

1 **** E-filed January 29, 2010 ****

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7 **NOT FOR CITATION**
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 In re ATMEL CORPORATION
12 DERIVATIVE LITIGATION

No. C06-04592 JF (HRL)

13 **ORDER GRANTING IN PART AND**
14 **DENYING IN PART DEFENDANT'S**
15 **MOTION TO COMPEL**

16 **[Re: Docket No. 237]**

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18 This litigation is a shareholder derivative action against nominal defendant Atmel
19 Corporation ("Atmel") and several individual defendants relating to alleged improper backdating of
20 Atmel stock options. Defendant J. Michael Ross, Atmel's former General Counsel, now moves to
21 compel production of several categories of documents and an updated privilege log. Atmel opposes
22 the motion. Upon consideration of the motion papers, the arguments presented at the hearing, and
23 the parties' joint status report, this court grants Ross's motion in part and denies it in part.

24 **DISCUSSION**

25 **A. Historical and New Documents**

26 The court held a hearing on this motion on December 22, 2009. At the hearing, the court
27 ordered the parties to meet and confer to develop a set of search terms and custodian lists that both
28 parties would find satisfactory to address Ross's request for production of additional documents for
both the "historical" period (those generated from January 1, 1997 to July 31, 2006) and the "new"
period (those generated from July 31, 2006 to June 27, 2007). Pursuant to that order, the parties

1 submitted a joint status report to the court on January 29, 2010 that detailed their meet and confer
2 efforts. In the joint report, Ross indicates that he withdraws his motion as to additional searches for
3 both “historical” and “new” documents at this time. Accordingly, the court DENIES AS MOOT his
4 motion as to these requests.

5 **B. Restatement Documents and Document Retention Policies**

6 Ross also moves to compel documents relating to Atmel’s financial restatements, document
7 retention policies, and nonprivileged document preservation notices. At the motion hearing, the
8 parties confirmed that Atmel had made appropriate production for these categories and would be
9 updating its privilege log to reflect notices it withheld on privilege grounds. As a result, the court
10 DENIES AS MOOT Ross’s motion as to these requests.

11 **C. Privilege Log**

12 In the joint report, the parties represent that Atmel will update its privilege log by January
13 29, 2010. To the extent this has not occurred, the court GRANTS Ross’s motion for an updated
14 privilege log. Furthermore, the court GRANTS Ross’s request that the court require Atmel to
15 update its privilege logs within thirty days of any subsequent production.

16 **D. Travel Investigation and Proxy Fight Documents**

17 Before Atmel initiated its investigation into stock option backdating, it investigated
18 allegations that some of its executives were using company money for personal travel expenses.
19 After this investigation, Atmel terminated Ross’s employment as it found he had misused such
20 travel funds. Atmel also terminated its Chief Executive Officer, George Perlegos, for similar
21 reasons. Four days after the travel investigation ended, Atmel announced its investigation into stock
22 option backdating using the same outside counsel that had just recommended Ross’s and Perlegos’s
23 terminations. Perlegos then instituted a proxy fight for control of Atmel’s board, which he later
24 withdrew during the course of the stock option backdating investigation.

25 Ross moves to compel production of all documents relating to the travel investigation and
26 proxy fight. Atmel argues that these requests are irrelevant because such “documents have nothing
27 to do with stock options or the subject matter of this litigation.” (Opp’n 5.) Ross counters that the
28 travel investigation documents might show that Atmel was biased against him during the later

1 backdating investigation. He also argues that the proxy documents could show that Atmel was
2 motivated to blame him and Perlegos in the backdating investigation in order to discredit Perlegos
3 during the proxy fight.

4 Ross has failed to convince the court that his speculative interest in the travel investigation
5 and proxy fight documents are relevant or likely to produce admissible evidence in this case, which
6 focuses on Ross's participation, or lack thereof, in stock option backdating. Ross alleges generally
7 that Atmel was biased against him during the stock option backdating investigation. Yet evidence
8 of that alleged bias would surely appear in documents pertaining to the stock option investigation at
9 issue in this case—documents that Ross already has—instead of in documents for the earlier,
10 unrelated travel investigation or in documents for a proxy fight that did not involve Ross at all.
11 Consequently, Ross's motion as to the travel investigation and proxy fight documents is DENIED.

12 **IT IS SO ORDERED.**

13 Dated: January 29, 2010

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16 HOWARD F. LLOYD
17 UNITED STATES MAGISTRATE JUDGE
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26 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
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