

## HP Beats Investor Claims Over Ex-CEO's Severance

By **Maria Chutchian**

*Law360, New York (September 25, 2012, 11:09 PM ET)* -- A California federal judge on Tuesday threw out a consolidated shareholder derivative complaint against Hewlett-Packard Co. and several of its officers over the severance package they gave the company's former CEO, but allowed the plaintiffs leave to amend.

U.S. District Judge Edward J. Davila ruled that the three plaintiffs had failed to show that HP's board of directors wasted corporate assets in handing former CEO Mark Hurd tens of millions in cash and benefits when he resigned following allegations of sexual harassment by an independent contractor.

The judge also ruled that the plaintiffs, including individual Louis Levine and a handful of pension funds, had failed to allege that the defendants breached their fiduciary duties and made misrepresentations in securities filings, dismissing their complaint without prejudice.

"Plaintiffs have failed to show that approving the separation agreement was so egregious or irrational that it could not have been based on a valid assessment of the corporation's best interests," Judge Davila said.

The judge shot down the plaintiffs' allegation that the agreement was not the result of a valid business decision and that the directors therefore must have had an interest in Hurd's severance. He said the complaint contained no allegation that they derived any personal benefit from their approval of the agreement.

He also rejected the plaintiffs' rebuttal to HP's argument that it obtained a release of potential claims in agreeing to the severance package, in which the plaintiffs contended that there was no indication that Hurd had any claims against HP to release. Judge Davila said they ignored the possibility that if the board had simply fired him or denied him severance, Hurd could have sued for wrongful termination or breach of his severance plan.

Additionally, the judge held that the plaintiffs failed to show that the cash and benefits Hurd received upon his departure were excessive.

"Plaintiffs do not allege that HP suffered significant losses during Hurd's tenure as CEO or that he otherwise was an ineffectual executive," he said.

Hurd resigned in August 2010 in the wake of sexual harassment allegations from Jodie Fisher, a former HP contractor. Hurd eventually settled with his accuser, but HP's board decided to ask the executive to step down after an investigation revealed he had fudged financial reports to conceal the relationship and paid Fisher for work she had not performed.

Counsel for the plaintiffs could not be immediately reached for comment Tuesday.

The HP officers are represented by Skadden Arps Slate Meagher & Flom LLP. Hurd is represented by Allen Matkins Leck Gamble Mallory & Natsis LLP. HP is represented by Morgan Lewis & Bockius LLP and Wilson Sonsini Goodrich & Rosati PC.

The plaintiffs are represented by A. Arnold Gershon, Gloria K. Melwani, Samuel M. Ward and Stephen R. Basser of Barrack Rodos & Bacine and Robin Winchester of Barroway Topaz Kessler Meltzer & Check LLP.

The case is In re: HP Derivative Litigation, case number 5:10-cv-03608, in the U.S. District Court for the Northern District of California.

--Additional reporting by Carolina Bolado. Editing by Elizabeth Bowen.

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