



**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. )

**DEFENDANT’S OPPOSITION TO  
PLAINTIFF’S MOTION TO EXPEDITE**

Defendant The Weinstein Company Holdings LLC (“TWC” or “Company”) respectfully submits this Opposition to Plaintiff’s Motion to Expedite (“Motion”).

**PRELIMINARY STATEMENT**

1. Plaintiff Harvey Weinstein is a former employee of TWC, who was terminated from the Company on October 8, following reports of sexual harassment and assault by scores of women spanning several decades. With new reports against Weinstein mounting almost daily, the allegations are now being investigated by the Company, various police departments and the State of New York. Victims have filed lawsuits against the Company and/or Weinstein. In addition, Weinstein has sued the Company in a confidential arbitration challenging his termination.

2. Shortly after he was fired, Weinstein informally requested access to internal Company documents—namely his emails and personnel file—so that he could respond to the allegations and investigate his claims for alleged wrongful termination. TWC refused Weinstein’s request, but agreed to produce, on a voluntary basis, the Company’s Code of Conduct as well as corporate documents setting forth Weinstein’s rights and obligations as a TWC shareholder. Unsatisfied, Weinstein served a books and records demand (“Demand”) seeking the very same documents (internal Company emails and his personnel file) under the Delaware Limited Liability Company Act (“LLC Act”) and the Third Amended and Restated Limited Liability Company Agreement (“LLC Agreement”). As before, Weinstein attempted to justify the Demand with an array of personal reasons, none of which constituted a proper purpose for a books and records demand under Delaware law. When TWC stated again that it would not provide these documents, Weinstein brought a Verified Complaint against the Company (“Complaint”). That same day, Weinstein commenced a JAMS arbitration against TWC alleging wrongful termination.

3. Weinstein does not assert that he needs these documents based on *any* purpose related to his interest as a member of the LLC, nor does he seek the types of documents (minutes and other Company records) regularly the subject of a books and records demand. Rather, the Complaint avers that Weinstein needs

these internal TWC documents to “assist” the Company in responding to investigations and lawsuits arising from Weinstein’s own wrongdoing. Weinstein makes this claim even though no one has sought his “assistance”, and even though none of these actions was pending when Weinstein first requested the documents.

4. The Complaint already calls for a summary proceeding, and the Company is prepared to litigate this matter on the typical schedule for such proceedings. But Weinstein wants more. He claims that the Company’s need for his “assistance” is so dire that his Complaint should be resolved at lightning speed, with full briefing and argument—but no discovery or trial—by November 10, a mere 15 days from filing his Complaint. (Mot. ¶ 13.) But Weinstein has not shown a proper basis for expediting this already summary proceeding, and certainly has not justified the unreasonably compressed schedule he proposes. Weinstein does not assert a colorable claim justifying the Demand (*infra* Argument Section I), or even feign to allege irreparable harm in support of expedition (*infra* Argument Section II). At the very least, TWC should be afforded the opportunity to build a factual record demonstrating that (i) Weinstein’s Demand is motivated by an improper, personal purpose; and (ii) it is not in the Company’s best interests for Weinstein to have immediate access to the documents sought (*infra* Argument Section III).

5. Instead, like any other litigant who wants Company documents for personal litigation purposes, Weinstein should obtain the documents through the regular discovery process. He should not be allowed to rush this Court into blessing an end-run around the discovery rules governing the arbitration of his wrongful termination claims. That is particularly true where Weinstein's goals are directly adverse to the Company and where the Company is complying with multiple ongoing investigations. Weinstein's Motion should be denied, and the Court should set this matter for trial, following discovery, in three to four months, subject to the Court's availability.

### **STATEMENT OF FACTS**

#### **I. Weinstein Is Terminated Following Egregious Misconduct.**

6. In early October 2017, *The New York Times* and *The New Yorker* published articles chronicling allegations of sexual harassment, assault and rape by Weinstein. Since then, approximately 60 women have come forward to accuse Weinstein of forcible sexual misconduct.

7. On October 8, 2017, TWC's Board of Representatives ("Board") terminated Weinstein's employment. The Board formally ratified its decision on October 17, and Weinstein resigned from the Board. Following his termination, Weinstein requested that TWC voluntarily provide him access to his internal Company emails and personnel file so that he could defend himself against the

allegations, as well as analyze potential claims against the Company for terminating him. TWC declined Weinstein's request.

## **II. Weinstein Demands Company Documents.**

8. On October 18, 2017, Weinstein sent the Demand to TWC, seeking his internal Company emails, his personnel file, and the TWC Code of Conduct. (Mot. Ex. A.) Consistent with his prior request, Weinstein said he needed these documents (i) to aid his own "defense of civil and criminal allegations arising out of and/or in connection with his employment with TWC"; and (ii) to support potential "claims arising out of the wrongful termination of his employment". (*Id.* at 1.)

9. TWC responded to Weinstein's Demand on October 20, 2017. Due to the purely personal nature of the requests, the Company declined to provide any documents under the Demand, and set forth the bases for its refusal under Delaware law. (Mot. Ex. B.) The Company agreed, however, to voluntarily provide Weinstein with the TWC Code of Conduct and corporate documents that set forth Weinstein's rights as a TWC shareholder.

10. On October 23, 2017, Weinstein sent a second letter that did not dispute the Company's conclusions. Instead, Weinstein sought to justify the Demand with new, previously unasserted bases. (Mot. Ex. C.) While TWC was in

the process of responding to that second (equally improper) request, Weinstein filed the Complaint and instant Motion to Expedite (the “Action”).

11. Weinstein now claims that he needs Company documents primarily “to assist the Company” in its defense of a recently commenced investigation by the New York State Attorney General, as well as a lawsuit brought by an actress against the Company alleging that Weinstein abused her. (Compl. ¶¶ 5, 15, 20.) But Weinstein’s third attempt to obtain his Company emails and personnel file is once again improper.

### **ARGUMENT**

12. In order to prevail on a motion to expedite, “a plaintiff must demonstrate a colorable claim and threatened imminent irreparable harm, such that the threat of harm justifies the costs to the litigants and the court of an expedited proceeding.” *Lechliter v. Del. Dep’t of Nat. Res. & Env’tl. Control*, 2013 WL 5718888, at \*2 (Del. Ch. Oct. 22, 2013). “Only when unique circumstances are present . . . will [the Court] entertain a request to ‘expedite’ a proceeding that is already summary in nature.” *Brown v. Rite Aid Corp.*, 2004 WL 723153, at \*1 (Del. Ch. Mar. 29, 2004).

13. None of the requirements for an expedited hearing is present here. *First*, Weinstein has failed to articulate a colorable claim to inspect the requested documents. (*Infra* Section I.) *Second*, Weinstein has failed to show a threatened,

imminent, irreparable harm. (*Infra* Section II.) *Third*, Weinstein has failed to show that unique circumstances justify his extraordinarily condensed schedule. (*Infra* Section III.)

**I. Weinstein Has Not Asserted A Colorable Claim To Inspect His Company Emails and Personnel File Under Delaware Law.**

14. To assert a valid claim to inspect documents under Section 18-305(a) of the LLC Act, a member of an LLC must (i) state “a proper purpose” that is reasonably related to the member’s interest as a member of the LLC, and (ii) establish “that the requested documents are ‘essential and sufficient’ to that stated purpose”. *E.g., Apogee Invs., Inc. v. Summit Equities LLC*, 2017 WL 4269013, at \*2 (Del. Ch. Sept. 22, 2017).<sup>1</sup> Board minutes and resolutions are “prime examples of documents to which a shareholder in a [books and records] action is entitled”. *Khanna v. Covad Commc’ns Grp., Inc.*, 2004 WL 187274, at \*9 (Del. Ch. Jan. 23, 2004). Emails, however, are rarely produced as part of a books and records request, unless there is clear evidence that those emails are necessary to a proper purpose. *E.g., id.* at \*8 (holding that it would be “excessive” to order “the production of all communications, including e-mails, among directors and

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<sup>1</sup> The LLC Agreement likewise requires Plaintiff to assert a “purpose reasonably related to [his] interest as a Member” of TWC. (LLC Agreement § 3.05.)

officers”). Here, Weinstein’s Motion must fail because the underlying Complaint is far from colorable; it is defective.<sup>2</sup>

A. Weinstein Has Failed To State A Proper Purpose or To Show That the Documents Are Essential to That Purpose.

15. Under Delaware law, personal purposes are not “proper” purposes. *E.g., Pogue v. Hybrid Energy, Inc.*, 2016 WL 4154253, at \*3 n.16 (Del. Ch. Aug. 5, 2016) (holding that plaintiff’s purposes of (i) investigating claims for breach of contract and (ii) determining the validity of a corporate act were improper because “both relate[d] to an individual interest”); *Dalmar Mgmt., Inc. v. Oilspace, Inc.*, C.A. No. 12780-VCS, at 10:21-22 (Del. Ch. Aug. 16, 2017) (TRANSCRIPT) (holding that plaintiff’s purpose of seeking documents “to vindicate only [plaintiff’s] individual interests or rights” was not proper). By contrast, purposes that *are* proper under Delaware law may include: (i) “determin[ing] the value of [a member’s] stock interest”; (ii) determining a company’s “condition and affairs so that [a member] can vote and otherwise exercise his rights in an informed manner”; and (iii) “determin[ing] the reason for the nonpayment of dividends”. *Berkowitz v. Legal Sea Foods, Inc.*, 1997 WL 153815, at \*1 (Del. Ch. Mar. 24, 1997) (holding that such stated purposes may be proper, but nevertheless denying plaintiff’s

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<sup>2</sup> There is also a procedural question as to whether Weinstein’s claim to inspect the Company’s documents must be arbitrated pursuant to the LLC Agreement’s broad arbitration provision. (See LLC Agreement § 12.07.)

demand because “[p]laintiff’s primary (if not sole) purpose, [was] to gather evidence to prosecute [another action], which only further[ed] his personal interests, as distinguished from his interests as a [] stockholder”). After three tries, a personal purpose is all Weinstein can offer.

16. Weinstein claims that he needs imminent access to the requested documents “to assist the Company in its investigation and in defense of the NY AG investigation and claims asserted against [the Company]” as a result of Weinstein’s misconduct. (Mot. ¶ 9.) Weinstein has not cited a single case—nor is the Company aware of any—holding that this is a “proper purpose” under Delaware law. Such a purpose has nothing to do with Weinstein’s interest as *a member of the LLC*, but instead relates solely to his individual interest in the investigations into his misconduct. (*E.g.*, Compl. ¶ 16 (“Mr. Weinstein is in a unique position to offer insight, and further explain and contextualize his emails.”)).<sup>3</sup>

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<sup>3</sup> Weinstein claims that his “brother, Robert Weinstein . . . recently asserted that his emails would exonerate him from claims similar to those being asserted against [Harvey Weinstein]. [Weinstein] simply requests that he has the same information available to him to assist the Company as does his brother”. (Mot. ¶ 9.) To be clear, not a single woman has accused Robert Weinstein of sexual assault or rape—let alone of decades of predatory sexual behavior. Weinstein’s suggestion that “similar” allegations have been levied against both men is simply false and reveals the true, personal motivation behind the Demand.

17. Furthermore, even if this purpose were proper—and it is not—Weinstein has failed to show that the requested documents are “essential” to that purpose. *Sanders v. Ohmite Holding, LLC*, 17 A.3d 1186, 1194 (Del. Ch. 2011) (“[T]he burden of proof is always on the party seeking inspection to establish that each category of the books and records requested is essential and sufficient to [the stockholder’s] stated purpose.”). Weinstein claims the documents will “prevent the Company from entering into unjustified settlements” or from offering the Company for sale for less than full value (a “purpose” he never otherwise articulates). (Mot. ¶¶ 10-11.) But the Company has already launched an independent investigation through a Special Committee of the Board with its own separate, independent counsel; is already responding appropriately to the claims against it; and is cooperating fully with all investigations into Weinstein’s misconduct. Respectfully, TWC does not need Weinstein’s “assistance”.<sup>4</sup>

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<sup>4</sup> In the Complaint, Weinstein also avers that he needs the documents to investigate certain press reports that “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”. (Compl. ¶ 20.) Not surprisingly, Weinstein does not rely on this purpose in his Motion, as it is plainly improper. *See Bizzari v. Suburban Waste Servs., Inc.*, 2016 WL 4540292, at \*5 (Del. Ch. Aug. 30, 2016) (“a stockholder’s purpose must not be adverse to the company, unrelated to a legitimate interest of the stockholder, or intended to harass the corporation”); *see also Haque v. Tesla Motors, Inc.*, 2017 WL 448594, at \*4 (Del. Ch. Feb. 2, 2017) (“[M]erely offering a suspicion of wrongdoing is not enough to justify a Section 220 demand.”).

## II. Weinstein Has Failed To Show Imminent Irreparable Harm.

18. Weinstein's motion to expedite also fails the second prong of the Delaware test because he has not shown "threatened imminent irreparable harm". *See Sonet v. Plum Creek Timber Co.*, 1998 WL 749445, at\*2 (Del. Ch. Sept. 23, 1998) (Plaintiff must establish that, absent expedition, it will suffer "immediate, discernible harm for which there is no adequate remedy at law"). Expedited proceedings should not be granted if "the injury to Plaintiff is merely speculative or if the injury can be fully compensated after a full trial on the merits, either by an award of damages or by any other form of final equitable relief". *Id.*

19. Nowhere does Weinstein assert that he will suffer imminent, irreparable harm if this summary proceeding is not expedited. The closest Weinstein comes is stating that, from "the progress of events since Mr. Weinstein's purported termination, such as the Company's investigation, the NY AG investigation, and the lawsuit filed on October 25, 2017, it is plain that events arising out of these issues are proceeding apace. The sooner this issue is resolved, the sooner that Mr. Weinstein can begin to assist the Company in its defense." (Mot. ¶ 13.) Putting aside that the Company does not need Weinstein's assistance as discussed above, none of these matters is proceeding at a pace that would justify the 15-day schedule Weinstein proposes.

### III. Weinstein's Proposed Schedule Is Unreasonable, Even if an Expedited Schedule Were Appropriate.

20. Even if the Court were inclined to expedite, there is no reason to complete this proceeding in 15 days—without any discovery or trial. Weinstein insists that the matter “can and should be resolved on a paper record without discovery or a trial”. (Mot. ¶ 12.) While the Company believes the Complaint is facially deficient, it is entitled to develop a record before this Court rules on the merits. For example, TWC seeks discovery of the motive behind the Demand in order to demonstrate that Weinstein's purpose is personal and, therefore, improper.<sup>5</sup> See *Highland Select Equity Fund L.P. v. Motient Corp.*, 2007 WL 907650, at \*1 (Del. Ch. Mar. 14, 2007), *aff'd*, 922 A.2d 415 (Del. 2007). The Company will also take discovery showing that compliance with the Demand is not in the best interests of the Company because, among other reasons, it would interfere with the ongoing internal investigation into Weinstein's conduct. *E.g.*, LLC Act § 18-305(c) (authorizing a company to withhold documents where

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<sup>5</sup> Notably, the same day that Weinstein filed this Action, he served a Demand for Arbitration on TWC and the Board at JAMS challenging his termination from the Company. See *Harvey Weinstein v. The Weinstein Company Holdings LLC, et al.*, Demand for Arbitration (JAMS, Oct. 25, 2017). Indeed, the arbitration is the very action that Weinstein stated he would bring when he first requested access to Company files. Weinstein will surely seek these same materials in connection with that arbitration and may be entitled to them in the normal course of discovery. Weinstein should not, however, be permitted to use this Action as an end-run around the JAMS discovery rules. *E.g.*, *United Techs. Corp. v. Treppel*, 109 A.3d 553, 559 (Del. 2014).

disclosure would not be in the best interests of the Company); LLC Agreement § 3.05 (allowing TWC to restrict access where the demand would “unreasonably interfere with the operation and administration of the Company”). TWC would be prejudiced if it were denied the opportunity to develop this record as a result of an unnecessarily compressed schedule. *E.g., Oliver Press Partners, LLC v. Decker*, 2005 WL 3441364, at \*1 (Del. Ch. Dec. 6, 2005).<sup>6</sup>

### CONCLUSION

21. For the foregoing reasons, Defendant respectfully requests that the Court deny Weinstein’s Motion and instead set this matter for trial in three to four months. The parties can meet and confer and then jointly submit to the Court an appropriate proposed scheduling order.

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<sup>6</sup> See also *Shiva Stein v. The Bancorp Inc.*, C.A. No. 2017-0071-JRS (Del. Ch. Feb. 2, 2017) (trial scheduled nearly six months after complaint was filed); *Sukant Jain vs. TeenSafe, Inc.*, C.A. No. 12494-VCS (Del. Ch. July 29, 2016) (trial scheduled nearly three months after complaint was filed); *David B. Cohen v. Dental Recycling North America*, C.A. No. 12214-VCS (Del. Ch. May 2, 2016) (trial scheduled nearly four months after complaint was filed).

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Deadline

**CERTIFICATE OF SERVICE**

I, David E. Ross, hereby certify that on November 1, 2017, I caused true and correct copies of the foregoing Opposition to Plaintiff's Motion to Expedite to be served upon the following counsel of record via File & ServeXpress:

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