

No. 19-20799

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**In the United States Court of Appeals  
for the Fifth Circuit**

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HEWLETT-PACKARD COMPANY,  
*Plaintiff – Appellee*

v.

QUANTA STORAGE, INCORPORATED,  
*Defendant – Appellant*

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On Appeal from the U.S. District Court, Southern District of Texas  
No. 4:18-CV-00762, Hon. David Hittner

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**APPELLANT’S EMERGENCY MOTION TO STAY, PENDING APPEAL,  
EXECUTION ON JUDGMENT AND TURNOVER ORDERS**

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## **CERTIFICATE OF INTERESTED PERSONS**

(1) *Number and Style of Case*: No. 19-20799; Hewlett-Packard Company, Plaintiff – Appellee v. Quanta Storage, Incorporated, Defendant – Appellant.

(2) *Statement*: The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

### ***Hewlett-Packard Company:***

- Appellee/Plaintiff Hewlett-Packard Company, now known as HP, Inc., is a corporation organized and existing under the laws of Delaware. No parent corporation or publicly held corporation owns 10% or more of Hewlett-Packard Company's stock.
- The following attorneys have appeared for Appellee/Plaintiff Hewlett-Packard Company in this Court and in the District Court:

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## **RECORD REFERENCES**

The Record on Appeal is referred to herein using this Court’s convention for citing the record, for example, “ROA.1.”

The exhibits in the appendix to this motion are referenced as “App’x-[letter].”

\* In this document, all emphasis is added unless otherwise indicated.

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TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Comes now, Defendant/Appellant Quanta Storage, Inc. (“Quanta”), and files this **Emergency** Motion to Stay, Pending Appeal, Execution on Judgment and Turnover Orders (“Motion”). Quanta would respectfully show the Court as follows:

**REQUEST FOR EMERGENCY RULING ON MOTION**

Post-judgment, the District Court, on April 1, 2020, entered an order requiring Quanta to turn over assets in execution on the judgment that Quanta is appealing to this Court (“First Turnover Order”). App’x-I. That First Turnover Order did not (1) contain a date by which the turnover must be made or (2) identify to whom the turnover must be made. *Id.*

On April 22, 2020, the District Court entered an order requiring Quanta to complete its asset turnover by May 1, 2020, or in nine days (the “Second Turnover Order”). App’x-O. That April 22 Second Turnover Order (1) requires Quanta to complete its asset turnover—amounting to hundreds of millions of dollars of assets in several countries—by May 1, 2020, or (2) to show cause why Quanta should not be held in contempt and sanctioned \$50,000/day (“Second Turnover Order”). *Id.*

On April 27, 2020, the District Court amended its turnover orders to require Quanta to turn over its assets to Constable Rosen (“Third Turnover Order”). App’x-S. The District Court’s Third Turnover Order of April 27 continued to require that Quanta complete its asset turnover by May 1, 2020. *Id.*

Because the District Court has ordered Quanta “fully” to comply with those turnover orders by May 1, 2020 or face contempt and a \$50,000/day sanction (App’x-O at 3), Quanta asks this Court to resolve this Motion to Stay execution on an emergency basis by May 1, or as soon thereafter as possible.

### **FACTUAL BACKGROUND**

**A. The District Court entered judgment of \$438,650,000 for Plaintiff Hewlett-Packard Corporation (“HP”).**

Following a jury trial in this antitrust case, the District Court entered an Amended Final Judgment holding Quanta liable for \$438,650,000, including treble damages. ROA.5342. Quanta appeals that judgment and has filed its Brief of Appellant.

**B. HP asked the District Court to appoint a receiver to sell all Quanta’s non-exempt assets in payment of this \$438,650,000 judgment.**

On February 25, 2020, HP filed its Motion for Post-Judgment Relief in Aid of Enforcing Judgment and Emergency Motion for Restraining Order. App’x-A. In that motion, HP asked the District Court—pursuant to Fed. R. Civ. P. 69 and the Texas turnover statute, Tex. Civ. Prac & Rem Code §31.002—to appoint a receiver to sell Quanta’s non-exempt assets to pay the \$438,650,000 judgment. *Id.* HP also filed a Motion for Writ of Execution. App’x-B.

On March 3, 2020, Quanta filed its motion to stay execution of judgment (App’x-D) and a response to HP’s motions (App’x-E). Quanta explained that it was

unable to obtain a supersedeas bond because (1) the judgment exceeds the value of all Quanta's assets, and (2) Quanta's primary assets are real property (*e.g.*, factories) in Taiwan and China. App'x-E. But Quanta offered alternative security: Quanta agreed to an injunction barring Quanta from disposing of any assets outside of the ordinary course of business during the pendency of this appeal.

**C. On March 12, 2020, the District Court entered an agreed injunction against Quanta disposing of assets, but the District Court also allowed a stay of execution only if Quanta posted an \$85 million bond (which Quanta was unable to post).**

After a March 5, 2020 hearing (App'x-C), the District Court entered its March 12, 2020 order containing an agreed injunction that bars Quanta, without Court approval, from disposing of any asset valued at over \$100,000.00 while Quanta's appeal is pending (App'x-F). The District Court allowed Quanta to stay execution only if Quanta posted an \$85 million bond (*id.*), which Quanta was unable to post (App'x-H).

**D. On April 1, 2020, the District Court issued the First Turnover Order and writ of execution.**

HP filed, on March 30, renewed motions for appointment of a receiver, for a turnover order, and for writ of execution. App'x-G. In an opposition filed that same day, Quanta explained that, given the COVID-19 pandemic, Quanta was "facing difficulties [obtaining an \$85 million supersedeas bond] because of several

mandated closures and preventive measures for all non-essential businesses required by Taiwanese government.” App’x-H.

Two days later, on April 1, 2020, the District Court issued an order that granted HP’s request for a turnover but denied appointment of a receiver (“First Turnover Order”). App’x-I. That First Turnover Order did not state (1) any date by which Quanta must complete its asset turnover, or (2) to whom the turnover should be made. *Id.*; *see Lozano v. Lozano*, 975 S.W.2d 63, 69 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (under Texas turnover statute, court “may not order the turnover of property directly to judgment creditors”). The District Court also granted HP’s request for writ of execution. App’x-I.

**E. Only twelve (12) days after the District Court entered the First Turnover Order, HP filed a motion to show cause why Quanta should not be held in contempt.**

Only twelve days after the District Court issued the First Turnover Order, HP filed, on April 13, 2020, a Motion to Show Cause why Quanta should not be held in contempt for failing to turn over all its assets. App’x-J. In Quanta’s response (filed April 14) to HP’s Motion to Show Cause, supplemental response (filed April 15), and second supplemental response (filed April 19), Quanta explained to the District Court that Quanta is working to comply with the turnover order even though that order does not contain a date by which Quanta must complete its asset turnover. App’x-K; App’x-L; App’x-N.

Quanta filed declarations from Taiwanese attorney Jake Wang explaining that Quanta’s turnover of assets (primarily real property, such as factories) located in Taiwan and mainland China is delayed due to the combination of the COVID-19 pandemic and Taiwanese law. *Id.* Quanta also argued that the Texas turnover statute cannot be used to require Quanta, itself, to domesticate HP’s judgment in Taiwan because, among other reasons, such a requirement would violate the Texas turnover statute and international comity. App’x-L.

**F. On April 22, 2020, the District Court, in its Second Turnover Order, required Quanta (1) to complete its asset turnover by May 1, 2020 or (2) to show cause why Quanta should not be held in contempt and sanctioned \$50,000/day.**

The District Court’s order of April 22, 2020 (“Second Turnover Order”), issued in the middle of the pandemic, gives Quanta just nine (9) calendar days (until May 1, 2020) “fully” to complete the turnover of Quanta’s assets—primarily, factories in Taiwan and China. App’x-O. If Quanta does not “fully” complete its turnover by May 1, 2020, that order requires Quanta to show cause why Quanta should not be held in contempt and sanctioned \$50,000/day. *Id.*

**G. On April 24, 2020, Quanta filed a motion with the District Court to provide needed clarification of the turnover orders.**

Quanta’s motion contended that the District Court’s turnover orders (of April 1, 2020 and April 22, 2020) are insufficiently clear because those orders do not tell Quanta to whom Quanta must turn over its assets. App’x-P. Quanta explained that

the Court had not appointed a receiver, and under the Texas turnover statute (the statute on which the turnover orders were based), “a turnover order may not order the turnover of property directly to judgment creditors.” *Lozano*, 975 S.W.2d at 69.

**H. The District Court’s Third Turnover Order, signed April 27, 2020 (and entered April 28, 2020), required, *for the first time*, that Quanta must turn over assets to Texas Constable Alan Rosen.**

That Third Turnover Order did not otherwise amend the prior turnover orders. App’x-S. Thus, the Third Turnover Order gives Quanta three (3) calendar days, in the middle of the pandemic, to turn over to Constable Rosen all Quanta’s non-exempt assets—including factories and other real property in Taiwan and China, manufacturing equipment, accounts receivable, intellectual property, etc. *Id.*

**I. On April 27, 2020, Quanta filed an emergency motion asking the District Court to stay the turnover orders pending review from this Court.**

In that motion (filed April 27 and supplemented April 28), Quanta explained that it would seek appellate review of the turnover orders entered April 1, 2020, April 22, 2020, and April 28, 2020. App’x-R; App’x-T. Quanta asked the District Court to stay those turnover orders pending appellate review from this Court. Fed. R. App. P. 8(a)(1). At the time of this filing, the District Court has not yet ruled on that motion.

## INTRODUCTION

Unless the turnover orders are stayed, those orders will compel Quanta to act in violation of Taiwanese law, including law subjecting Quanta to criminal penalties. Because Quanta is publicly traded on the Taiwan Stock Exchange, Taiwan's Securities and Exchange Act (and related regulations) requires Quanta, before it can make a major disposition of assets, to follow detailed procedures. Under that Act, violators are subject to criminal penalties. The exigency of the pandemic prevents Quanta from completing those required procedures—*e.g.*, having third parties do appraisals and in-person inspections of Quanta's factories in Taiwan and China—in the short timelines mandated by the District Court (nine calendar days from the Second Turnover Order and three calendar days from the Third Turnover Order).

Moreover, due to the pandemic, Taiwanese authorities have issued emergency orders that effectively commandeer Quanta's assets for use in fighting COVID-19—*e.g.*, for COVID-19 screening and quarantine—and Quanta has repurposed factory production lines to manufacture facemasks. App'x-K. Under Taiwan's Communicable Disease Control Act, violators are subject to criminal penalties. *Id.* If Quanta turns over its assets in the middle of this pandemic, Quanta will be unable to comply with those emergency pandemic orders. A stay is needed to protect Quanta from the irreparable injury of being compelled to violate Taiwanese law.

Quanta has a substantial likelihood of prevailing on its appeal of the turnover orders and appeal from final judgment. The turnover orders cannot withstand appellate review because they compel Quanta to act in violation of Taiwanese law. *See Waste Management of Washington, Inc. v. Kattler*, 776 F.3d 336, 343 (5th Cir. 2015) (order cannot compel a party to turn over property in violation of a legal duty). And the final judgment cannot withstand appellate review because HP failed to prove its damages.

Entry of a stay would impose no hardship on HP. Quanta's property is not perishable. And, as Quanta agreed, Quanta is separately enjoined from disposing of its property during the pendency of Quanta's appeal.

The public interest favors a stay: if the turnover orders are stayed, then, during the pandemic, Quanta will be able to continue manufacturing facemasks, conducting COVID-19 screening, and providing quarantine facilities. Quanta respectfully requests a stay of the District Court's turnover orders pending appellate review.



## **ARGUMENT**

This Court applies four factors in deciding whether to grant a stay pending appeal: (1) whether the movant has made a strong showing that it is likely to succeed on the merits; (2) whether the movant will be irreparably injured absent a stay; (3) whether a stay would substantially injure the other parties; and (4) where the public interest lies. *Texas v. United States Env'tl. Prot. Agency*, 829 F.3d 405, 424 (5th Cir. 2016). Each factor is satisfied here.

**I. Quanta makes a strong showing that it is likely to succeed on the merits.**

**A. Quanta's appeal of the turnover orders: the District Court abused its discretion by ordering Quanta, in violation of Taiwanese law, to turn over significant assets during a crippling pandemic.**

To be enforceable, an order must be “a definite and specific order of the court requiring [a person] to perform or refrain from performing a particular act or acts[.]”); *Waste Mgmt. of Wash., Inc. v. Kattler*, 776 F.3d 336, 341 (5th Cir. 2015); *In re Baum*, 606 F.2d 592, 593 (5th Cir. 1979). Because the First Turnover Order did not provide a date for compliance—and because neither the First nor the Second Turnover Order identified the person to whom Quanta must make a turnover—those orders are not specific enough to be enforceable. App’x-I; App’x-O.

But even if they were enforceable, the First Turnover Order, entered April 1, 2020, does not mandate compliance by any particular date. App’x-I. The Second Turnover Order, entered April 22, 2020, required, for the first time, that Quanta complete its asset turnover by May 1, 2020 (in nine calendar days). App’x-O. The

Third Turnover Order, entered April 28, 2020, identified, for the first time, Constable Rosen as the person to whom Quanta must turn over its assets. The Third Turnover Order, taken with the District Court's First and Second Turnover Orders, gave Quanta just three (3) calendar days (between April 28 and May 1) to comply. App'x-S.

As shown below, due to the pandemic, Quanta is unable to complete its asset turnover on these accelerated timetables (whether nine days or three days) without violating Taiwanese law. An order may not require a party to act in violation of that party's legal duties. *Kattler*, 776 F.3d at 343; *Cagle v. Scroggins*, 410 F.2d 741, 742 (5th Cir. 1969). (reversing contempt order based on party's uncontroverted testimony that it was unable to comply with court order)

**1. Quanta's compliance is precluded by Taiwanese law governing disposal of assets by publicly traded companies.**

Given requirements of Taiwanese law applicable to publicly traded companies (like Quanta), Quanta cannot dispose of its Taiwanese assets on an emergency basis in the middle of the COVID-19 pandemic. App'x-L; App'x-N. Taiwanese law experts for both Quanta and HP agree that, for Quanta to dispose of its factories, Taiwanese law would require Quanta to obtain two separate appraisal reports, and each appraisal report would need to be supported by third-party inspections of the assets at issue. App'x-N; App'x-Q, Ex. B ¶8. Taiwanese law additionally mandates that Quanta would need to call a board meeting and obtain a Board of Directors vote.

App’x-N. If Quanta determines that the COVID-19 pandemic creates an ambiguity in requirements for disposing of assets, then Quanta is required to petition a Taiwanese court to resolve the ambiguity. *Id.* It is logistically impossible for Quanta, in the middle of the pandemic and resulting turmoil for Taiwanese public and private institutions, to complete these necessary steps for disposal of its Taiwanese assets on the emergency schedule required by the District Court. App’x-N at 4-5.

**2. Quanta’s compliance is precluded by emergency regulations relating to the COVID-19 pandemic.**

Around the world, public authorities have made “numerous, complex judgment calls” to battle the “pandemic emergency.” *In re Abbott*, 2020 WL 1911216, at \*12 (5th Cir. Apr. 20, 2020). In Taiwan, public authorities have addressed the pandemic by imposing mandatory restrictions on businesses like Quanta—restrictions that effectively commandeer Quanta’s assets for use by the Taiwanese government in fighting COVID-19. App’x-K. Those restrictions include “scores of measures [imposed] on all companies to aid in containing the disease [COVID-19] and preventing its spread into the general community.” *Id.*

These Taiwanese orders essentially commandeer Quanta’s Taiwanese assets for the Taiwanese government to use in the fight against COVID-19. App’x-K at 4-5. Those orders require Quanta to screen its employees for COVID-19 and collect tracking data on its employees. *Id.* Quanta must then provide the collected data to

the government for “case identification” and “containment.” *Id.* Taiwanese orders also mandate that Quanta provide facilities to enable a 14-day quarantine for employees who have recently traveled to “hot spot” areas and are unable to self-quarantine at home. *Id.*

If Quanta could somehow turn over all its assets to Constable Rosen by May 1—as required by the District Court’s Third Turnover Order entered April 28—then Quanta would be unable to comply with these emergency pandemic orders. Logically, to comply with the pandemic orders, Quanta needs (1) the factories where Quanta screens employees for COVID-19, (2) the equipment that Quanta uses to conduct screening and to collect data, (3) the computer systems that Quanta uses to store and transmit data to the government, and (4) money that Quanta uses to pay for quarantine facilities, essential equipment, and employees.

**3. The District Court abused its discretion by effectively requiring Quanta, the judgment debtor, to domesticate this judgment in Taiwanese courts—in violation of Texas law and international comity.**

As established by undisputed evidence, to comply with the District Court’s directives without following the procedures required by Taiwanese law, Quanta would need (1) to petition a Taiwanese court for a determination that Quanta is bound by the District Court’s judgment and orders—*i.e.*, to domesticate the judgment in Taiwan—and (2) to use such a determination by the Taiwanese court as a basis to excuse Quanta’s compliance with Taiwanese law. App’x-N at 5-7.

HP says Quanta could just turn over all of its assets that are in cash and cash equivalents. But Taiwanese law would require Quanta's board to vote to do that, and Taiwanese lawyer Jake Wang, who works for Quanta, has explained that Quanta's board would not vote to turnover assets to enforce a judgment that has not been domesticated in Taiwan. App'x-N, Ex. B ¶12. HP cites no decisions from this Court holding that, despite concerns about international comity, the Texas turnover statute can properly be used to required Quanta's board to turn over foreign assets in foreign countries without domestication of the judgment.

It was an abuse of discretion for the District Court essentially to require Quanta to make such a petition of a Taiwanese court. The Texas turnover statute does not, on its face, contain any provision authorizing a court to order a foreign judgment debtor to domesticate a judgment in a foreign country. Tex. Civ. Prac & Rem Code §31.002. And Texas law is clear that efforts to enforce a domestic judgment in a foreign country may need to comport with the laws of that foreign country. *Reeves v. Federal Savings & Loan Insurance Corp.*, 732 S.W.2d 380, 381 (Tex. App.—Dallas 1987, no writ). By effectively requiring Quanta to domesticate this judgment in Taiwan, the District Court impermissibly amended the Texas turnover statute. *In re Geomet Recycling LLC*, 578 S.W.3d 82, 87 (Tex. 2019) (“It is not our place to judicially amend the statute.”).

The turnover orders also contravene international comity. “The doctrine of comity contains a rule of ‘local restraint’ which guides courts reasonably to restrict the extraterritorial application of sovereign power.” *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 371 (5th Cir. 2003). “Comity has been defined as the ‘recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another.’” *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1004 (5th Cir. 1990).

International comity and reciprocity dictate that a court should not compel a foreign judgment debtor (here, Quanta) to file suit in a foreign court (here, the courts of Taiwan) to request recognition of a judgment. After all, if Quanta requests domestication of this judgment in Taiwan, then the domestication proceeding will essentially be stipulated. *See Reading & Bates Const. Co. v. Baker Energy Resources Corp.*, 976 S.W.2d 702, 706 (Tex. App.—Houston [1 Dist.] 1998, pet. denied) (foreign judgment conclusive unless contested by judgment debtor). The Taiwanese courts, in turn, will be deprived of a genuine opportunity—in a contested proceeding—to determine whether this judgment is valid and enforceable under Taiwanese law. Of course, applying Taiwanese law to determine whether a foreign judgment is valid and enforceable in Taiwan is a sovereign prerogative of the courts of Taiwan.

For protection of U.S. companies operating abroad, it is important that U.S. courts respect the sanctity of foreign adversary proceedings to recognize and domesticate judgments. If U.S. courts short-circuit foreign countries' judgment-domestication procedures by ordering foreign judgment debtors to domesticate judgments in a foreign courts—and thereby to forfeit their defenses to domestication—then foreign courts might reciprocate. In other words, foreign courts might order U.S. companies, under threat of contempt, to domesticate judgments against them in U.S. courts without an opportunity to litigate whether the foreign judgment would be enforceable under U.S. law.

Given that, as shown by Quanta's Brief of Appellant, Quanta believes that the judgment is, in effect, improperly allowing HP to recover for antitrust damages that could only have been sustained by HP's foreign subsidiaries, a Taiwanese court might well conclude that the District Court's judgment violates Taiwanese law by improperly applying U.S. antitrust law to overseas purchases by HP's foreign subsidiaries. Indeed, the Seventh Circuit has held that U.S. law does not apply to such foreign subsidiary purchases. *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015) (Posner, J.)

**B. Quanta's appeal from Final Judgment: HP failed to prove its damages.**

In this antitrust suit, HP alleges that, due to a price-fixing conspiracy from 2003-2009, HP paid inflated prices for "optical disk drives" or "ODDs"—a class of

computer components that includes CD-ROM drives and DVD drives. Quanta does not challenge the jury’s liability finding, but rather limits its appeal to whether HP proved that the damages found by the jury were sustained by HP itself, as opposed to HP’s foreign subsidiaries.

The Amended Final Judgment makes Quanta liable to HP for the staggering sum of \$438,650,000—more than the total value of Quanta. App’x-D, Tab A. The District Court calculated that amount by trebling the \$176,000,000 in actual damages found by the jury in Question 7—an amount purportedly reflecting HP’s damages, based on HP’s purchases of ODDs, caused by the price-fixing conspiracy. But that \$176,000,000 actual damages finding is not supported by legally sufficient evidence because, at trial, HP failed to differentiate between (1) ODDs purchased by the Plaintiff HP, and (2) ODDs purchased by one of HP’s foreign subsidiaries.

The jury charge limited HP’s damages to those resulting from Plaintiff Hewlett-Packard Company’s ODD purchases. The charge specifically defined the “plaintiff” to be the “Hewlett-Packard Company”:

In these instructions, I will refer to the **Plaintiff Hewlett-Packard Company** as “plaintiff.”

ROA.6067. And the charge instructed the jury to calculate damages by comparing the amount that “plaintiff” paid for ODDs against the amount “plaintiff” would have paid but-for the price-fixing conspiracy. ROA.6074-75. Question 7 of the charge, on damages, asked the jury to find “the amount of the overcharge that plaintiff paid



as a result of the conspiracy.” ROA.6080. This restriction on HP’s damages—to overcharges paid by Plaintiff HP—was no accident. As noted above, U.S. antitrust law does not apply to, and a plaintiff cannot recover for, purchases by the plaintiff’s foreign subsidiaries. *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015).

HP never adduced evidence of which ODDs were purchased by HP, as opposed to ODDs purchased by HP’s foreign subsidiaries. HP’s head of procurement Russell Hudson acknowledged that some ODDs would have been purchased by HP’s foreign subsidiaries, but he also confessed that he was unable to quantify the amount of ODDs purchased by HP itself, as opposed to ODDs purchased by HP’s foreign subsidiaries. ROA.5747-48; ROA.5755.

HP’s only other live witness at trial—its damages expert, Dr. Debra Aron—likewise did not provide the needed legally sufficient evidence of what quantity of ODDs were purchased by HP as opposed to HP’s foreign subsidiaries. When HP asked Dr. Aron to state her “understanding” as to which legal entity made “the purchases of the DVDs,” Quanta objected that HP had laid “no foundation” for such an opinion, and that the question “call[ed] for hearsay.” ROA.5961. HP never proved that Dr. Aron—in providing her “understanding” of which entity made the ODD purchases forming the basis for her damages opinions—was relying on the

type of information (even if hearsay) that experts in her field would normally consider.

Using the passive voice, Dr. Aron testified that it “was represented to” her by some unidentified person that HP was the “company that purchased the ODDs.” ROA.6042. But Dr. Aron never identified the mystery declarant who made that representation, so HP never established that this hearsay is the type of hearsay on which an expert would normally rely. Fed. R. Evid. 703; *Factory Mut. Ins. Co. v. Alon USA L.P.*, 705 F.3d 518, 523 (5th Cir. 2013); *Soden v. Freightliner Corp.*, 714 F.2d 498, 502–03 (5th Cir. 1983). Dr. Aron testified that she talked to HP’s Head of Procurement Hudson, but as noted above, Hudson testified that he could not differentiate between ODDs purchased by HP, as opposed to those purchased by HP’s foreign subsidiaries.

Dr. Aron’s testimony was unreliable and speculative. And because Dr. Aron’s damages opinion is unreliable, there is no legally sufficient evidence to support the jury’s answer to Question 7—a question that the District Court expressly limited to purchases that were made by HP (as opposed to HP’s foreign subsidiaries). *Hodges v. Mack Trucks Inc.*, 474 F.3d 188, 193 (5th Cir. 2006) (“An appellate court, in deciding whether JMOL should have been awarded, must first excise inadmissible evidence.”). Quanta is likely to prevail in its appeal from final judgment.

**II. Absent a stay, the turnover orders will cause irreparable injury to Quanta because those orders (1) compel Quanta to commit criminal conduct and (2) impair public health and safety.**

**A. Irreparable injury #1: The turnover orders compel Quanta to engage in conduct warranting criminal sanctions under Taiwanese law.**

As shown above, unless the turnover orders are stayed, those orders will compel Quanta to violate two categories of Taiwanese law, each of which warrants criminal penalties:

<i>Taiwanese Law That Turnover Orders Require Quanta to Violate</i>	<i>Taiwanese Statute Imposing Criminal Penalties for Such Violation</i>
Laws governing disposal of assets by publicly traded companies (App’x-K, N)	Taiwan’s Securities and Exchange Act. App’x-M, Tab A, art. 178 (11).
Emergency orders for COVID-19 screening and quarantine (App’x-K)	Taiwan’s Communicable Disease Control Act (App’x-K at 4);

The turnover orders threaten Quanta’s constitutional right to Due Process because they compel Quanta, against its will, to commit a crime, and thereby to subject itself to criminal deprivations.

The Due Process Clause regulates the “deliberate decisions of government officials to deprive a person of life, liberty, or property.” *Daniels v. Williams*, 474 U.S. 327, 331 (1986). For such a deprivation to satisfy the requirements of due process, the deprivation must be preceded by “procedures [that] meet the essential

standard of fairness.” *Landon v. Plasencia*, 459 U.S. 21, 35 (1982). The turnover orders lack such fair procedures.

Where, as here, a party’s constitutional rights are threatened, the law “mandat[es] a finding of irreparable injury.” *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); accord *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995))).

**B. Irreparable injury #2: The turnover orders threaten the health and safety of Quanta’s employees and the Taiwanese public.**

As noted above, emergency Taiwanese orders commandeer Quanta’s assets for contact tracing and quarantines—measures that protect both Quanta employees and the public. Unless stayed, the turnover orders will impair health and safety because Quanta will not have the assets it needs to comply with those emergency measures. Moreover, as explained below, Quanta is presently using production lines to manufacture much-needed facemasks, and Quanta will not be able to manufacture facemasks if Quanta transfers all its assets to HP. Injuries to health and safety are irreparable injuries. *Family Rehabilitation, Inc. v. Azar*, 886 F.3d 496, 504 (5th Cir. 2018); *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976);

*Bullock v. U.S.*, 265 F.2d 683, 690 (6th Cir. 1959); *see Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 623-26 (5th Cir. 1985) (adverse impact on public satisfies irreparable harm requirement).

**III. A stay would not substantially injure HP: Quanta’s assets are not perishable, and Quanta is enjoined from disposing of those assets.**

HP has never attempted to explain why it desperately needs Quanta to turn over critical assets on an emergency basis in the middle of the pandemic. Quanta’s factories are real property; they are not some perishable goods that will “go bad” if not turned over in nine days. Furthermore, HP is under no threat of injury because Quanta is enjoined from disposing of its assets without the District Court’s approval. App’x-F. Even absent the injunction, the present governmental and economic disruptions make it impossible for Quanta to make a major asset disposition in any event. HP faces no substantial threat of injury.

**IV. The public interest favors a stay because, if the turnover orders are enforced, Quanta will be required to stop manufacturing facemasks, stop contact tracing, and stop providing quarantine facilities.**

Due to the COVID-19 pandemic, Quanta production lines in Taiwan have been repurposed to manufacture facemasks for Quanta employees, so that Quanta will not be required to purchase (reduce the supply of) facemasks that might otherwise be available for emergency personnel. App’x-N at 5. The supply of facemasks is critical for first responders on the front lines of the pandemic. As this Court has recognized, “[n]ot wearing face masks and other PPE when caring for

patients who are not under investigation for COVID 19 . . . exposes health care workers to transmission of infection asymptomatic patients.” *In re Abbott*, 2020 WL 1911216, at \*11 (5th Cir. Apr. 20, 2020). This Court has also recognized that “[t]he surge of COVID-19 cases causes mounting strains on healthcare systems, including critical shortages of . . . personal protective equipment [e.g., facemasks].” *In re Abbott*, 954 F.3d 772 (5th Cir. 2020).

On April 18, 2020, the U.S. Food and Drug Administration, noting the “insufficient supply and availability of face masks,” issued an Emergency Use Authorization addressing the face mask shortage. *See* FDA, Emergency Use Authorization (Apr. 18, 2020), <https://www.fda.gov/media/137121/download>. Like Quanta, U.S. manufacturers have repurposed manufacturing lines for facemask production to address the “critical shortage of face masks across the world.” General Motors, An Inside Look at How General Motors is Mass-Producing Masks, <https://www.gm.com/our-stories/commitment/face-masks-covid-production.html>.

It is undisputed that the immediate turnover of Quanta’s factories, in the middle of the COVID-19 pandemic, would prevent Quanta from manufacturing facemasks at a time when facemasks are desperately needed. It is also undisputed that, as shown above, the immediate turnover of Quanta’s assets would prevent Quanta from using those assets for contact tracing and quarantine. The public

interest does not favor a requirement that Quanta turn over its property on an emergency basis in the middle of this devastating pandemic.

**PRAYER**

For the foregoing reasons, Quanta asks the Court to grant to stay, pending appellate review, execution of the judgment—including the turnover orders entered April 1, 2020 (App’x-I), April 22, 2020 (App’x-O), and April 28, 2020 (App’x-S).

DATE: April 29, 2020

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

1. This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because this document contains 5,147 words, excluding those sections exempted by Rule 32(f).
2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman. Footnotes are in 14-point Times New Roman in compliance with Fifth Circuit Rule 32.1.

Dated: April 29, 2020

/s/ Marie Roach Yeates  
Marie Roach Yeates  
*Attorney for Quanta Storage, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of April, 2020, all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing instrument via the Court's CM/ECF filing system.

/s/ Marie R. Yeates  
Marie R. Yeates  
*Attorney for Quanta Storage, Inc.*

**CERTIFICATE OF CONFERENCE**

I hereby certify that on the 29th day of April, 2020, I conferred with Alistair Dawson, counsel for Plaintiff Hewlett-Packard Corporation, and was informed that Plaintiff opposes the relief sought in this Motion. I also notified Mr. Dawson by telephone that Quanta would be filing its motion as an emergency motion.

*/s/ Michael A. Heidler*  
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