



1 considered each the documents filed by all parties, including Copeland’s reply, and finds this matter  
2 suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b). The motion hearing  
3 scheduled for December 2, 2011, is therefore vacated. Copeland’s motion will be denied for as  
4 explained below.

5 **I. FACTUAL AND PROCEDURAL BACKGROUND**

6 For the purposes of clarity and to emphasize their independent nature, each of the three cases  
7 at issue are discussed under separate headings.

8 *In re HP Derivative Litigation*

9 On November 1, 2010, the court consolidated four related shareholder derivative actions  
10 previously filed against certain officers and directors of Hewlett-Packard Company (“HP”).<sup>2</sup>  
11 Specifically, plaintiffs allege in the consolidated complaint filed December 3, 2010, that HP’s Board  
12 of Directors, CEO and Chairman of the Board Hurd breached their fiduciary duty and wasted  
13 corporate assets in connection with the Board granting Hurd an “unreasonable and grossly excessive  
14 severance award upon his resignation” from HP. See Complaint, Docket Item No. 60, Case No.  
15 5:10-cv-03608 EJD, at ¶ 1. Plaintiffs in the HP Derivative action further allege that shareholder  
16 plaintiffs did not make a pre-suit demand on the HP Board of Directors “because the Board is  
17 incapable of making an independent and disinterested decision to institute and vigorously prosecute  
18 this action.” See id., at ¶ 66. According to the shareholder plaintiffs, Delaware law excuses such a  
19 pre-suit demand under these circumstances. See id., at ¶ 67.<sup>3</sup>

20 \_\_\_\_\_  
21 <sup>2</sup> Prior to becoming In re HP Derivative Litigation, the four cases were separately captioned  
22 as Levine v. Andreessen, Case No. 5:10-cv-03608 JW; Teamsters Union Local #142 Pension Trust  
23 v. Andreessen, Case No. 5:10-cv-03659 JW; Key West Police & Fire Pension Trust v. Andreessen,  
Case No. 5:10-cv-03660 JW; and Louisiana Municipal Police Employees’ Retirement System v.  
Andreessen, Case No. 5:10-cv-03716 JW.

24 <sup>3</sup> HP is a Delaware Corporation. See Complaint, Docket Item No. 60, Case No. 5:10-cv-  
25 03608 EJD, at ¶ 12. Delaware law draws a distinction between “demand futility” cases, such as the  
HP Derivative and Saginaw actions, and “demand made” cases, such as the Copeland action:

26 The focus of a complaint alleging wrongful refusal of demand is  
27 different from the focus of a complaint alleging demand futility. The  
28 legal issues are different; therefore, the legal standards applied to the  
complaints are necessarily different. A shareholder plaintiff, by  
making demand upon a board before filing suit, “tacitly concedes the  
independence of a majority of the board to respond. Therefore, when a

1            Saginaw Police & Fire Pension Fund v. Andreessen

2            On October 19, 2010, Saginaw Police & Fire Pension Fund filed a derivative action against  
3 current and former HP officers and directors for violations of the Anti-Kickback Act of 1986, False  
4 Claims Act, Truth in Negotiations Act, and the Foreign Corrupt Practices Act. See Complaint,  
5 Docket Item No. 1, Case No. 5:10-cv-04720 EJD. Plaintiffs in the Saginaw action allege that from  
6 January 1, 2002, through December 31, 2009, HP violated these federal statutes in its dealings with  
7 government contractors, and that the officers and directors breached their fiduciary duty by allowing  
8 such violations to occur. See id. Much like the HP Derivative action, plaintiffs in the Saginaw  
9 action also allege a pre-suit demand is excused since HP Board cannot “act as a disinterested and  
10 independent check on illegal corporate action.” See id., at ¶ 13.

11            Copeland v. Lane

12            On March 7, 2011, Copeland filed a shareholder derivative complaint against eighteen then-  
13 current and former members of HP’s Board of Directors. See Complaint, Docket Item No. 1, Case  
14 No. 5:11-cv-1058 EJD. Copeland alleges the directors violated Section 14(a) of the Securities  
15 Exchange Act and breached their fiduciary duty by making false and misleading statements in a  
16 proxy statement, wasting corporate assets to acquire another business, paying bribes to obtain  
17 contracts, and authorizing the payment of an unreasonable severance to Hurd. See id. Unlike the  
18 HP Derivative and Saginaw actions, Copeland *did* make a pre-suit demand on the HP Board. See  
19 id., at ¶ 80.

20            **II. DISCUSSION**

21            Federal Rule of Civil Procedure 42(a) provides:

22            If actions before the court involve a common question of law or fact, the court may:  
23            (1) join for hearing or trial any or all matters at issue in the actions;  
24            (2) consolidate the actions; or

25            \_\_\_\_\_  
26            board refuses a demand, the only issues to be examined are the good  
27            faith and reasonableness of its investigation.” When a shareholder  
28            files a derivative suit asserting a claim of demand futility, hence  
                 demand excused, the basis for such a claim is that the board is (1)  
                 interested and not independent; and (2) that the transaction attacked is  
                 not protected by the business judgment rule.

Levine v. Smith, 591 A.2d 194, 212 (Del. 1991) (internal citation omitted).

1 (3) issue any other orders to avoid unnecessary cost or delay.  
2 The court exercises “broad discretion to decide how cases on its docket are to be tried so that the  
3 business of the court may be dispatched with expedition and economy while providing justice to the  
4 parties.” Morin v. Turpin, 778 F. Supp. 711, 733 (S.D.N.Y 1991). In exercising this discretion, the  
5 court “weighs the saving of time and effort consolidation would produce against any inconvenience,  
6 delay, or expense that it would cause.” Huene v. United States, 743 F.2d 703, 704 (9th Cir. 1984).

7 Here, Copeland requests a conglomeration of orders under Rule 42(a)(2), including this  
8 representative selection:

9 The [Copeland, Saginaw and HP Derivative] actions are hereby  
10 consolidated for the purpose of coordinated pre-trial proceedings  
11 pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. These  
12 actions, and similar actions that may be commenced and consolidated  
13 later with these actions, shall be collectively referred to as In re HP  
14 Derivative Litigation, Master File No. 10-3608. The Copeland action  
15 is excluded from Judge Ware’s November 1, 2010 consolidation order  
16 in In re HP Derivative Litigation, Case No. 10-cv-3608 (EJD).

17 ....  
18 A Master Docket and Case File is hereby established for the  
19 consolidated pre-trial proceedings in this action...When a pleading is  
20 intended to be applicable to all actions to which this Order is  
21 applicable, the words “All Actions” shall appear immediately after the  
22 words, “This Document Relates To:” in the caption set out above.  
23 When a pleading is intended to be applicable only to some, but not all,  
24 of such actions, this Court’s docket number for each individual action  
25 to which the pleading is intended to be applicable and the name of that  
26 case...shall appear immediately after the words “This Document  
27 Relates to:” Henceforth, the parties will use this method of captioning  
28 exclusively, and the parties will not use individual case captions as the  
caption for any documents filed with the Court.

29 ....  
30 All subsequently filed or transferred shareholder derivative actions  
31 asserting “demand-made” claims related to the allegations in the  
32 Copeland Complaint, should be consolidated with Copeland, and the  
33 Copeland Complaint should be designated the operative complaint for  
34 all demand-made actions.

35 ....  
36 This order shall apply to each civil action alleging claims similar to  
37 those set forth in In re HP Derivative Litigation... which is  
38 subsequently filed or transferred to this Court, unless the Court  
otherwise orders upon motion of a party moving for relief from this  
Order or from any of its provisions within twenty (20) days after the  
date upon which the Clerk of the Court mails a copy of this Order to  
counsel for that party.

39 Copeland argues the proposed coordination order will promote judicial economy and avoid  
40 prejudice to the parties mainly because (1) the facts underlying the Copeland, Saginaw and HP

1 Derivative actions all arise from a common general fact, namely the “unprecedented failures of  
2 corporate governance by the HP Board,” (2) the cases are at similar stages of litigation, and (3) the  
3 parties can consolidate overlapping discovery proceedings. But while Copeland believes a  
4 generalized common thread justifies pendente lite coordination, he does not believe this  
5 commonality can endure through trial due to the inherent differences between his “demand made”  
6 case and the other two “demand futility” cases.

7 Plaintiff in the Saginaw action does not oppose the coordination order requested by Copeland  
8 so long as it may continue to pursue its own lawsuit and have its attorneys appointed lead counsel  
9 for all “demand futility” lawsuits.

10 For their part, plaintiffs in the HP Derivative action and Hurd collectively oppose  
11 coordination. Aside from the fact that the three cases involve a collection of distinct parties, they  
12 each point out that (1) many questions of law and fact are not common to the three lawsuits, (2)  
13 there are significant legal and procedural differences in the way derivative cases are handled,  
14 depending on whether they are “demand made” or “demand futile,” (3) the Copeland action includes  
15 claims not raised in either the HP Derivative or Saginaw actions, (4) any pre-trial coordination or  
16 consolidation would lead to confusion, and (5) Copeland’s request for consolidation of future cases  
17 and appointment of his attorneys as lead counsel is inappropriate.

18 The court has carefully considered the positions of Copeland and the Saginaw plaintiff, on  
19 the one hand, and the HP Derivative plaintiffs and Hurd on the other, and finds the latter more  
20 persuasive and indeed more appropriate to the current circumstances for several reasons. First, as  
21 Copeland even concedes, his “demand made” case is categorically different from the HP Derivative  
22 and Saginaw actions, and for this reason will ultimately be analyzed under a different legal standard.  
23 While Copeland attempts to emphasize the few similarities between the cases and describe their  
24 factual underpinnings in a general sense, it is clear that the unique characteristics of each case will  
25 predominate even at the pre-trial stage.

26 Second, coordination of the cases for pre-trial proceedings in the manner requested by  
27 Copeland is unnecessary. The Copeland, Saginaw and HP Derivative actions are each pending in  
28 the same court, assigned to the same district judge, and are referred to the same magistrate judge for

1 discovery disputes. If pre-trial coordination does become necessary at some point, it can be easily  
2 accomplished through the issuance of discrete joint orders or the scheduling of joint hearings  
3 without the need for actual consolidation or coordination, and certainly without the detailed - and  
4 seemingly onerous - set of orders requested by Copeland. As such, coordinating or consolidating the  
5 cases for pre-trial proceedings or otherwise is neither more efficient nor more effective than simply  
6 maintaining the cases on separate, yet similar, litigation tracks.

7 Third, coordinating the cases in the manner proposed by Copeland would lead to confusion  
8 for the court, the clerk, and the parties themselves. Pre-trial coordination would jumble all three  
9 cases into one indistinguishable morass of defendants, factual allegations and legal theories.  
10 Motions and other pleadings applicable to one case and not the others would become lost in the  
11 evitable swarm of paperwork generated by the mega-case, leaving it up to the clerk and the court to  
12 sort out the mess. The confusion arising from such a potential quagmire would layer additional  
13 complexity on top of three cases already sufficiently complicated. Indeed, Copeland implicitly  
14 recognizes the potential for confusion since his proposed order includes a detailed process for a task  
15 as simple as filing documents. And the fact that coordination would last only during pre-trial  
16 proceedings does not alleviate the problem - it is during this critical time that organization of parties,  
17 claims and allegations is most important.

18 Fourth, the court agrees with the HP plaintiffs and Hurd that Copeland's request for  
19 automatic consolidation of future unknown cases and appointment of his attorneys as lead counsel is  
20 entirely premature. At this time, the Copeland action is the only "demand made" action pending  
21 before this court. The court will not issue orders of the type requested designed solely for the  
22 benefit of Copeland or his attorneys when no such order is required.<sup>4</sup>

23 In conclusion, the court sees no benefit to coordinating the Copeland, Saginaw and HP  
24 Derivative actions or to appointing Copeland's attorneys as lead counsel for an unknown group of  
25 "demand made" cases. While some of the parties have requested the court postpone ruling on this  
26 motion until after the resolution of the motions to dismiss, such a delay is unwarranted. Based on  
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28 <sup>4</sup> The same reasoning applies to the additional orders requested by the Saginaw plaintiffs.

1 what has been presented, it does not appear that consolidation would promote the purpose  
2 underlying Rule 42, but instead would create inefficiency, confusion and potential prejudice.  
3 Accordingly, Copeland's motion for consolidation or coordination will be denied in its entirety.

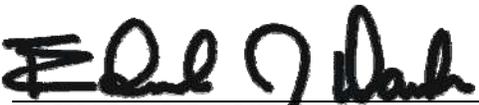
4 **III. ORDER**

5 The motion hearing scheduled for December 2, 2011, is VACATED. Copeland's Motion to  
6 Consolidate or Coordinate (Docket Item No. 39 in the Copeland action; Docket Item No. 83 in the  
7 HP Derivative action) is DENIED.

8 With regard to the Case Management Conferences also scheduled for December 2, 2011, a  
9 separate order addressing case scheduling will issue in short order.

10  
11 **IT IS SO ORDERED.**

12  
13 Dated: November 28, 2011

  
EDWARD J. DAVILA  
United States District Judge

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