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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 CHRISTOPHER WARE, individually and on
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 HP INC.,

23 Defendant.
24
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27
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Case No. 5:16-cv-06519

CLASS ACTION COMPLAINT FOR:

1. UNFAIR METHODS OF COMPETITION
IN VIOLATION OF THE UNFAIR
COMPETITION LAW, CAL. BUS. & PROF.
CODE § 17200, *ET SEQ.*

2. UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

1 Plaintiff Christopher Ware (“Plaintiff”), individually and on behalf of all others similarly
2 situated, allege the following against Defendant HP Inc. (“HP”):

3 **I. SUMMARY OF THE ACTION**

4 1. On September 13, 2016, thousands of HP printers in homes and offices throughout the
5 United States failed in unison. These simultaneous failures were no coincidence. They resulted from
6 HP’s implementation of a software update for the purpose of disabling printers that contained ink
7 cartridges manufactured by HP’s competitors. The failed HP printers remain inoperable today unless an
8 owner replaces non-HP ink cartridges with HP cartridges.

9 2. The failed HP printers display an error message that the ink cartridges appear to be
10 “damaged or missing” and therefore should be replaced. But the non-HP ink cartridges in these
11 printers are neither damaged, missing, nor out of ink. HP installed the disabling software update as a
12 means of gaining an advantage over its competition in the market for printer ink cartridges.

13 3. The persons immediately harmed by HP’s unfair methods of competition were those
14 who owned its printers. Plaintiff by this action seeks relief for himself and the other owners of printers
15 that HP wrongfully rendered inoperable.

16 **II. JURISDICTION AND VENUE**

17 4. This Court has subject matter jurisdiction over this action under the Class Action
18 Fairness Act of 2005, 28 U.S.C. § 1332(d), because (a) at least one member of the Class is a citizen of a
19 state different from HP, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and
20 costs, (c) the Class includes more than 100 members, and (d) none of the exceptions under the
21 subsection apply to this action.

22 5. Venue is proper in this District under 28 U.S.C. § 1391(b) because HP’s principal place
23 of business is within this District, and a substantial part of the events or omissions that give rise to
24 Plaintiff’s claims occurred in this District. HP executives and employees devised and carried out the
25 scheme underlying these claims at HP’s headquarters in Palo Alto, California.

26 **III. INTRADISTRICT ASSIGNMENT**

27 6. Assignment to the San Jose Division is proper under Local Rule 3-2(c) because a
28 substantial part of the conduct at issue in this case occurred in Santa Clara County.

1 **IV. PARTIES**

2 7. Defendant HP Inc. is a Delaware corporation headquartered in Palo Alto, California

3 8. Plaintiff Christopher Ware is a citizen of New Jersey who resides in Hillsdale, New
4 Jersey.

5 **V. FACTS SPECIFIC TO PLAINTIFF**

6 **A. Plaintiff Christopher Ware**

7 9. In January 2012, Ware purchased an HP 8610 OfficeJet Pro printer. When the cartridges
8 in his printer ran out of ink, Ware purchased replacement cartridges manufactured by a competitor of
9 HP. Those cartridges continued functioning up until mid-September 2016.

10 10. In mid-September 2016, Ware's HP printer unexpectedly failed and no longer printed
11 documents.

12 11. The failure of Ware's HP printer was directly and proximately attributable to actions by
13 HP to disable it.

14 12. Immediately after Ware's printer failed, the screen on the printer displayed a message
15 directing him to remove "damaged" ink cartridges and replace them with new cartridges. A link to a
16 Website accompanied this message. Ware clicked on the link on his printer's screen. The link was to an
17 HP Website selling HP ink cartridges.

18 13. The inoperability of his printer has caused Ware to expend time and money to satisfy his
19 document printing needs.

20 **VI. COMMON ALLEGATIONS OF FACT**

21 **A. HP's Printer and Printer Ink Business**

22 14. HP sells computers, printers, and printer services. Printers—and printer ink—account
23 for nearly half of HP's business.

24 15. With regard to HP's printer business, HP obtains most of its profits from the sale of ink
25 cartridges used in HP printers.

26 16. These ink cartridges are generally priced at \$13 to \$75 per ounce (\$1,664 to \$9,600 per
27 gallon). As such, the cost of ink cartridges often amounts to a substantial fraction of the cost of the
28 purchase and operation of the printer housing the cartridges.

1 17. HP obtains little or no profits from the sale of HP printers.

2 18. HP obtains substantial profits from the sale of HP printer ink cartridges.

3 19. Manufacturers in competition with HP sell printer ink cartridges that are compatible
4 with HP printers and often priced below the corresponding HP cartridges. To save money, owners of
5 HP printers frequently purchase such non-HP cartridges.

6 20. Microchip technology allows HP to detect whether HP printers already sold are using
7 HP or non-HP cartridges.

8 21. Because the HP printers at issue here (the “Class Printers”) connect to the Internet, HP
9 is able to communicate with the Class Printers after they have been sold. HP is therefore able to
10 remotely update the Class Printers’ software.

11 **B. The Class Printers**

12 22. The Class Printers comprise HP printers and all-in-one devices—which perform some
13 combination of printing, copying, scanning, and faxing—in the following product series: (a) OfficeJet 28
14 6220 series; (b) OfficeJet Pro 6230 series; (c) OfficeJet 6820 series; (d) OfficeJet Pro 6830 series; (e)
15 OfficeJet 8600 series; and (f) OfficeJet Pro X series.

16 23. The Class Printers are small-format devices typically, but not exclusively, used in homes
17 or small offices.

18 24. The Class Printers rely on ink cartridges for the ink with which they print documents.

19 25. HP derives a significant portion of its printer ink revenue from sales of replacement ink
20 cartridges for the Class Printers.

21 26. On or about September 13, 2016, or soon thereafter, thousands of Class Printers
22 throughout the United States failed.

27. Failed Class Printers displayed the following error message:



28. The failure of Class Printers, however, did not result from any problem or error with the ink cartridges they contained. Notwithstanding HP's error message, the ink cartridges in the failed Class Printers were neither missing nor damaged.

29. The failed Class Printers still do not work unless they are loaded with replacement ink cartridges manufactured by HP.

C. HP's Scheme to Repel Competition to Its Ink Cartridges and Constrain Its Customers' Purchasing Options

30. HP purposely caused Class Printers with non-HP ink cartridges to fail.

31. The failure of Class Printers was the product of malicious code that HP wrote and installed.

32. In or around March 2016, HP created and distributed a firmware update for Class Printers. (Firmware is a type of software that is semi-permanently embedded in an electronic device.)

1 33. Although HP distributed its firmware update in or around March 2016, HP did not
2 activate this update until September 2016. HP delayed activation of its update to increase the number of
3 printers the update would affect.

4 34. The purpose of HP's firmware update was to disable HP printers containing non-HP ink
5 cartridges. By doing so, HP intended to force purchases of HP's higher-priced cartridges and to reduce
6 the market share of its ink cartridge competitors. Thus, through its update, HP sought to repel
7 competition from more affordable ink cartridges on the market.

8 35. HP carried out this scheme in order to restrict the choices available to its customers,
9 induce them to purchase more HP products, and protect HP's profits from sales of non-HP products.

10 36. HP's conduct in disabling Class Printers prompted a flurry of complaints and criticism
11 from consumers, advocacy groups, and others.¹

12 37. On September 28, 2016, Jon Flaxman, the Chief Operating Officer of HP, issued a public
13 statement apologizing for HP's conduct.² Mr. Flaxman stated: "We should have done a better job of
14 communicating about the authentication procedure to customers, and we apologize. ... Again, to our
15 loyal customers who were affected, we apologize."

16 **D. The HP Warranty**

17 38. HP's express warranty accompanying the Class Printers (the "Warranty") contemplates
18 the use of non-HP-manufactured replacement cartridges in HP printers.

19 39. The Warranty provides: "The use of a non-HP or refilled cartridge does not affect either
20 the HP Limited Warranty to the end-user customer or any HP support contract with the end-user
21 customer for the printer." Pursuant to the Warranty, HP's technical support services do "NOT include
22

23 ¹ *E.g., HP Launched Delayed DRM Time Bomb to Disable Competing Printer Cartridges*,
24 [https://www.techdirt.com/articles/20160920/07021035568/hp-launched-delayed-drm-time-bomb-to-](https://www.techdirt.com/articles/20160920/07021035568/hp-launched-delayed-drm-time-bomb-to-disable-competing-printer-cartridges.shtml)
25 [disable-competing-printer-cartridges.shtml](https://www.techdirt.com/articles/20160920/07021035568/hp-launched-delayed-drm-time-bomb-to-disable-competing-printer-cartridges.shtml) (last visited Oct. 5, 2016); *EFF calls on HP to disable printer*
self-destruct sequence, [http://arstechnica.com/information-technology/2016/09/hp-should-apologize-](http://arstechnica.com/information-technology/2016/09/hp-should-apologize-and-stop-sabotaging-non-hp-ink-cartridges-eff-says/)
26 [and-stop-sabotaging-non-hp-ink-cartridges-eff-says/](http://arstechnica.com/information-technology/2016/09/hp-should-apologize-and-stop-sabotaging-non-hp-ink-cartridges-eff-says/) (last visited Oct. 5, 2016).

27 ² *Dedicated to the best printing experience*, [http://www8.hp.com/us/en/hp-news/blog/Small-Business-](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
28 [Printing/best-possible-printing-](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
[experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e084](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
[4c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2E](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F)
[com%2F](http://www8.hp.com/us/en/hp-news/blog/Small-Business-Printing/best-possible-printing-experience.html?source=aw&aid=7168&jumpid=af_6mrc7uxaeb&awc=7168_1475273723_78f4d01e0844c1ceeab6b6cee5a4b2d7&aoid=35252&pbid=291795&siteid=http%3A%2F%2Fwww%2Edigitaltrends%2Ecom%2F) (last visited Oct. 6, 2016).

1 assistance with . . . installation of non-HP software purchased separately,” but “non-HP manufacturers
2 and suppliers or publishers may provide their own warranties directly to you.”

3 40. The Warranty further states that where “printer or print head failure or damage is
4 attributable to the use of a non-HP or refilled cartridge, HP will charge its standard time and materials
5 charges to service the printer for the particular failure or damage....”

6 41. HP’s disablement of Class Printers caused HP to profit from servicing products that had
7 failed by design.

8 **CLASS ACTION ALLEGATIONS**

9 42. Plaintiff brings this action under Federal Rule of Civil Procedure 23 on behalf of:

10 All persons in the United States who own or owned one or more HP
11 printers or devices at any time from September 12, 2016 to the present, in
12 any of the following categories: OfficeJet 6220 series; OfficeJet Pro 6230
series; OfficeJet 6820 series; OfficeJet Pro 6830 series; OfficeJet 8600
series; OfficeJet Pro X series.

13 Excluded from this proposed Class are HP’s officers, directors, legal representatives, successors, and
14 assigns; any entity in which HP has a controlling interest; and judicial officers to whom this case is
15 assigned and their immediate family members.

16 43. Plaintiff reserves the ability to modify the definition of the proposed Class before the
17 Court determines whether class certification is warranted.

18 44. The requirements of Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3) are
19 met in this case.

20 45. Numerosity. The Class consists of thousands of owners of Class Printers, making joinder
21 of each Class member impracticable.

22 46. Commonality and Predominance. Common questions of law and fact exist for each of the
23 causes of action and predominate over questions affecting only individual Class members. Questions
24 common to the Class include:

25 a. Whether HP’s acts and practices described herein constitute unfair methods of
26 competition;

27 b. Whether HP engaged in unfair acts or practices in the conduct of trade;
28

- c. Whether HP's conduct is substantially injurious to owners of its products;
- d. Whether HP was unjustly enriched by reason of the aforesaid practices;
- e. Whether Plaintiff and the Class are entitled to restitution and, if so, in what

amount; and

- f. Whether Plaintiff and the Class are entitled to other appropriate equitable relief.

47. Typicality. Plaintiff's claims are typical of the claims of the Class. Plaintiff, like all Class members, purchased Class Printers that HP unilaterally disabled and rendered inoperable. Each Class member's claims arise from the same tortious conduct of HP.

48. Adequacy. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests do not conflict with the interests of Class members, and they have retained counsel experienced in prosecuting class action and consumer protection litigation.

49. In addition to satisfying the prerequisites of Rule 23(a), Plaintiff satisfies the requirements for maintaining a class action under Rule 23(b)(3).

50. Superiority. A class action is superior to individual adjudications of this controversy. Litigation is not economically feasible for individual Class members because the amount of monetary relief available to individual plaintiffs is insufficient in the absence of the class action procedure. Separate litigation could yield inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. A class action presents fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

51. Class certification also is appropriate under Rule 23(b)(1) and/or (b)(2) because:

- a. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for HP;

- b. the prosecution of separate actions by individual Class members would create a risk of adjudication of their rights that, as a practical matter, would be dispositive of the interests of other Class members not parties to such adjudications or would substantially impair or impede other Class members' ability to protect their interests; and

1 c. HP has acted and refused to act on grounds that apply generally to the Class such
2 that final injunctive relief and/or declaratory relief is warranted with respect to the Class as a whole.

3 **FIRST CLAIM FOR RELIEF**
4 **Violations of the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code**
5 **§ 17200, *et seq.***

6 52. Plaintiff incorporates the above allegations by reference.

7 53. HP’s conduct detailed herein resulted from policies that HP contrived, ratified, and
8 implemented in California.

9 54. HP’s conduct detailed herein is unlawful, in violation of the UCL, because it contravenes
10 the legislatively declared policy against unfair methods of competition.

11 55. HP engaged in unfair methods of competition and unfair trade practices that violate the
12 UCL in at least the following respects:

13 a. With the intent and effect of stifling free and open competition in the market for
14 printer cartridges, HP devised and executed a material change to printers it had sold.

15 b. HP intentionally caused HP printers to stop functioning upon detection of
16 cartridges manufactured by HP’s competitors.

17 c. HP conditioned the operation of HP printers on their owners’ purchases of HP
18 products in another product market.

19 d. HP tied HP printers’ functionality to their owners’ purchases of HP cartridges
20 even though HP’s Warranty expressly contemplates that printer owners may, will, and do replace
21 depleted printer cartridges with cartridges not made or sold by HP. HP rendered printers it had sold
22 inoperable without prior notice to their owners.

23 e. HP printers remain inoperable as a result of HP’s conduct unless their owners
24 purchase and install cartridges made and sold by HP.

25 f. To induce purchases of HP cartridges, HP provided misleading written messages
26 on the screens of all of the failed Class Printers directing their owners to replace non-HP cartridges that,
27 in fact, still contained ink and, but for HP’s conduct, would function in an ordinary manner.
28

1 g. HP's conduct was designed to increase and maintain its share of the printer
2 cartridge market due to conditions separate from competitive factors such as pricing and quality of
3 goods.

4 56. HP acted to inhibit competition in a manner that is unfair and substantially injurious to
5 the consuming public. HP's unfair methods of competition and unfair acts and practices are contrary to
6 California law and policy and constitute unscrupulous, unethical, outrageous, and oppressive business
7 practices.

8 57. The gravity of the harm resulting from HP's conduct set forth above outweighs any
9 possible utility of the conduct. There are reasonably available alternatives that would further HP's
10 legitimate business interests, such as refraining from disabling printers that contain ink cartridges
11 manufactured by other companies.

12 58. Plaintiff and Class members could not have reasonably avoided injury from HP's unfair
13 business conduct. Plaintiff and Class members did not know, and had no reasonable means of learning,
14 that HP would unilaterally disable their printers upon detecting ink cartridges manufactured by HP's
15 competitors.

16 59. As a direct and proximate result of HP's conduct, Plaintiff and Class members have
17 suffered injuries in fact, including, without limitation, the following:

18 a. While Plaintiff and Class members depend on the Class Printers to transact
19 business and/or to manage important aspects of their personal and family lives, HP's unfair methods of
20 competition and unfair acts and practices have thwarted and deprived them of the use of the Class
21 Printers.

22 b. HP's unfair methods of competition and unfair acts and practices have prevented
23 Plaintiff and Class members from making purchasing decisions on the basis of competitive factors in the
24 marketplace for consumer and business goods.

25 c. HP's unfair methods of competition and unfair acts and practices have caused
26 Plaintiff and Class members to incur lost time and out-of-pocket costs for, among other things,
27 replacement printers and printer cartridges.
28

- 1 a. Certify this case as a class action pursuant to Federal Rule of Civil Procedure 23,
2 appoint Plaintiff as the Class representatives, and appoint the undersigned counsel as Class counsel;
3 b. Order restitution to Plaintiff and Class members;
4 c. Enter injunctive and declaratory relief as appropriate under the applicable law;
5 d. Award Plaintiff and Class members pre-judgment and/or post-judgment interest
6 as prescribed by law;
7 e. Award reasonable attorneys' fees and costs as permitted by law; and
8 f. Enter such other and further relief as may be just and proper.

9 **VII. DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial on all issues so triable.

11
12 Dated: November 9, 2016

Respectfully Submitted,
JOSEPH SAVERI LAW FIRM, INC.

13
14 By: /s/ Joseph R. Saveri
15 Joseph R. Saveri

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