by  
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25 <sup>1</sup> Nothing in this Order is intended to address the fiduciary duties of law partners to one  
26 another—they are not the parties who have been sued. Nor does this Order address matters which Heller  
Ehrman LLP was handling on a contingency basis.

27 <sup>2</sup> Only one California Supreme Court case cites Jewel. See Howard v. Babcock, 6 Cal. 4th 409,  
28 424 n.8 (1993) (citing Jewel in a string cite in a footnote for a proposition which is not material to this  
case). Howard was decided before the Revised Uniform Partnership Act (“RUPA”) took effect in 1999.  
See Cal. Corp. Code § 16111(b).

1 quarrelsome claims of disgruntled attorneys and their creditors. While this Court  
2 distinguishes Jewel v. Boxer on its facts, it is also of the opinion that the California Supreme  
3 Court would likely hold that hourly fee matters are not partnership property and therefore are  
4 not “unfinished business” subject to any duty to account.<sup>3</sup>

5 Now before the Court are cross motions for summary judgment in a long-running  
6 bankruptcy dispute. These four actions arise from the bankruptcy of a large law firm: Heller  
7 Ehrman LLP. Heller’s bankruptcy estate claims the profits earned by the law firms that  
8 Heller’s former clients retained to work on hourly fee matters. Heller, because of its  
9 bankruptcy and dissolution, could no longer do that work. The question these cases present  
10 is whether hourly fee matters pending when a law firm dissolves are the property of that firm.  
11 More specifically, these cases require the Court to consider whether Heller’s bankruptcy  
12 Trustee has a claim against third-party law firms that hired former Heller lawyers,  
13 representing former Heller clients in hourly fee matters. The answer to both questions is no.

14 Heller’s bankruptcy Trustee (“Trustee”) filed multiple adversary proceedings against  
15 various law firms, including Davis, Wright, Tremaine LLP; Orrick, Herrington & Sutcliffe  
16 LLP; Foley & Lardner LLP; and Jones Day (“Defendants”) which Heller’s former  
17 Shareholders joined. Many of the initial lawsuits settled, but four defendant law firms  
18 challenged the Trustee’s claims to their profits earned from former Heller clients. For the  
19 reasons set forth below, the Court finds that the Trustee does not have a property interest in  
20 profits Defendants earned working on hourly fee matters which Heller had once handled, and  
21 therefore enters JUDGMENT in favor of Defendants and against the Trustee.

## 22 **II. BACKGROUND**

23 As to the questions of (1) whether hourly fee matters pending when a law firm  
24 dissolves are the property of that firm and (2) whether Heller’s bankruptcy Trustee has a  
25 claim against third-party law firms representing Heller’s former clients in hourly fee matters,  
26 the relevant facts are undisputed.

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28 <sup>3</sup> As Judge Pauley of the Southern District of New York noted, “. . . there is good reason to believe that the highest courts of New York and California would decline to follow [Jewel].” Geron v. Robinson & Cole LLP, 476 B.R. 732, 745 (S.D.N.Y. 2012).

1 Heller was a global law firm with approximately 700 lawyers until its dissolution in 2008.  
2 Heller was structured as a limited liability corporation composed of eight partners, all of which were  
3 professional corporations (the “Heller PCs”). The shareholders of the Heller PCs (the  
4 “Shareholders”) provided legal services to Heller’s clients. Heller relied on a \$35 million revolving  
5 line of credit from Bank of America to finance its operations. In September 2008, Bank of America  
6 declared Heller to be in default and seized control of the firm’s bank accounts. Unable to continue  
7 their business, the Heller PCs voted to dissolve the firm in accordance with a dissolution plan  
8 written by a group of Shareholders. The dissolution plan included a “Jewel Waiver” which  
9 purported to waive any rights and claims under the doctrine of Jewel v. Boxer to seek payment of  
10 legal fees generated after the departure date of any lawyer or group of lawyers with respect to  
11 non-contingency/nonsuccess fee matters only. Heller notified its clients that as of October  
12 31, 2008, it would no longer be able to provide legal services. Heller filed its Chapter 11  
13 bankruptcy case in December 2008.<sup>4</sup>

14 The Trustee’s adversary proceedings against Defendants and other law firms allege  
15 that Heller’s estate is entitled to recover profits associated with pending hourly matters  
16 because the “Jewel Waiver” was a constructively fraudulent transfer or an actual fraudulent  
17 transfer of Heller’s property under the Bankruptcy Code or under the California Uniform  
18 Fraudulent Transfer Act. 11 U.S.C. § 548; Cal. Civ. Code § 3439 et seq. The Trustee has  
19 not sued the individual Shareholders. In re Heller Ehrman LLP, 2013 WL 951706 at \*1-2  
20 (Bankr. N.D. Cal. Mar. 11, 2013).

21 At the hearings in Bankruptcy Court, the Trustee made several significant concessions  
22 which the Bankruptcy Court described in detail:

23 At both hearings on the MSJs, [the Trustee’s] counsel conceded that  
24 if a Shareholder had left Heller prior to the dissolution and had taken  
25 unfinished business, Heller could not pursue recovery of profits  
26 earned by that Shareholder following his or her departure, absent  
27 some breach of fiduciary duty. In particular, at the hearing on  
28 October 15, the [bankruptcy] court asked [the Trustee’s] counsel  
whether a partner who took a big case would have to account for it.  
[The Trustee’s] counsel stated the duty to account arose upon

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<sup>4</sup> The parties acknowledged at the June 5, 2014, motion hearing that these facts are not in dispute.

1 dissolution, but not before, unless the departing attorney breached a  
2 fiduciary duty to the firm:

3 THE COURT: How about if there wasn't a dissolution?

4 MR. SULLIVAN: If he breached his fiduciary duty.

5 THE COURT: How about if he just walked out the door and stole  
6 the client, took the client with him? You know, the documents, the  
7 way I interpret it, said, as I stated earlier this afternoon, the client is a  
8 client of the firm.

9 . . . .

10 THE COURT: So if Mr. X or Ms. Y leaves and nobody cares, that's  
11 fine. But if somebody goes out the door with a big fat case, did  
12 Heller or didn't it have the right to pursue that attorney  
13 predissolution?

14 MR. SULLIVAN: Not in the absence of a breach of fiduciary duty.

15 THE COURT: But was that itself a breach of duty?

16 MR. SULLIVAN: No

17 While [the Trustee's] counsel was not as direct on this issue at the  
18 November hearing, he did not deny that a Shareholder who left  
19 Heller prior to the dissolution, in the absence of a breach of duty,  
20 would not have to account for unfinished business taken to another  
21 firm. Moreover, he acknowledged and did not dispute Defendants'  
22 allegation that prior to its dissolution, Heller had never sued a former  
23 Shareholder under a Jewel theory to recover the profits earned on  
24 such unfinished business. Thus, only as a result of Heller's  
25 dissolution were departing Shareholders burdened with a duty to  
26 account for unfinished business taken from the firm. The Jewel  
27 Waiver purported to eliminate that duty to account, freeing the  
28 Shareholders to keep profits earned on unfinished business.

29 Finally, counsel for [the Trustee] also acknowledged that a law firm  
30 that took unfinished business from Heller without a Shareholder  
31 concurrently joining it would have no exposure under [the Trustee's]  
32 fraudulent transfer theories.

33 Id. at \*3-4 (emphasis added) (citations omitted).

34 The only Defendants in these cases are the third-party law firms that provided services  
35 to Heller's former clients under new fee agreements once Heller dissolved. The Trustee  
36 seeks to recover a portion of the fees paid to these third parties.

### 1 III. LEGAL STANDARD

2 The Court shall grant summary judgment if the movant shows that there is no genuine  
3 dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed.  
4 R. Civ. P. 56(a). An issue is “genuine” only if there is a sufficient evidentiary basis on which  
5 a reasonable fact finder could find for the nonmoving party, and a dispute is “material” only  
6 if it could affect the outcome of the suit under governing law. See Anderson v. Liberty  
7 Lobby, Inc., 477 U.S. 242, 248-49 (1986). The burden is on the moving party to demonstrate  
8 that there is no genuine dispute with respect to any material fact and that it is entitled to  
9 judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A court  
10 must view the evidence in the light most favorable to the non-moving party and draw all  
11 justifiable inferences in its favor. Anderson, 477 U.S. at 255. “Where the record taken as a  
12 whole could not lead a rational trier of fact to find for the non-moving party, there is no  
13 ‘genuine issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 587  
14 (1986). It is agreed that this Court must apply California law in its analysis of whether the  
15 bankruptcy estate held a property interest in the pending hourly matters at the time of the  
16 dissolution. See generally Erie R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). If Heller had no  
17 property interest in Defendants’ fees, then summary judgment must be granted in favor of the  
18 Defendants.

### 19 IV. DISCUSSION

#### 20 A. Law

21 The Trustee asserts that under California law as set forth in Jewel v. Boxer, the estate  
22 has a property interest in pending hourly matters. In Jewel, the California Court of Appeal  
23 considered the voluntary dissolution of a four-person firm after its partners split into groups  
24 of two and formed new firms. 156 Cal. App. 3d at 174-75. “[E]ach former partner sent a  
25 letter to each client whose case he had handled for the old firm, announcing the dissolution.”  
26 Id. at 175. The letter included “a substitution of attorney form, which was executed and  
27 returned by each client retaining the attorney who had handled the case for the old firm.” Id.  
28 Significantly, “[t]he new firms represented the clients under fee agreements entered into

1 between the client and the old firm.” Id. (emphasis added). The court held that, under those  
2 facts, the former partners violated their “fiduciary duty not to take any action with respect to  
3 unfinished partnership business for personal gain.” Id. at 178-79. In essence, the court found  
4 that the new firms had earned profits which, in equity, belonged to the dissolving partnership  
5 because the departing partners had appropriated work for themselves that could have been  
6 performed on behalf of the dissolved firm.

7 Jewel is different from the cases here for five key, related reasons. First, the  
8 dissolution of the firm at issue in Jewel was voluntary, while Heller’s dissolution was forced  
9 when Bank of America withdrew the firm’s line of credit. This is significant because the  
10 partners in Jewel could have, but chose not to, finish representing their clients as or on behalf  
11 of the old firm. Here, Heller lacked the financial ability to continue providing legal services  
12 to its clients, leaving clients with ongoing matters no choice but to seek new counsel and  
13 Heller Shareholders no choice but to seek new employment. Second, in Jewel, “[t]he new  
14 firms represented the clients under fee agreements entered into between the client and the old  
15 firm.” Id. at 175. Here, the clients signed new retainer agreements with the new firms.  
16 Third, in Jewel, the new firms consisted entirely of partners from the old firms: one firm with  
17 four partners had become two firms with two partners each. Here, Defendants are pre-  
18 existing third-party firms that provided substantively new representation, requiring  
19 significant resources, personnel, capital, and services well beyond the capacity of either  
20 Heller or its individual Shareholders. Where in Jewel, the departed partners continued to  
21 have fiduciary duties to each other and the old firm, here, the third-party firms never owed  
22 any duty, fiduciary or otherwise, to the dissolved firm. Fourth, Jewel treated hourly fee  
23 matters and contingency fee matters as indistinguishable. Here, there are no contingency fee  
24 cases at issue. Finally, Jewel was decided in 1984 and thus applied the Uniform Partnership  
25 Act (the “UPA”) which the materially different Revised Uniform Partnership Act (the  
26 “RUPA”) has since superseded. The RUPA, which applies after 1999 to all California  
27 partnerships, allows partners to obtain “reasonable compensation” for helping to wind up  
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1 partnership business, Cal. Corp. Code § 16401(h), and thus undermines the legal foundation  
2 on which Jewel rests.

3 The RUPA’s impact on Jewel is significant. Section 404(b)(3) of the RUPA provides  
4 that a partner must “refrain from competing with the partnership in the conduct of the  
5 partnership business before the dissolution of the partnership.” Cal. Corp. Code  
6 § 16404(b)(3). As the drafters of the RUPA explained, this language means that “[t]he duty  
7 not to compete . . . does not extend to winding up the business, as do the other loyalty rules.  
8 Thus, a partner is free to compete immediately upon an event of dissolution . . . .” RUPA  
9 § 404 cmt. 2. Therefore, unlike in Jewel, if a former Heller Shareholder signed a new  
10 retainer agreement with a former Heller client, this would not violate the “fiduciary duty not  
11 to take any action with respect to unfinished partnership business for personal gain.” Jewel,  
12 156 Cal. App. 3d at 178-79. Consequently there is no provision of the RUPA that gives the  
13 dissolved firm the right to demand an accounting for profits earned by its former partner  
14 under a new retainer agreement with a client. Moreover, here, the new retainer agreements  
15 were not even signed between former Heller clients and former Heller Shareholders but  
16 rather between the clients and new, third-party firms.

17 Although Jewel has been cited in dozens of cases from California and beyond, “courts  
18 have cited Jewel reflexively and uncritically,” that is, without much analysis or consideration  
19 of the changes in law firm practice or law. Geron, 476 B.R. at 739 n.2. The California  
20 Supreme Court has not ruled on the issue now before the Court, nor do any published  
21 California cases decided under the RUPA cite Jewel for its unfinished business rule. Thus,  
22 California law is unsettled on the question of whether a law firm may assert a property  
23 interest in hourly fee matters pending at the time of its dissolution. Absent clear authority  
24 from California courts, the Court next turns to the equities.<sup>5</sup>

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27 <sup>5</sup> Because Jewel does not apply, the Court need not reach the issue of whether the “Jewel  
28 Waiver” at issue here was valid or constituted a fraudulent transfer. Nor does the Court reach the issue  
of whether Heller was unable to pay its bills as they became due and was thus insolvent at the time of  
the “Jewel Waiver.”



1                   **B. Equity**

2           A bedrock of the commercial legal profession is that lawyers expect to be paid for  
3 services they provide to their clients, and clients expect to pay the firm that employs the  
4 lawyers who provide their services. Balancing the equities, it is simple enough to conclude  
5 that the firms that did the work should keep the fees.<sup>6</sup> And, of course, the fees that Heller  
6 earned through its labor prior to dissolution have been paid or are not at issue here. The fees  
7 at issue here were generated by Defendants' labor, not Heller's. So in terms of fairness, the  
8 Trustee cannot argue that the Defendants have received a windfall—they did the work.

9           The Trustee argues instead that the former Heller Shareholders had a fiduciary duty to  
10 account to Heller's estate for profits their new firms earned from work on former Heller  
11 matters. However, the fiduciary duty to account is limited to partnership property. Cal.  
12 Corp. Code § 16404(b)(1). If the profits Defendants earned are not derived from Heller  
13 partnership property, then there is no duty to account. A few basic principals demonstrate  
14 why the equities do not favor finding a property interest here.

15           A law firm never owns its client matters. The client always owns the matter, and the  
16 most the law firm can be said to have is an expectation of future business. At the motion  
17 hearing the Trustee was unable to articulate a basis for calculating the value of this expected  
18 future business. The Trustee suggested that the value at issue here is "good will," which  
19 does not ordinarily appear on law firm balance sheets which are on a modified cash basis. In  
20 California, and beyond, professional law partnerships do not have a "good will" asset. See  
21 Lyon v. Lyon, 246 Cal. App. 2d 519, 526 (1966).<sup>7</sup> "The 'good will' which plaintiff claims—

22 \_\_\_\_\_  
23           <sup>6</sup> At the motion hearing, the Trustee was right to emphasize that equitable considerations also  
24 weigh in favor of Heller's creditors, many of whom are former Heller Shareholders and employees.  
25 Heller's dissolution and its outstanding debt to its dedicated Shareholders and employees is lamentable.  
26 However, it does not, in and of itself, justify taking away from Defendants that which they earned  
through their labor and investment absent a clear direction from the California Supreme Court that this  
is a property interest, the recognition of which would further advance the public policy goals of  
bankruptcy law.

27           <sup>7</sup> State supreme courts from Wyoming and Iowa have favorably cited Lyon for this proposition.  
28 See Smith, Keller & Assocs. v. Dorr & Assocs., 875 P.2d 1258, 1265 n.5 (Wyo. 1994); Bump v.  
Stewart, Wimer & Bump, P.C., 336 N.W.2d 731, 736 (Iowa 1983). For example, "[t]he accepted rule  
has recognized that professional partnerships do not have a goodwill asset. This rule is consistent with  
the position that a client's files belong to the client, and the professional partnership may not withhold

1 the expectation of future business—is personal and confidential and attaches to the individual  
2 partners of the firm, thus, no monetary value can be attributed to it and there is nothing to  
3 sell.” Id. The good will the Trustee discussed may be real in one sense: certainly a firm’s  
4 reputation is a crucial part of its ability to obtain work. However, good will is not an asset to  
5 which a property interest attaches. Moreover, Heller’s bankruptcy did much to undermine  
6 the firm’s otherwise stellar reputation and to eviscerate any reasonable expectation of future  
7 business.

8 Obviously, the expectation of future business—if it is “good will”—would disappear  
9 as soon as either (1) the client removes business, which it can do at will, or (2) the law firm  
10 ceases to be able to perform the work to generate those expected future profits. “It has long  
11 been recognized in [California] that the client’s power to discharge an attorney, with or  
12 without cause, is absolute.” Fracasse v. Brent, 6 Cal. 3d 784, 790 (1972). When a client  
13 exercises “the unilateral right to discharge his or her attorney,” the party discharged “only  
14 has a right to quantum meruit recovery” for the value of work already done on the matter.  
15 Jalali v. Root, 109 Cal. App. 4th 1768, 1777 (2003). Here, the client matters at issue ceased  
16 to be Heller’s partnership business and became the Defendants’ partnership business when  
17 the clients terminated Heller and retained new, third-party counsel.

18 The Trustee conceded as much before the Bankruptcy Court. As the Bankruptcy Court  
19 explained, the Trustee “did not deny that a Shareholder who left Heller prior to the  
20 dissolution, in the absence of a breach of duty, would not have to account for unfinished  
21 business taken to another firm.” In re Heller Ehrman LLP, 2013 WL 951706, at \*4. The  
22 Trustee further “acknowledged and did not dispute Defendants’ allegation that prior to its  
23 dissolution, Heller had never sued a former Shareholder under a Jewel theory to recover the  
24 profits earned on such unfinished business.” Id. Thus, according to the Trustee, “only as a  
25 result of Heller’s dissolution were departing Shareholders burdened with a duty to account for  
26 unfinished business taken from the firm.” Id.

27  
28 the files to restrict the client’s access to other providers.” Smith, Keller & Assocs., 875 P.2d at 1265  
n.5 (emphasis in original) (internal citations omitted).

1 It is unclear why the duties, rights, and property interests at stake here should be  
2 different simply because Heller dissolved. To the extent dissolution does change the lay of  
3 the land, it should do so in favor of Defendants as a matter of equity. Heller ceased to be able  
4 to represent its clients, leaving them with no choice but to seek representation elsewhere.  
5 Defendants came to the rescue of these clients and provided them with legal services on  
6 ongoing matters. The former Heller clients negotiated and signed entirely new retainer  
7 agreements with third-party firms. And those firms provided substantively new  
8 representation, requiring significant resources, personnel, capital, and services well beyond  
9 the capacity of either Heller or its individual Shareholders.

10 The plight of Heller's former staff and creditors is, as in all bankruptcies, deplorable.  
11 However, Defendants did the work that generated the fees at issue here. With the Defendants  
12 those fees should stay. The equities favor Defendants.

### 13 **C. Policy**

14 Public policy considerations also support the Court's ruling. The Trustee argued at the  
15 motion hearing that the two policy reasons articulated by Jewel apply here. First, Jewel  
16 explained that preventing extra compensation to law partnerships "prevents partners from  
17 competing for the most remunerative cases during the life of the partnership in anticipation  
18 that they might retain those cases should the partnership dissolve." Jewel, 156 Cal. App. 3d at  
19 179. Second, the Jewel holding "discourages former partners from scrambling to take  
20 physical possession of files and seeking personal gain by soliciting a firm's existing clients  
21 upon dissolution." Id. Based on the detailed discussion of these policy issues during the  
22 motion hearing, the Court concludes that they are not at play here.

23 The profits to which the Trustee asserts a claim are not those of the former Heller  
24 Shareholders themselves, but rather those of the new, third-party firms. Thus, any benefit or  
25 incentive for the former Heller Shareholders is not directly at issue. Further, the former Heller  
26 clients chose to sign new retainer agreements with third-party firms. The decision to retain  
27 new counsel was not instigated by "physical possession of files" but rather by Heller's  
28 inability to provide further representation. Nor could the Trustee provide the Court with a

1 workable definition of “winding up” or “unfinished business.” The Court agrees that Heller  
2 should bill and be paid for the time its lawyers spent filing motions for continuances, noticing  
3 parties and courts that it was withdrawing as counsel, packing up and shipping client files  
4 back to the clients or to new counsel, and getting new counsel up to speed on pending matters.  
5 That is what winding up unfinished business entails when a firm dissolves in the context of a  
6 bankruptcy.<sup>8</sup> But the Trustee suggests that Heller’s estate is entitled to a share of all profits  
7 earned even on litigation lasting long after Heller ceased to function, into the indefinite future  
8 perpetuating the inequity over time. Legal matters have a way of dragging on,<sup>9</sup> even in this  
9 century. Public policy cannot favor such an outcome.

10 Nor could the Trustee direct the Court to any concrete evidence that either of the two  
11 policy factors articulated in Jewel came into play during Heller’s dissolution. That  
12 Defendants, in hiring former Heller Shareholders, considered those Shareholders’ book of  
13 business is to be expected and hardly speaks to unruly competition within Heller. In fact, the  
14 Trustee’s position would create a perverse incentive in the context of a firm struggling to  
15 avoid dissolution. The Trustee’s rule would incentivize partners of a struggling firm to jump  
16 ship at the first sign of trouble to avoid the kind of suit Defendants now find themselves in,  
17 even if that would destabilize an otherwise viable firm.

18 Moreover, the Trustee would have this Court prevent third-party firms from earning a  
19 profit on hourly fee matters formerly handled by Heller simply because those firms hired  
20 former Heller Shareholders. Such a holding would discourage third-party firms from hiring  
21 former partners of dissolved firms and discourage third-party firms from accepting new  
22 clients formerly represented by dissolved firms. It is not in the public interest to make it more  
23 difficult for partners leaving a struggling firm to find new employment, or to limit the  
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25 <sup>8</sup> To the extent that the Trustee argues that “winding up” entails further substantive legal work  
26 on pending matters, the RUPA allows partners to obtain “reasonable compensation” for helping to wind  
27 up partnership business. Cal. Corp. Code § 16401(h). Authorizing wind-up compensation does not  
28 create a property interest. It simply permits lawyers to continue to work on pending matters and be  
compensated.

<sup>9</sup> See Charles Dickens, Bleak House (1853) (describing the fictional legal case of Jarndyce v. Jarndyce, which dragged on for generations).

1 representation choices a client has available, by establishing a rule that prevents third-party  
 2 firms from earning a profit off of labor and capital investment they make in a matter  
 3 previously handled by a dissolved firm.<sup>10</sup> See In re Thelen LLP, 736 F.3d 213, 223 (2d Cir.  
 4 2013) (“the [unfinished business] doctrine may discourage other law firms from accepting  
 5 lawyers and client engagements from a dissolved law firm for fear that a substantial portion of  
 6 the resulting profits may be turned over to the dissolved law firm or its creditors.”). Law  
 7 firms accepting a new client, even for an hourly-fee matter, must be prepared to invest  
 8 considerable resources: attorney salaries; malpractice insurance; administrative support;  
 9 research fees; document preparation; space allocation; opportunity costs; and so on. No firm  
 10 can be expected to contribute those resources if they are not entitled to retain the  
 11 corresponding profits. Here, the Trustee asks this Court to deprive Defendants of profits  
 12 earned off of Defendants’ labor and capital investment. Public policy weighs strongly against  
 13 such an outcome. See In re Thelen LLP, 736 F.3d at 222-23 (discussing policy arguments  
 14 against treating hourly fee matters as partnership property including (1) the nature of the  
 15 attorney-client relationship, (2) economic consequences and perverse incentives, (3) rules of  
 16 professional conduct,<sup>11</sup> and (4) distinctions between contingency and hourly fee matters).

17 **V. CONCLUSION**

18 Finding no justification, legal or otherwise, for creating a property interest in pending  
 19 hourly matters, the Court GRANTS summary judgment in favor of Defendants and against  
 20 Plaintiff.

21 **IT IS SO ORDERED.**

22 Dated: June 11, 2014



23 CHARLES R. BREYER  
 24 UNITED STATES DISTRICT JUDGE

25 <sup>10</sup> If, as here, clients would like to choose third-party firms with some familiarity with the matters  
 26 by virtue of having hired former Heller Shareholders, the Trustee’s argument is that those third-party  
 27 firms would not be able to earn a profit on their labor or investment. Thus, the Trustee’s position would  
 all but force former Heller clients to retain new counsel with no connection to Heller or their matters.

28 <sup>11</sup> Defendants argue that the Trustee’s position would lead to a fee sharing arrangement  
 prohibited by Rule 1-320 of the California Rules of Professional Ethics. The Court need not address  
 this argument.