



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERNESTO ESPINOZA,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
HEWLETT-PACKARD COMPANY,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR RELIEF PURSUANT TO 8 DEL. C. §220

Plaintiff Ernesto Espinoza ("Plaintiff"), as and for his Complaint, herein alleges, upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. In this action, Plaintiff seeks to enforce his right to inspect certain corporate books and records of defendant Hewlett-Packard Company ("HP" or the "Company"), a Delaware corporation, pursuant to 8 *Del. C.* §220 ("Section 220"). Plaintiff seeks to inspect the report concerning the Standards of Business Conduct investigation of the Company's former Chief Executive Officer ("CEO"), Mark Hurd ("Hurd"), prepared for and reviewed by HP's Board of Directors ("Board") (the "Report"). The Report concerns REDACTED

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Plaintiff also seeks to inspect Board meeting minutes responsive

to Plaintiff's Section 220 demand letter (the "Demand Letter")¹ that the Company has said it would produce, but has failed to do after months of delay. Plaintiff seeks to inspect the Report and minutes in furtherance of his investigation regarding whether Board members breached their duty to HP by causing it to enter into a separation agreement (the "Separation Agreement") with Hurd that is worth tens of millions of dollars instead of terminating him for cause.

2. Hurd began his tenure as CEO of HP in 2005. As the CEO of HP, Hurd was subject to the Company's Standards of Business Conduct and Conflicts of Interests Policy. The Standards of Business Conduct prohibits REDACTED

REDACTED Hurd violated the Standards of Business Conduct. Hurd was also subject to HP's Conflicts of Interest Policy, which requires the disclosure of close personal relationships that could have even the appearance of impropriety. Violations of these policies would result in "disciplinary action, up to and including termination of employment." The Company's Severance Plan for Executive Officers ("Severance Plan") defined termination for "cause" as "conduct (including action or failure to act) that is not in the best interest of, or is injurious to, HP." The Board determines whether "cause" exists under the Severance Plan.

3. REDACTED a
female independent contractor who supposedly performed work for HP's marketing

¹ The Demand Letter is attached hereto as Exhibit 1.

department. Fisher often attended Company events with Hurd. In reality, Fisher worked directly for Hurd. REDACTED

REDACTED

Hurd, despite being a

multimillionaire, REDACTED

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4. On June 24, 2010, Fisher's attorney, Gloria Allred, sent a letter to Hurd (the "Allred Letter") in an attempt to reach an out-of-court resolution of Hurd's alleged violations of Cal. Govt. Code §12940(j)(1) and the Unruh Act §51.9. According to the Allred Letter, REDACTED

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5. After receiving the Allred Letter, Hurd provided it to Michael J. Holston ("Holston"), HP's General Counsel, Executive Vice President, and Secretary. Holston shared it with the Board. After receiving the Allred Letter, the Board retained outside counsel to investigate the allegations contained in the Allred Letter and prepare the Report. In the course of the Board's investigation, the Company's outside counsel interviewed REDACTED REDACTED

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The Company's

outside counsel also interviewed Hurd. Following interviews with REDACTED_{ED} and Hurd, the Company's outside counsel was scheduled to meet with Fisher and Allred concerning the

allegations in the Allred Letter. However, on August 4, 2010, the day before the Company's outside counsel was to meet with them, Hurd reached a settlement with Fisher. As part of this settlement, Fisher agreed to enter into a confidentiality agreement, preventing the Board from interviewing her to discuss the Allred Letter's allegations.

6. After having reviewed the Report, on August 6, 2010, the Company announced that the Board had determined that Hurd had violated the Company's Standards of Business Conduct and that in the wake of his shameful acts "it would be impossible for him to be an effective leader moving forward and that he had to step down." According to *The Wall Street Journal*, one HP director even stated Hurd "lied to my face." Admitting that Hurd had violated Company policy and recognizing that he misused Company assets, conduct that was not in the best interest of and injurious to HP, the Board appeared to have more than sufficient bases to terminate Hurd for cause under the Severance Plan. The Board, however, did not terminate him for cause. Instead, Hurd resigned and the Board entered into a Separation Agreement with Hurd.

7. The Separation Agreement called for the Company to pay \$12.2 million in cash to Hurd and provide him with nearly 350,000 shares of HP stock worth an additional \$16 million based on HP's closing price on August 6, 2010. In addition, the Separation Agreement provided Hurd with medical and dental coverage for eighteen months, restricted stock units, and an extension on the expiration date to purchase up to 775,000 shares of HP common stock. According to the *Financial Times*, Hurd's Separation Agreement was valued between \$35 million - \$40 million. If the Board had terminated Hurd's employment for "cause", Hurd would have received no severance.

8. In the wake of the disclosure by the Company of Hurd's misconduct, resignation, and severance, on August 17, 2010, Plaintiff sent an inspection demand to the Company to investigate Hurd's misconduct, the Board's actions, and the facts surrounding the decision to enter into the Separation Agreement rather than terminate Hurd for cause. Despite continual discussions between counsel for Plaintiff and the Company and Plaintiff entering into a confidentiality agreement, the Company has produced only the Allred Letter, a few Board meeting minutes, the Separation Agreement, the Company's Standard of Business Conduct and the Conflicts of Interest Policy, and Hurd's and his assistant's expense reports REDACTED. The Company has refused to permit inspection of the Report or to finalize and produce the Board minutes sought by Plaintiff. Plaintiff needs the Report and minutes to determine both the true extent of Hurd's wrongdoing and to investigate the Board's failure to terminate him for cause. The Board minutes from these meetings are central to Plaintiff's investigation, and Plaintiff has consistently sought them from the Company.

9. As reported in *The Wall Street Journal* and supported by the Board minutes produced to Plaintiff to date, on July 28, 2010, the Board's counsel provided the Report concerning Hurd's violations of the Standards of Business Conduct to the Board, and the Board reviewed the Report before making its determination to enter into the multi-million dollar Separation Agreement with Hurd. Plaintiff has demanded, through counsel, that the Company provide him with the Report concerning the Standards of Business Conduct investigation and the missing Board minutes related to the investigation of Hurd on multiple occasions. HP has rejected the request for the Report on the basis of attorney work product

and attorney client privilege. The Company has also delayed producing the remaining Board minutes related to the Hurd investigation because they are purportedly not "finalized" because they have not been "signed," despite the meetings occurring three months ago.

10. This action seeks to compel production of the Report and the Board minutes that the Company has yet to provide that are responsive to Plaintiff's Section 220 demand letter. Plaintiff's proper purpose is to investigate corporate mismanagement, a well-established proper purpose.

11. Plaintiff has good cause and a substantial need for the Report and Board meeting minutes because they uniquely detail and evidence the bases for the possible courses the Board evaluated and why it chose not to terminate Hurd for cause. This information is unavailable from any other source. Moreover, the Report and minutes go directly to the manifest and compelling claim that Plaintiff is investigating regarding Hurd's termination. In seeking the Report and minutes, Plaintiff is not casting a broad net; rather, he seeks the specific Report the Board reviewed and the specific Board minutes that reflect the Board's discussions regarding Hurd. Due to the Board's failure to provide the Report concerning the Standards of Business Conduct investigation and the Board minutes related to the investigation, Plaintiff is now forced to bring this action.

THE PARTIES

12. Plaintiff is a beneficial owner of HP's common stock.

13. Defendant HP is a Delaware corporation with its principal offices and corporate headquarters located at 3000 Hanover Street, Palo Alto, California. HP has approximately 2.2 billion shares of common stock outstanding and a market capitalization of

approximately \$95 billion. Defendant HP is a global provider of products, technologies, software, solutions, and services to individual consumers, small and medium sized businesses, and large enterprises, including customers in the government, health, and education sectors. HP offers consumers a wide range of products and services from digital photography to digital entertainment and from computing to home printing.

FACTUAL BACKGROUND

14. On June 24, 2010, Hurd received the Allred Letter. REDACTED

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15. The Allred Letter claims REDACTED

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According to the Allred Letter, REDACTED

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16. The Allred Letter also states that REDACTED

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17. The Allred Letter details that REDACTED

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18. After Hurd received the Allred Letter, he gave it to HP's General Counsel, Holston. Holston in turn gave the Allred Letter to HP's Board. While the Board was exploring the allegations in the Allred Letter, Hurd entered into a settlement agreement with Fisher. The settlement agreement reportedly provided for Fisher to receive a payment from Hurd. In return, Fisher would provide for a release of her claims against HP, a confidentiality agreement with Hurd, and a brief letter signed by Fisher that seeks to absolve HP and Hurd of responsibility and claiming there were "many inaccuracies" in the Allred Letter. This agreement prevented the Board from interviewing Fisher.

19. Then, on August 6, 2010, HP issued a press release disclosing that Hurd would be resigning as a result of a sexual harassment investigation that led to discoveries of violations of HP's Standards of Business Conduct. Also in the press release, Hurd admitted that "there were instances in which I did not live up to the standards and principles of trust, respect and integrity that I have espoused at HP and which have guided me throughout my career."

20. After HP issued the April 6, 2010 press release, Holston hosted a conference call to discuss Hurd's resignation. In an attempt to minimize the Separation Agreement, the Company also preliminary announced its better than expected third quarter 2010 earnings. On the conference call, Holston disclosed that the Company had found that Hurd "had a close personal relationship" with Fisher and that she was "hired by the office of the CEO." Holston disclosed that Hurd's expense reports contained "numerous" inaccuracies designed to "conceal" his relationship with Fisher. In his attempt to conceal his relationship, Hurd undertook a "systematic pattern of improper expenses and inaccurate reports" that ignored HP's standard of integrity.

21. Because of his misconduct, the Board found that Hurd had violated the Company's Standards of Business Conduct policy. HP's Standards of Business Conduct explicitly states that "[b]ecause HP is committed to getting things done the right way, violations of our SBC or HP policies or rules may result in disciplinary action, up to and including termination of employment." The Standards of Business Conduct includes a REDACTED It also includes The Headline Test, which is a very practical test to analyze whether an employee's

decisions or actions are in line with the Standards of Business Conduct. The Headline Test states: "Before I make a decision, I consider how it would look in a news story. We should each ask ourselves what the impact would be if the conduct or actions became public or were reviewed by colleagues we respect. If you are uncomfortable with the answer, don't do it!" Hurd obviously did not follow this very practical standard, resulting in his violation of the Standards of Business Conduct, numerous negative news stories, and a \$8.6 billion decline in the Company's market capitalization upon disclosure of the investigation and resignation.

22. Hurd also violated the Conflicts of Interest Policy that also states that violations can lead to "disciplinary action up to and including termination of employment." Because the relationship between Hurd and Fisher (an HP contractor) was a "close personal relationship," it should have been disclosed under the Company's Conflicts of Interest Policy, which explicitly states that Board members, like Hurd, are subject to heightened duties "relating to their special responsibilities." The Conflicts of Interest Policy required Hurd to disclose his relationship with Fisher because HP employees, including Hurd, must "disclose in writing ... any situation involving ... anyone with whom you have a close personal relationship that could cause the perception of any conflict between your HP responsibilities and your involvement in the relationship." Hurd's close personal relationship with Fisher interfered with his responsibilities and duties to HP as demonstrated by REDACTED
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23. Because Hurd violated the Standards of Business Conduct and Conflicts of Interest Policy, he could have been terminated. The Board did consider terminating Hurd as

detailed in the Company's August 4 and 5, 2010 Board meeting minutes. If the Board would have terminated Hurd, the Severance Plan dictates the circumstances under which the Board could have fired Hurd for "cause." The Severance Plan states that "a participant shall not be deemed to have engaged in conduct constituting Cause under this plan except by a majority vote of the members of HP's Board." Moreover, HP's Severance Plan defines "Cause" as "conduct (including action or failure to act) that is not in the best interest of, or is injurious to, HP." Despite Hurd's violations of the Company's Standard of Business Conduct and Conflicts of Interest Policy, Hurd's misuse of Company assets, and attempts to cover it up, Hurd's alleged statements to Fisher regarding the EDS transaction, and his apparent effort to muzzle Fisher through an eleventh hour settlement, Hurd was not fired for cause. Instead, Hurd resigned and was provided with the financial benefits of the Separation Agreement.

24. The Company's Form 8-K filed with the U.S. Securities and Exchange Commission on August 6, 2010, revealed that Hurd would receive a windfall upon his departure. The Separation Agreement provides for a cash payment of \$12,224,693, equity based severance that could be worth as much as \$25,556,439, and other lucrative benefits. In sum, the Separation Agreement totaled between \$35 million – \$40 million. This news was critical to the marketplace and had a dramatic impact on HP's stock price and reputation as demonstrated by the \$3.70 decline in the Company's stock value, an over \$8.6 billion, or 8% market capitalization fall.

25. Plaintiff seeks to inspect the Report on the Standards of Business Conduct investigation and meeting minutes related to Hurd's misconduct in order to investigate the

Board's decision not to terminate Hurd for cause and instead to have HP enter into the Separation Agreement with him.

THE INSPECTION DEMAND

26. On August 17, 2010, Plaintiff sent the Demand Letter, which he signed under oath, to Holston demanding to inspect the books, records, and documents of HP relating to the various matters described herein.

27. The books and records sought were narrowly tailored to serve Plaintiff's purpose for serving the Demand Letter, i.e., to investigate possible breaches of fiduciary duty, corporate waste, and unjust enrichment. These proper purposes are reasonably related to Plaintiff's interests as a shareholder of HP and not contrary to the Company's best interests. The Demand Letter enumerated the following legitimate and proper purposes for the inspection of the books, records and documents:

[Mr. Espinoza's] purpose is to investigate corporate mismanagement, wrongdoing, and waste by the Board ... of HP and the Company's former [CEO], Chairman, and President ... Hurd. In particular, Mr. Espinoza brings his demand for the proper purpose of investigating what appears from the public record to be improper conduct by certain officers and directors of HP concerning the resignation of Mr. Hurd

28. The Company responded to Plaintiff's Demand Letter on September 2, 2010, after Plaintiff's counsel agreed to extensions to the Demand Letter response date. While the September 2, 2010, letter challenged Plaintiff's proper purpose, the Company agreed to "enter into an appropriate agreement of confidentiality acceptable to HP" in order to provide Plaintiff with Company books and records, including the Allred Letter. The September 2, 2010 letter is attached as Exhibit 2.

29. On September 9, 2010, Plaintiff's counsel wrote to HP detailing that he was willing to examine the documents offered by HP. The September 9, 2010 letter is attached as Exhibit 3.

30. Since September 9, 2010, Plaintiff's counsel and HP have had numerous discussions regarding production of documents to Plaintiff's counsel for examination. Plaintiff's counsel and HP also spent considerable time negotiating a sufficient confidentiality agreement to govern the examination of the documents. Thereafter, on October 4, 2010, HP and Plaintiff's counsel entered into a confidentiality and non-disclosure agreement.

31. On October 13, 2010, the parties entered into an amended confidentiality and non-disclosure agreement. The amended confidentiality agreement contained a carve-out for the Allred Letter. HP and Plaintiff's counsel included the carve out for the Allred Letter because HP (and now Plaintiff's counsel) did not believe the Allred Letter to be confidential, private, or otherwise protected from disclosure. Nonetheless, Plaintiff's counsel and HP agreed to a temporary and provisional confidentiality designation for the Allred Letter for ten business days to provide Hurd's counsel the opportunity to take whatever action Hurd deemed warranted in connection with protecting the Allred Letter. Plaintiff was informed by counsel for HP and Hurd that Hurd received notice of the ten day provisional confidentiality designation of the Allred Letter and a copy of the amended confidentiality agreement.

32. Also on October 13, 2010, Plaintiff's counsel received the Allred Letter. HP marked the Allred Letter "CONFIDENTIAL AT THE REQUEST OF MARK HURD" at Hurd's insistence. The Allred Letter is attached as Exhibit 4. Neither HP nor Plaintiff's

counsel believe the Allred Letter is confidential or private, but in the interest of protecting HP, have mutually agreed that Hurd would be afforded the opportunity to show good cause why the Allred Letter should be sealed.

33. Thereafter, Plaintiff's counsel requested the Report concerning the Standards of Business Conduct investigation reviewed by the Board. According to the Board's minutes, the Board reviewed a Report concerning the Standards of Business Conduct investigation on July 28 and 29, 2010. The Report concerning the Standards of Business Conduct investigation contained the scope of the investigation, the investigative activities undertaken, finding of possible violations, and potential disciplinary options for HP.

34. On October 21, 2010, Plaintiff's counsel again contacted HP to request the Report concerning the Standards of Business Conduct investigation reviewed by the Board. Despite further correspondence and discussions to resolve this matter without resorting to litigation compulsion, on November 3, 2010, HP's counsel sent a letter refusing to produce to Plaintiff what it for the first time styled as the "interim internal investigation report" concerning the Standards of Business Conduct, based on attorney client privilege and the work product doctrine. Plaintiff reiterated his request for the Report concerning the Standards of Business Conduct on November 4, 2010. On November 9, 2010, the Company said it "will not produce any reports from the internal investigation." The Company has also said it will only produce the remaining minutes once "they are finalized."

35. It is apparent that without Court intervention, HP will not comply with Plaintiff's request under Section 220. Plaintiff has no other options than to file this action to compel the production of these documents.

CAUSE OF ACTION

(Demand for Inspection Pursuant to 8 Del. C. §220)

36. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth herein.

37. On August 17, 2010, Plaintiff made written demand upon HP for the inspection of the books, records and documents set forth in the Demand Letter.

38. Plaintiff has complied fully with all requirements under Section 220 of the Delaware General Corporation Law respecting the form and manner of making a demand for inspection of HP's books, records, and documents.

39. Plaintiff's demand for inspection is for proper purposes, and the Report concerning the Standards of Business Conduct investigation and Board minutes related to Hurd's misconduct and the circumstances relating to his termination are necessary, essential, and directly related to the satisfaction of that proper purpose.

40. Plaintiff's demand for inspection has included ample evidence of a credible basis for the Court to conclude there was wrongdoing on the part of the Board in its costly and wasteful approach to Hurd's departure.

41. More than five business days have passed since HP received the Demand Letter, and HP has stated that it will not provided Plaintiff with access to the final investigative report concerning the Standards of Business Conduct investigation. HP has not provided Plaintiff with access, or agreed to provide him with access, to the Board minutes related to Hurd's misconduct.

42. By reason of the foregoing and pursuant to Section 220, Plaintiff is entitled to an order permitting him to inspect and make copies of the Report concerning the Standards of Business Conduct investigation and all Board minutes related to Hurd's violation of the Standards of Business Conduct.

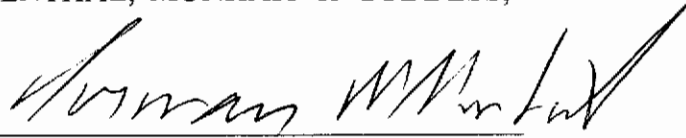
43. Plaintiff has no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment in his favor and prays for relief as follows:

- A. That the Court summarily order HP to produce to Plaintiff and/or his designees the Report concerning the Standards of Business Conduct investigation and all Board meeting minutes related to Hurd's conduct that are purportedly not finalized;
- B. That the Court award Plaintiff his costs and expenses, including reasonable attorneys' fees, in connection with this Section 220 action; and
- C. That Plaintiff be awarded such other and further relief as is just.

ROSENTHAL, MONHAIT & GODDESS,
P.A.



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November 18, 2010

CERTIFICATE OF SERVICE

I, James M. Yoch, Jr., Esquire, do hereby certify that on January 14, 2011, I caused a copy of the foregoing document to be served on the following counsel in the manner indicated below:

BY LEXISNEXIS FILE & SERVE

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