

## HP Escapes Shareholder Suit Targeting Former CEO

By Kurt Orzeck

*Law360, Los Angeles (June 26, 2014, 4:06 PM ET)* -- A California federal judge on Wednesday tossed a proposed shareholder class action claiming Hewlett Packard Co. stock prices dipped after CEO Mark Hurd was ousted over his relationship with a female contractor, ruling that it failed to adequately allege materiality and falsity.

Granting HP's motions to dismiss without leave to amend, U.S. District Judge Jon S. Tigar decided that the second amended complaint didn't cure the previous suit's failure to adequately allege that HP's standards of business conduct contained material misrepresentations.

HP argued late last month that investors hadn't shown they relied on company statements suggesting Hurd followed HP's code of ethics and that nothing in HP's SBC document promised that all employees comply with it.

Lead plaintiff Cement & Concrete Workers District Council Pension Fund contended that its second amended complaint had more detail over Hurd's conduct and how his conduct violated the SBC, but Judge Tigar disagreed.

"The court's prior order was not based on plaintiff's failure to plead Hurd's conduct with particularity; it was based on plaintiff's failure to identify an actionable representation," Wednesday's order said.

The suit is one of many filed in the wake of Hurd's 2010 departure from HP.

After the 2006 scandal, which implicated HP executives and members of its board of directors, HP and Hurd amended the company's SBC in May 2008 and 2010 to restore confidence among HP employees and shareholders, the plaintiff claimed.

Hurd said in the 2008 SBC that he wanted "to build trust in everything we do by living our values and conducting business consistent with the high ethical standards embodied within our SBC," court filings said.

All the while, Hurd was knowingly violating the revised SBC through his relationship with Jodie Fisher, an HP contractor who had a past career in adult films, according to the shareholders.

While Hurd settled sexual harassment claims with Fisher, HP's board asked him to step down after an investigation revealed he fudged financial reports to conceal the relationship and paid Fisher for work

she hadn't performed.

Hurd resigned Aug. 6, 2010, and a week later, HP's share price dropped 12.6 percent, court filings said.

Shareholders sued on behalf of those who bought HP stock between November 2007 and August 2010 and held the shares as of Aug. 6, 2010. They alleged that HP and Hurd made false and misleading statements prior to his resignation.

They alleged that Hurd had a duty to disclose any conduct in violation of the SBC and that the company filed similarly misleading SEC forms during the class period.

Judge Tigar ruled in August that the complaint didn't identify any section of the SBCs that would have been rendered false or misleading had Hurd been violating them, according to the judge.

Likewise, the SEC forms that HP filed, like the SBCs, were vague and routine statements concerning the retention of executives in general, the opinion said. Thus, they weren't material to the securities fraud claims.

The judge held Wednesday that, while the plaintiff had provided additional details concerning the content of the SBC, the details were similar to the allegations in the first amended complaint.

"The [SBC] is an ethical code of the kind the court previously found not to be actionable, and the [SBC] does not identify any representation by HP or Hurd that amounts to a warranty of ethical compliance with the [SBC]," Wednesday's order said. "Accordingly, plaintiff has not stated a securities law violation."

A spokesman for Morgan Lewis & Bockius LLP, which is representing HP, and an attorney for Hurd declined comment Thursday.

Attorneys for the plaintiffs didn't immediately respond to requests for comment Thursday.

Cement & Concrete Workers District Council Pension Fund and Retail Wholesale & Department Store Union Local 338 Retirement Fund are represented by Lionel Z. Glancy and Robert V. Prongay of Glancy Binkow & Goldberg LLP and Thomas W. Elrod, Ira M. Press and Sarah G. Lopez of Kirby McInerney LLP.

HP is represented by Marc Sonnenfeld, Laura Hughes McNally, Karen Pohlmann, Bob Gooding, Joe Floren, Elizabeth Frohlich, Jennifer Bagosy, Monique Cho, Jason Wilson and Carole Griffin of Morgan Lewis & Bockius LLP.

Hurd is represented by Lawrence D. Lewis, Keith P. Bishop, Amy Wintersheimer and Dwight Armstrong of Allen Matkins Leck Gamble Mallory & Natsis LLP.

The case is Cement & Concrete Workers District Council Pension Fund et al. v. Hewlett Packard Co. et al., case number 3:12-cv-04115, in the U.S. District Court for the Northern District of California.

--Additional reporting by Beth Winegarner. Editing by Philip Shea.