



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

HARVEY WEINSTEIN, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. ) C.A. No. 2017-0765-JRS  
 )  
 ) THE WEINSTEIN COMPANY )  
 ) HOLDINGS LLC, )  
 )  
 ) Defendant. )

**ANSWER OF DEFENDANT THE WEINSTEIN COMPANY HOLDINGS LLC TO VERIFIED COMPLAINT UNDER 6 DEL. C. § 18-305**

Defendant The Weinstein Company Holdings LLC (“Defendant”, “TWC” or the “Company”), by and through its undersigned counsel, respectfully submits its answer and defenses to the Verified Complaint under 6 *Del. C.* § 18-305 (the “Complaint”) as follows. All allegations in the Complaint that are not expressly admitted, including any averments contained or implicit in headings, are hereby denied. Defendant expressly reserves the right to seek to amend and/or supplement its answer and defenses as may be necessary.

**NATURE OF THE ACTION**

1. Plaintiff Harvey Weinstein brings this complaint against the company he founded and, until recently, of which he was the Co-Chairman, The Weinstein Company Holdings, LLC (“TWC” or the “Company”), to enforce his rights under 6 *Del. C.* § 18-305 and the Third Amended and Restated Limited Liability Company Agreement of The Weinstein Company Holdings, LLC dated as of October 21, 2005 (the “LLC Agreement”).

**ANSWER NO. 1:** Defendant denies the allegations in Paragraph 1, except admits that Plaintiff purports to describe the allegations in his Complaint.

2. Mr. Weinstein is an owner of Class W Stock and Class B Stock of TWC and a Class W and Class B Member of TWC. In addition, Mr. Weinstein is a Principal under the LLC Agreement.

**ANSWER NO. 2:** Defendant denies the allegations in Paragraph 2, except (i) admits the first sentence of Paragraph 2; and (ii) admits that the Third Amended and Restated Limited Liability Company Agreement, dated October 21, 2005, as amended (the “LLC Agreement”) lists Mr. Weinstein as a “Principal”.

3. Under Section 3.05 of the LLC Agreement, upon reasonable notice by a Member, the Member:

will have access to such books and records, and to all officers and employees (including the Principals so long as such Member owns at least 1% Percentage Interest) acting on behalf of the Company (subject to the performance of their day-to-day responsibilities) during normal business hours for any purpose reasonably related to such Member’s interest as a Member; provided that such Member shall exercise such rights in a manner that will not unreasonably interfere with the operation and administration of the Company.

**ANSWER NO. 3:** Defendant denies the allegations in Paragraph 3, except admits that the Company operates pursuant to the LLC Agreement and refers to the LLC Agreement for its contents.

4. By letter dated October 18, 2017, counsel for Mr. Weinstein made a demand under 6 *Del. C.* § 18-305 and Section 3.05 of the LLC Agreement on the Company (the “Demand”), through its counsel, attached hereto as Exhibit A, to inspect three categories of the Company’s books and records:

- a. All emails sent to or from Mr. Weinstein's email address, hw375@weinsteinco.com<sup>1</sup>;
- b. Mr. Weinstein's complete personnel, or employment, file; and
- c. The Code of Conduct referenced in paragraph 11(i) of Mr. Weinstein's employment agreement, dated as of October 20, 2015, and any and all amendments thereto.

**ANSWER NO. 4:** Defendant denies the allegations in Paragraph 4, except admits that counsel for Plaintiff sent a letter dated October 18, 2017, with the subject line "Demand for Access to Book and Record Pursuant to 6 Del. C. § 18-305", and refers to that letter for its contents. Defendant further states that the allegations in Footnote 1 set forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Footnote 1.

5. In the Demand, Mr. Weinstein explained that his purpose in obtaining the documents requested was to assist in his defense of civil and criminal allegations arising out of or in connection with his employment at TWC and potentially to aid in investigating claims arising out of the wrongful termination of his employment. Critically, Mr. Weinstein has already seen all of the documents he is requesting, and they are uniquely personal to him. He did not demand any confidential or proprietary documents. Instead, he solely requested his emails and personnel file.

**ANSWER NO. 5:** Defendant denies the allegations in Paragraph 5, except (i) admits that counsel for Plaintiff sent a letter dated October 18, 2017, with the subject line "Demand for Access to Book and Record Pursuant to 6 Del. C. § 18-

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<sup>1</sup> Footnote 1 to Paragraph 3 of the Complaint states: "Emails are considered books and records subject to production by the Company in response to a demand. *See Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 792-94 (Del. Ch. 2016)."

305”, and refers to that letter for its contents; and (ii) states that it is without information sufficient to confirm or deny whether Plaintiff has previously viewed the documents sought in the Complaint.

6. By letter dated October 20, 2017, the Company’s counsel responded to the Demand, rejecting the request to inspect the emails requested and Mr. Weinstein’s personnel file, but providing the Code of Conduct (the “Rejection”). A copy of the Rejection is attached hereto as Exhibit B.

**ANSWER NO. 6:** Defendant denies the allegations in Paragraph 6, except admits that counsel for the Company sent a letter dated October 20, 2017, with the subject line “Harvey Weinstein / Inspection Demand on The Weinstein Company Holdings LLC”, and refers to that letter for its contents.

7. On October 23, 2017, Mr. Weinstein’s counsel sent another letter (the “October 23 Letter”) to the Company’s counsel responding to the Rejection and clarifying the reasons why Mr. Weinstein’s request was reasonably related to his interests as a stockholder. A copy of the October 23 Letter is attached hereto as Exhibit C.

**ANSWER NO. 7:** Defendant denies the allegations in Paragraph 7, except admits that counsel for Plaintiff sent a letter dated October 23, 2017, with the subject line “Harvey Weinstein / Inspection Demand on The Weinstein Company Holdings LLC”, and refers to that letter for its contents.

8. In the October 23 Letter, Mr. Weinstein asked that the Company respond by the close of business on October 24, 2017. On October 24, the Company informed Mr. Weinstein's counsel that it was working on a response to the October 23 Letter. As of the filing of this Complaint on October 26, the Company has not responded to the October 23 Letter.

**ANSWER NO. 8:** Defendant denies the allegations in Paragraph 8, except admits that (i) counsel for Plaintiff sent a letter dated October 23, 2017, with the subject line "Harvey Weinstein / Inspection Demand on The Weinstein Company Holdings LLC" (the "October 23 Letter"), and refers to that letter for its contents; (ii) on October 24, 2017, counsel for the Company sent counsel for Plaintiff an email concerning the October 23 Letter, and refers to that email for its contents; and (iii) on October 26, 2017, counsel for Defendant sent a letter to counsel for Plaintiff concerning the October 23 Letter, and refers to that letter for its contents.

### **JURISDICTION**

9. This Court has exclusive jurisdiction to hear and determine this action pursuant to 6 *Del. C.* § 18-305.

**ANSWER NO. 9:** Defendant states that the allegations in Paragraph 9 state a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 9, except refers to 6 *Del. C.* § 18-305 for its contents.

### **THE PURPOSE OF THE DEMAND**

10. On October 5, 2017, the New York Times published an article that included claims and allegations of improper conduct by Mr. Weinstein. On October 8, 2017, the Company's Board of Representatives (the "Board") sent an

email to Mr. Weinstein purporting to terminate his employment. The email stated simply, “Your employment with The Weinstein Company is hereby terminated, effective immediately.” At about the same time the Board sent Mr. Weinstein his purported termination notice, the Board issued a press release which stated: “In light of the new information about misconduct by Harvey Weinstein that has emerged in the past few days, the directors of The Weinstein Company ... have determined, and have informed Harvey Weinstein, that his employment with The Weinstein company is terminated, effective immediately.” In an interview with the *New York Times* on October 8, 2017, Lance Maerov, a member of the Board, said that it had been “brought to [the Board’s] attention that Mr. Weinstein had violated the company’s code of conduct at some point in the last week,” but he did not specify what the supposed violation was.

**ANSWER NO. 10:** Defendant denies the allegations in Paragraph 10, except admits that (i) the *New York Times* published an article dated October 5, 2017 concerning Mr. Weinstein, and refers to that article for its contents; (ii) on October 8, 2017, Mr. Weinstein was terminated from TWC; (iii) also on October 8, 2017, Representatives of the TWC Board of Representatives (the “Board”) sent an email to Mr. Weinstein with the subject line “Notice”, and refers to that email for its contents; (iv) also on October 8, 2017, the Board issued a public statement concerning Mr. Weinstein, and refers to that statement for its contents; (v) Lance Maerov is a Representative on the Board; and (vi) an October 8, 2017 *New York Times* article purports to quote Mr. Maerov, and refers to that article for its contents.

11. On October 17, 2017, the TWC Board met and ratified the termination of Mr. Weinstein. Shortly thereafter, the Company removed Mr. Weinstein’s permission to access his email account at TWC and any other Company documents.

**ANSWER NO. 11:** Defendant denies the allegations in Paragraph 11, except admits that (i) Mr. Weinstein was terminated from TWC on October 8, 2017; (ii) on October 17, 2017, the Board ratified Mr. Weinstein's termination; and (iii) as a terminated former employee, Mr. Weinstein is not authorized to access TWC's internal email systems or other internal Company documents.

12. By letter dated October 19, 2017, counsel for a Special Committee of the TWC Board (the "Special Committee") sent a letter (the "Investigation Letter") to Mr. Weinstein's counsel informing her that the Special Committee had retained its own counsel "to conduct an independent investigation into asserted or actual misconduct by Mr. Harvey Weinstein while employed at TWC." In the Investigation Letter, the Special Committee's counsel asked Mr. Weinstein to produce or provide among other things:

- Any documents or property, whether hard copy or electronic, that Mr. Weinstein removed from the offices of TWC after June 1, 2017, including any computers or electronic devices paid for by TWC and any files belonging to TWC;
- Any documents, including but not limited to, credit card, bank or other financial statements reflecting expenses for Mr. Weinstein from January 1, 2005 to the present;
- Any documents concerning allegations of misconduct by Mr. Weinstein, including complaints, correspondence, settlement agreements and non-disclosure agreements. The Special Committee's counsel also requested that Mr. Weinstein agree to waive any non-disclosure agreements or confidentiality agreements to allow the parties to those agreements to speak without constraint to counsel;
- Immediate access to any mobile phones, computers or other electronic devices used by Mr. Weinstein;

- Electronic copies of emails, along with associated metadata, from all email accounts that Mr. Weinstein has used from January 1, 2005 to the present;
- Immediate access to any mobile phones, computers or other electronic devices used by Mr. Weinstein's assistant;
- Electronic copies of emails, along with associated metadata, from all email accounts that Mr. Weinstein's assistant has used from the time she began her work at TWC to the present; and
- Any other documents or information that you believe are relevant or related to our investigation.

**ANSWER NO. 12:** Defendant denies the allegations in Paragraph 12, except states that counsel for Mr. Weinstein has provided to counsel for TWC a letter dated October 19, 2017, that purports to be from counsel for the Special Committee of the Board, and refers to that letter for its contents.

13. From the stated purpose of the Investigation Letter to the categories of documents and information it seeks from Mr. Weinstein, it is clear that the Company is performing an investigation to determine whether and to what extent the Company may face liability because of the allegations against Mr. Weinstein.

**ANSWER NO. 13:** Defendant denies the allegations in Paragraph 13, except states that counsel for Mr. Weinstein has provided to counsel for TWC a letter dated October 19, 2017, that purports to be from counsel for the Special Committee of the Board, and refers to that letter for its contents.

14. On October 23, 2017, the Attorney General of the State of New York, Eric Schneiderman (the "NY AG"), announced that he had opened an investigation into whether the allegations against Mr. Weinstein reflect broad gender discrimination and other civil rights violations at TWC. The NY AG's Civil Rights Bureau sent a subpoena to the Company seeking a substantial amount of

information, including personnel files. The Company may face additional liability as a result of this investigation.

**ANSWER NO. 14:** Defendant denies the allegations in Paragraph 14, except admits that (i) on October 23, 2017, the Attorney General of the State of New York made a public statement concerning an inquiry related to TWC, and refers to that statement for its contents; and (ii) on October 23, 2017, the Company received a subpoena from the Civil Rights Division of the Office of the Attorney General of the State of New York, and refers to that subpoena for its contents.

15. On October 25, 2017, an actress sued TWC for \$5 million damages based on Mr. Weinstein's alleged conduct. In her complaint, the plaintiff alleged that the TWC Board had actual knowledge about Mr. Weinstein's alleged misconduct.

**ANSWER NO. 15:** Defendant denies the allegations in Paragraph 15, except admits that, on October 24, 2017, Dominique Huett filed a complaint against the Company in the Superior Court for the State of California for the County of Los Angeles, and refers to that complaint for its contents.

16. Because of the many investigations and actions that have been announced and are anticipated, Mr. Weinstein's counsel has written counsel for the Company to ask that the Company voluntarily provide certain information, including Mr. Weinstein's emails, to Mr. Weinstein. The purpose of that request, and the request made in the Demand and October 23 Letter, is to review the emails and personnel file to determine whether there is any exculpatory information in those files that would assist the Company in defending against any claims. Mr. Weinstein believes that his email account – which is the primary, if not only, account he used during the term of his employment by the Company – will contain information exonerating him, and therefore the Company, from claims that may be asserted against him or the Company. Further, Mr. Weinstein is in a unique position to offer insight, and further explain and contextualize his emails. By

providing Mr. Weinstein access to his emails, he can more efficiently assist the Company in its investigation of these issues and defense of the NY AG investigation and any other claims asserted against the Company, such as the one filed on October 25, 2017, against TWC based on Mr. Weinstein's alleged conduct.

**ANSWER NO. 16:** Defendant denies the allegations in Paragraph 16, except admits that counsel for Mr. Weinstein has sent correspondence requesting access to certain Company documents, and refers to that correspondence for its contents.

17. Indeed, Mr. Weinstein's brother, Robert Weinstein, who, like Mr. Weinstein, is a Principal of TWC and the only other holder of Class W shares besides Mr. Weinstein, was recently accused of similar improper conduct, and expressly identified his emails as containing exonerating or exculpatory information. Mr. Weinstein seeks no more than to be able to have access to the same information as his brother does to prevent further harm to the Company.

**ANSWER NO. 17:** Defendant denies the allegations in Paragraph 17, except admits that (i) Robert Weinstein is Mr. Weinstein's brother; (ii) Robert Weinstein is a Class W shareholder and a Principal of TWC; and (iii) the LLC Agreement lists Robert Weinstein and Mr. Weinstein as the only two holders of Class W Stock.

18. Assisting the Company in its investigation reasonably relates to Mr. Weinstein's interest as a Member of TWC because he maintains, along with Mr. Robert Weinstein, the largest individual financial stake in the Company. Should the Company be forced to pay out unjustified settlements or judgments, Mr. Weinstein's interest as a Member will suffer as a result. The LLC Agreement requires that with certain exceptions, all cash must be distributed every year to the Members. The less cash available for distribution, the less Mr. Weinstein will receive as a Member.

**ANSWER NO. 18:** Defendant denies the allegations in Paragraph 18, except admits that the Company operates pursuant to the LLC Agreement, and refers to the LLC Agreement for its contents.

19. In addition, press reports have indicated that the Board is exploring a sale of the Company. If the Board agrees to sell the Company for less than it would be worth because of the threat of unsubstantiated or false allegations, Mr. Weinstein will receive less than he should have received as a Member.

**ANSWER NO. 19:** Defendant denies the allegations in Paragraph 19, except states that it is without knowledge or information sufficient to admit or deny the contents of unspecified “press reports”.

20. Further, certain press reports have mentioned information that Mr. Weinstein believes could have come only from his personnel file. By obtaining his personnel file, Mr. Weinstein can confirm that the information being reported in the press could have come only from his personnel file, and then pursue potential claims against the Company and its Representatives or officers for mismanagement by leaking confidential Company information.

**ANSWER NO. 20:** Defendant denies the allegations in Paragraph 20, except states that it is without knowledge or information sufficient to admit or deny the contents of unspecified “press reports” or Plaintiff’s subjective beliefs.

21. By reason of the foregoing, Mr. Weinstein is entitled to inspect his emails and his personnel file.

**ANSWER NO. 21:** Defendant denies the allegations in Paragraph 21.

## **COUNT I.**

### **Inspection of Books and Records in the Demand**

22. Plaintiff repeats and realleges each of the allegations in the preceding paragraphs as if fully set forth herein.

**ANSWER NO. 22:** Defendant incorporates by reference its answers to the preceding allegations as though fully set forth herein.

23. Plaintiff stated a proper purpose in the Demand. The documents sought in the Demand are necessary and essential to the purpose of the Demand.

**ANSWER NO. 23:** Defendant denies the allegations in Paragraph 23.

24. Under 6 *Del. C.* § 18-305, upon presentation of a demand with a proper purpose, the Company must produce, among other things, “[o]ther information regarding the affairs of the limited liability company as is just and reasonable.”

**ANSWER NO. 24:** Defendant states that the allegations in Paragraph 24 state a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 24, and refers to 6 *Del. C.* § 18-305 for its contents.

25. Similarly, under Section 3.05 of the LLC Agreement, the Members of TWC enjoy broad inspection rights, and even rights to access officers and employees, for “any” purpose reasonably related to their interests as Members.

**ANSWER NO. 25:** Defendant denies the allegations in Paragraph 25, except admits that the Company operates pursuant to the LLC Agreement, and refers to the LLC Agreement for its contents.

26. The Demand is reasonably related to Mr. Weinstein’s interests as a Member because if given access, Mr. Weinstein may cooperate more fully with the Company’s investigation and potentially reduce the Company’s liability, and, ultimately, improve Mr. Weinstein’s distributions on a regular basis or in a merger or other transaction.

**ANSWER NO. 26:** Defendant denies the allegations in Paragraph 26.

27. In addition, by accessing his personnel file, Mr. Weinstein can determine whether Company employees have leaked confidential Company information.

**ANSWER NO. 27:** Defendant denies the allegations in Paragraph 27.

28. Mr. Weinstein is entitled to an order compelling the Company to produce the documents sought in the Demand.

**ANSWER NO. 28:** Defendant states that the allegations in Paragraph 28 state a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 28.

WHEREFORE, Mr. Weinstein respectfully requests that the Court enter its Orders, Judgments and Decrees:

- A. Declaring that Mr. Weinstein is entitled to inspect the documents described in the Demand (with the exception of the Code of Conduct);
- B. Ordering the Company to produce the documents described in the Demand (with the exception of the Code of Conduct) within five business days of the date of the Order;
- C. Awarding Mr. Weinstein his reasonable attorneys' fees, expenses and costs; and Granting such other and further relief as the Court deems just and proper.

**ANSWER TO PRAYER FOR RELIEF:** Defendant states that the allegations in the prayer for relief state legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in the prayer for relief, except states that Mr. Weinstein purports to describe certain relief sought in his Complaint.

## **AFFIRMATIVE DEFENSES**

The Company pleads the following defenses without assuming or shifting any burden of production or proof that would otherwise rest with Mr. Weinstein. The Company reserves the right to assert additional defenses, as warranted by facts learned through investigation and discovery, and expressly reserves the right to amend its answer to assert such additional defenses.

### **FIRST DEFENSE**

Mr. Weinstein has failed to state a claim upon which relief may be granted.

### **SECOND DEFENSE**

Acquiescence to the Demand is not in the best interests of the Company.

### **THIRD DEFENSE**

Acquiescence to the Demand would unreasonably interfere with the operation and administration of the Company.

### **FOURTH DEFENSE**

Mr. Weinstein is not entitled to attorneys' fees, expenses or costs in connection with this action.

### **FIFTH DEFENSE**

Mr. Weinstein seeks to inspect documents that contain confidential information of the Company, including sensitive business information. To the extent any inspection may be granted by the Court, it should be subject to appropriate limitations on the use of any such documents.

\* \* \*

WHEREFORE, TWC respectfully requests that the Court enter an order:

- (a) Dismissing the Complaint with prejudice;
- (b) Awarding the Company the costs of defending this action, including reasonable attorneys' fees and costs; and
- (c) Awarding such other relief as the Court deems just and proper.

ROSS ARONSTAM & MORITZ LLP

/s/ David E. Ross

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Dated: November 15, 2017

**CERTIFICATE OF SERVICE**

I, David E. Ross, hereby certify that on November 15, 2017, I caused true and correct copies of the foregoing to be served upon the following counsel of record via File & Serve*Xpress*:

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*/s/ David E. Ross*

David E. Ross (Bar No. 5228)