



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

HARVEY WEINSTEIN,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
THE WEINSTEIN COMPANY	)	C.A. No.
HOLDINGS, LLC,	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT UNDER 6 DEL. C. § 18-305**

Plaintiff Harvey Weinstein, by and through his undersigned attorneys, for his Verified Complaint under 6 *Del. C.* § 18-305 against The Weinstein Company Holdings, LLC, alleges as follows:

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”).

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.

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.

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](mailto: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.

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

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<sup>1</sup> 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).

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.

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.

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.

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.

## **JURISDICTION**

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

## **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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.



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

**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.

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.

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.”

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.

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.

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

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

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
- D. Granting such other and further relief as the Court deems just and proper.

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Dated: October 26, 2017

/s/ Peter B. Ladig

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