

**[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—N.D. Cal.: Court grants HP’s motion to dismiss based on plaintiff’s failure to state a claim, \(Jun. 30, 2014\)](#)**

Securities Regulation Daily Wrap Up

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By R. Jason Howard, J.D.

The United States District Court for the Northern District of California granted defendant Hewlett-Packard Company’s (HP) motion to dismiss the plaintiff’s second amended complaint because it failed to state a claim for relief under Exchange Act Section 10(b). The plaintiff’s Section 20(a) claim failed because it was not predicated upon an adequately pleaded Exchange Act violation ([Retail Wholesale & Department Store Union Local 338 Retirement Fund v. Hewlett-Packard Co.](#), June 30, 2014, Tigar, J.)

**Background.** In 2006, HP was at the center of an ethics scandal in which several HP executives and board members were involved in an unethical investigation into potential information leaks at the company. As a result, several executives and board members were ousted. Mark Hurd had become CEO in 2005 but he was not implicated in the scandal.

As a result of the scandal, HP implemented its Standards of Business Conduct (SBC), and in 2008 that was updated. In 2007, HP retained Jodie Fisher as an independent consultant to help host executive events and to introduce Hurd to important HP customers at hotel receptions around the world. In 2009, Fisher stopped contracting with HP and in 2010, Fisher’s attorney sent HP a letter alleging that Hurd had sexually harassed Fisher and that her contract was terminated because she refused his sexual advances. The letter also alleged that Hurd had told Fisher about HP’s plan to acquire Electronic Data Services (EDS) at a time that the information was confidential.

The investigation that followed revealed that Hurd had filed inaccurate expense reports, and that there were factual inaccuracies in the account Hurd initially gave to the board regarding the allegations. Hurd resigned in August 2010 and HP’s stock saw a 69 percent decline from \$46.00 per share to \$14.00 per share by the end of 2012.

**Allegations.** The plaintiff, the Retail Wholesale & Department Store Union Local 338 Retirement Fund, alleged that HP and Hurd committed securities fraud in violation of Exchange Act Sections 10(b) and 20(a) and Rule 10b-5. The plaintiff’s second amended complaint was filed on behalf of a class of shareholders who purchased HP stock between November 13, 2007, and August 6, 2010 (the class period), and who held the shares as of August 6, 2010. The complaint alleged that HP and Hurd made material misrepresentations when HP adopted its SBC without disclosing that Hurd was violating the SBC by submitting false expense reports and making unwanted sexual advances on an HP contractor.

**Outcome.** The court dismissed the plaintiffs SAC without leave to amend because the court had already provided the plaintiff an opportunity to cure deficiencies in the complaint.

The case is [No. 12-cv-04115-JST](#).

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