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12 UNITED STATES DISTRICT COURT

13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 SAN JOSE DIVISION

15
16
17 DONNA J. FORSYTH, SIDNEY L. STATON
18 III, ARUN VATTURI, DAN WEILAND,
19 SHAFIQ RAHMAN, ED KAPLAN, KAREN
20 BECKS, AND ALBERT R. DEVERE for and
21 on behalf of themselves and other persons
22 similarly situated,

23 Plaintiffs,

24 vs.

25 HP INC. and HEWLETT PACKARD
26 ENTERPRISE COMPANY,

27 Defendants.

Case No. 5:16-cv-04775

CLASS ACTION

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Donna J. Forsyth, Sidney L. Staton III, Arun Vatturi, Dan Weiland, Shafiq
2 Rahman, Ed Kaplan, Karen Becks, and Albert R. DeVere (“Plaintiffs”), on behalf of themselves
3 and other persons similarly situated, as and for their Complaint against HP Inc. and Hewlett
4 Packard Enterprise Company, allege and state as follows:

5 **INTRODUCTION**

6 1. Defendants HP, Inc. (“HPI”) and Hewlett Packard Enterprise Company (“HPE”),
7 along with their predecessor, Hewlett-Packard Company (collectively, the “HP Entities”), through
8 coordinated employment policies and practices, have unlawfully discriminated against Plaintiffs
9 and other similarly situated employees because of their age.

10 2. In 2012, under the direction of Ms. Meg Whitman, who was then its President and
11 Chief Executive Officer (CEO), Hewlett-Packard Company began implementing a company-wide
12 initiative to replace thousands of existing, older workers with new, younger employees
13 (hereinafter, referred to as the “Workforce Restructuring Initiative” or “Initiative”). When rolling
14 out this Initiative, Ms. Whitman said the goal was to restructure Hewlett-Packard Company’s
15 workforce over a period of approximately five years, between 2012 and 2017.

16 3. In October 2013, Ms. Whitman admitted publicly during a Securities Analyst
17 Meeting that the Initiative’s overarching goal was to “recalibrate and reshape” the workforce by
18 “replacing” existing workers with “a whole host of young people.”

19 4. In November 2015, Hewlett-Packard Company split into two companies, HPI and
20 HPE. Since the split, Ms. Whitman has been the Chair of the Board of Directors for HPI and the
21 CEO for HPE.

22 5. Under Ms. Whitman’s direction, both HPI and HPE have continued to implement
23 the Initiative in concert with one another, shedding thousands of additional employees since
24 November 2015, and making plans to terminate the employment of thousands more in 2017 (and
25 possibly beyond).

26 6. Ms. Whitman has repeatedly admitted that her goal has been to make the entire
27 Hewlett-Packard organization younger. In pursuit of this goal, the three HP Entities have now
28 shed thousands of older workers since 2012, while at the same time aggressively recruiting

1 younger employees to replace them.

2 7. The split of Hewlett-Packard Company into HPI and HPE was Ms. Whitman's
3 brain-child, as was the entire Workforce Restructuring Initiative. Ms. Whitman not only
4 implemented and controlled the Initiative at the pre-split Hewlett-Packard Company, she also
5 continues to exert control and substantial influence over the implementation of the Initiative at the
6 post-split entities, HPI and HPE.

7 8. The HP Entities may contend that the Workforce Restructuring Initiative was
8 always meant to be age-neutral. However, the Initiative and the programs and plans implemented
9 under it have had a clear and substantially adverse impact on older employees.

10 9. At all relevant times, HPI and HPE have colluded, conspired and aided and abetted
11 one another to carry out the Workforce Restructuring Initiative in furtherance of Ms. Whitman's
12 goal to "recalibrate" the age of the HP Entities' workforces. At worst, the HP Entities
13 intentionally designed and carried out the Initiative to discriminate willfully against older workers
14 in an effort to get younger. At best, the Initiative was comprised of facially neutral policies that
15 disproportionately and adversely impacted the HP Entities' older workers.

16 10. Since the Initiative was implemented in 2012, it has involved a coordinated two-
17 prong strategy: (1) pushing current, older workers out of the company, while (2) at the same time
18 hiring a large number of new, younger employees to replace them. As just one means of
19 executing the first prong of this strategy, Hewlett-Packard Company, under Ms. Whitman's
20 direction, implemented the "2012 Workforce Reduction Plan," which was subsequently adopted
21 by both HPI and HPE (hereinafter, the pre- and post-split Workforce Reduction Plans are referred
22 to collectively as the "WFR Plans").

23 11. While the WFR Plans' titles suggest that the primary goal is a "workforce
24 reduction," as Ms. Whitman herself admits, the true goal of the entire Workforce Restructuring
25 Initiative has been to restructure, recalibrate and reshape the HP Entities' workforces to make
26 them younger. Indeed, in the nearly five years since they began to implement the Initiative and
27 the WFR Plans in 2012, the HP Entities have added thousands of new employees to replace those
28 who were terminated under the WFR Plans.

1 19. Plaintiff Dan Weiland is a resident of the State of Texas. He worked at Hewlett-
2 Packard Company until he was laid off in July 2015, when he was 63 years old.

3 20. Plaintiff Shafiq Rahman is a resident of the State of Texas. He worked at Hewlett
4 Packard Enterprise Company (and previously Hewlett-Packard Company) until he was laid off in
5 July 2016, when he was 65 years old.

6 21. Plaintiff Ed Kaplan is a resident of the State of Illinois. He worked at Hewlett
7 Packard Enterprise Company (and previously Hewlett-Packard Company) until he was laid off in
8 July 2016, when he was 63 years old.

9 22. Plaintiff Karen Becks is a resident of the District of Columbia. She worked at
10 Hewlett Packard Enterprise Company (and previously Hewlett-Packard Company) until she was
11 laid off in June 2016, when she was 51 years old.

12 23. Plaintiff Albert R. DeVere is a resident of the State of Virginia. He worked at
13 Hewlett Packard Enterprise Company (and previously Hewlett-Packard Company) until he was
14 laid off in July 2016, when he was 52 years old.

15 24. Defendant HP Inc. is a corporation organized under the laws of the State of
16 California with its headquarters and principal place of business located at 1501 Page Mill Road,
17 Palo Alto, California.

18 25. Defendant Hewlett Packard Enterprise Company is a corporation organized under
19 the laws of the State of Delaware with its headquarters and principal place of business located at
20 3000 Hanover Street, Palo Alto, California.

21 26. Non-party Hewlett-Packard Company in November 2015 split into the two
22 Defendants in this action, HPE and HPI. These new entities have expressly and/or impliedly
23 assumed liability for the wrongful acts of Hewlett-Packard Company and the wrongful acts of
24 Hewlett-Packard Company are imputed to the Defendants. Furthermore, Defendants have
25 continued Hewlett-Packard Company's illegal age discrimination. As a matter of law, Defendants
26 are legally responsible for the age discrimination of their predecessor, Hewlett-Packard Company.

27 27. At all times relevant, both Defendants aided and abetted, incited, compelled,
28 coerced and/or conspired with each other in connection with the acts complained of herein. Each

1 Defendant knowingly and substantially assisted and encouraged the other in the discriminatory
2 conduct alleged. Through Ms. Whitman's common leadership and control over the management
3 of both entities, Defendants agreed to continue the discriminatory policies after Hewlett-Packard
4 Company split into two companies and they have acted in furtherance of that conspiracy by
5 pursuing virtually identical discriminatory policies and practices. At all times relevant,
6 Defendants acted as a joint or single employer and/or the agents of one another while carrying out
7 this illegal age discrimination.

8 JURISDICTION AND VENUE

9 28. This Court has subject matter jurisdiction over this action pursuant to the ADEA,
10 29 U.S.C. § 621, *et seq.*

11 29. This Court has supplemental jurisdiction over the California state law claims
12 alleged herein pursuant to 28 U.S.C. § 1367(a).

13 30. This Court has personal jurisdiction over the two Defendants because they are
14 headquartered and do substantial business in the State of California.

15 31. Venue is proper in the Northern District of California, San Jose Division, pursuant
16 to 28 U.S.C. §§ 1391(b)(1) and (2) because a substantial part of the events giving rise to
17 Plaintiffs' claims arose in this District, and because both Defendants are headquartered here.

18 FACTUAL ALLEGATIONS

19 *The HP Entities' Publicly-Stated Goal to Get Younger*

20 32. Throughout the time that the HP Entities have been carrying out the Workforce
21 Restructuring Initiative, Ms. Whitman held senior leadership positions at all three companies. She
22 was the CEO of pre-split Hewlett-Packard Company, and is currently the Chair of HPI's Board of
23 Directors and the CEO of HPE. Throughout this time, Ms. Whitman has publicly made it known
24 that her overarching goal is to make the HP Entities younger.

25 33. Ms. Whitman candidly admitted this objective when discussing the need to change
26 Hewlett-Packard Company's "labor diamond" into a "labor pyramid" or a "quite flat triangle"
27 with large numbers of young people at its base. Specifically, during an October 2013 Securities
28 Analyst Meeting, Ms. Whitman said:

1 [A]s we think about our overall labor pyramid at Hewlett-Packard,
 2 we need to return to a labor pyramid that really looks like a triangle
 3 where you have a lot of early career people who bring a lot of
 4 knowledge who you're training to move up through your
 organization, and then people fall out either from a performance
 perspective or whatever.

5 And over the years, our labor pyramid doesn't look—has become
 6 not a triangle. It's become a bit more of a diamond. And *we are*
 7 *working very hard to recalibrate and reshape our labor pyramid*
 8 *so that it looks like the more classical pyramid* that you should
 have in any company and particularly in ES. If you don't have *a*
whole host of young people who are learning how to do delivery or
 learning how to do these kinds of things, you will be in [for] real
 challenges.

9

10 Now, that's not something that changes like that. Changing the
 11 same shape of your labor pyramid takes a couple of years, but we
 12 are on it, and *we're amping up our early career hiring, our college*
 13 *hiring*. And we put in place an informal rule to some extent which
 is, listen, when you are *replacing* someone, really think about the
 new style of IT skills. (emphasis added.)

14 34. Two years later, at another Securities Analyst Meeting held in September 2015
 15 (just before the anticipated November 2015 split and formation of HPI and HPE), Ms. Whitman
 16 reiterated her position that the HP Entities needed to create a “labor pyramid” that was “quite
 17 flat,” stating:

18 We have to fundamentally recreate the labor pyramid. Many of you
 19 heard me say our labor pyramid in Enterprise Services looks like a
 20 diamond and it needs to look like a triangle and quite frankly it
 needs to look like a quite flat triangle to be competitive.

21 35. In November 2015, more than three years after implementing the Initiative and the
 22 2012 WFR Plan, and just as Ms. Whitman was preparing to take on senior leadership positions at
 23 both HPI and HPE, Ms. Whitman again declared publicly during an interview on CNBC that the
 24 goal was for the HP Entities to get younger:

25 Interviewer: You did announce significant job cuts about a month
 26 or so ago. . . . Is that going to be it for HP?

27 Ms. Whitman: That should be it. That will allow us to right-size our
 28 Enterprise Services business . . . to make sure that we've got a labor
 pyramid with *lots of young people* coming in right out of college
 and graduate school and early in their careers. That's an important
 part of the future of the company. . . . (emphasis added).

1 36. Notably, Ms. Whitman answered the CNBC interviewer’s question about *job cuts*
2 by saying that the HP Entities would be doing a lot of additional *hiring* of “young” people. This
3 demonstrates the true purpose of the Initiative: to reduce the *age* of the HP Entities’ workforce,
4 not its size.

5 37. When carrying out the Initiative, the HP Entities’ senior management (acting
6 under the direction of Ms. Whitman) provided managers throughout the country with two
7 simultaneous orders: (1) terminate a specific number of employees, called “slates,” pursuant to a
8 WFR Plan; and (2) hire a specific number of requisitions (“reqs”) to replace them, focusing on
9 new, younger hires. The issuance of these “slates” and “reqs” followed a distinct pattern: an
10 upper-level manager would order a subordinate manager to lay off a designated number of
11 experienced, older, tenured “LT” (meaning “long-term” or “long-tailed”) employees, while
12 simultaneously providing that manager a similar number of new “reqs” authorizing the hiring of
13 recent “graduate” or “early career” employees to replace those just fired.

14 38. The HP Entities used uniform, near-verbatim paperwork when terminating
15 Plaintiffs and other class members, who all received the same vaguely worded, boilerplate
16 reasons for being terminated, regardless of which of the HP Entities they worked for. Those
17 notices generically state: “Employees were selected for the reduction in force because the job
18 they were performing will no longer continue, their skill set was not applicable to the Company’s
19 or organization’s operations going forward, and/or other employees were viewed as better
20 qualified because of past performance and competency evaluation, which may include skills,
21 abilities, knowledge and experience.” This broadly worded, proffered justification for firing these
22 employees was merely a pretext for policies of overt age discrimination.

23 39. Even when a terminated employee’s specific job title or position was eliminated,
24 consistent with Ms. Whitman’s statements about the Initiative generally, those positions were not
25 truly eliminated, but were simply staffed with new, younger hires.

26 ***The HP Entities’ Other Efforts to Eliminate Older Workers***

27 40. In addition to terminating employees under the WFR Plans, the HP Entities used
28 other tactics to push current, older workers out—thereby further fulfilling the first prong of the

1 Initiative. For example, in 2012 and 2014, Hewlett-Packard Company implemented early and
2 phased retirement programs under which employees having a combined number of years in terms
3 of age and tenure were strongly encouraged to “voluntarily” phase out their employment.

4 41. In 2016, HPI initiated nearly the same phased retirement program that the former
5 Hewlett-Packard Company had, and HPE has also implemented similar retirement policies to
6 strongly encourage older employees to leave the company.

7 42. For example, Hewlett-Packard Company proposed that Plaintiff Dan Weiland take
8 early phased retirement in September 2014. However, Mr. Weiland declined because he was not
9 ready to retire and wanted to continue working. Nevertheless, Mr. Weiland’s supervisor tried to
10 persuade him to participate in the program, even though it offered no significant benefits to
11 Mr. Weiland. It was simply a way for Hewlett-Packard Company to apply pressure on
12 Mr. Weiland to leave the company “voluntarily.”

13 43. The retirement programs have put older employees in a dilemma that works to the
14 HP Entities’ advantage. During meetings with older employees where the various phased
15 retirement programs are explained and promoted by management, the elephant in the room is
16 looming: each person is thinking, like Mr. Weiland did, “If I turn down this retirement program,
17 am I just going to be laid off anyway?”

18 44. In Mr. Weiland’s case, and in thousands of others, that question was answered just
19 how Mr. Weiland feared. Shortly after he turned down the 2014 phased retirement program,
20 Mr. Weiland’s employment was simply terminated under Hewlett-Packard Company’s WFR
21 Plan. As time went on, older employees at each of the HP Entities received the message: they
22 were in serious jeopardy of losing their jobs.

23 45. Hewlett-Packard Company also employed a bait-and-switch strategy with its
24 employees regarding work-at-home policies. Specifically, just before implementing the 2012
25 WFR Plan, Hewlett-Packard Company adopted new employment policies that strongly
26 encouraged employees to work remotely from home. But then, shortly after it initiated its 2012
27 WFR Plan, Hewlett-Packard Company (acting at Ms. Whitman’s direction) reversed course and
28 suddenly required all employees to appear regularly at physical office locations. Not only was this

1 a complete reversal of the prior policy (which was only recently implemented), in many cases, the
2 offices where these employees previously worked had been closed. Thus, many employees found
3 themselves needing to make hour-plus long commutes to new offices that often did not even have
4 room for them. This policy change disproportionately impacted older employees and amplified
5 the ongoing hostility toward older workers.

6 46. Pursuant to their Workforce Restructuring Initiative, the HP Entities also
7 implemented bans on hiring employees who were terminated pursuant to WFR Plans
8 implemented by any of the HP Entities. In other words, the HP Entities agreed to effectively
9 blacklist employees who were terminated under any of the WFR Plans. This ensured that the
10 current, older workers would not be re-hired by any of the HP Entities.

11 47. This blacklisting policy was implemented even though the HP Entities claimed to
12 have a “60 Day Preferential Rehire Period” during which those terminated under a WFR Plan
13 were encouraged to apply for new positions within either HPE or HPI (and Hewlett-Packard
14 Company before the split). These employees were told they would receive preferential hiring
15 status for 60 days following their termination. However, although apparently meant to be facially
16 neutral, in practice, the 60 day Preferential Rehire Period was a farce for older employees.

17 48. For example, after Mr. Rahman was terminated, HPE created a new job opening
18 for a nearly identical position in Colorado Springs, Colorado. Mr. Rahman was appropriately
19 qualified for that position and applied for it during his 60 Day Preferential Rehire Period, but
20 HPE refused to hire him because he was laid off under a WFR Plan. All three HP Entities
21 engaged in this policy of blacklisting their own and each other’s former employees in order to
22 prevent them from being rehired.

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24 //
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HP's Internal Policies to Hire Young Employees

1
2 49. While pushing out older workers as part of the first prong of the Initiative, the
3 HP Entities also hired (and continue to hire) thousands of new, younger workers as part of the
4 Initiative's second prong.

5 50. In other words, since the so-called workforce "reduction" efforts began in 2012,
6 the HP Entities have continued to hire aggressively. The primary difference is that, since 2012,
7 HP has hired a disproportionately large number of new, younger employees (under the age of 40)
8 to replace older employees (aged 40 and older) who were terminated.

9 51. Thus, the HP Entities were not actually engaging in a workforce "reduction."
10 Rather, as Ms. Whitman admitted publicly, the Initiative has always been an effort to
11 "recalibrate" (most modestly stated) or "fundamentally recreate" (most accurately stated) the HP
12 Entities' workforces with a "whole host of young people." Regardless of which words are used,
13 the HP Entities are engaging in illegal age discrimination.

14 52. The discriminatory intent is also shown by internal directives provided to hiring
15 managers by senior management and the human resources departments at the HP Entities. For
16 example, in August 2013, the Hewlett-Packard Company's human resources department
17 distributed written guidelines stating that its "[n]ew corporate requisition policy requires 75% of
18 all External hire requisitions be 'Graduate' or 'Early Career'" employees. A similar policy of
19 promoting "graduate" and "early career" hires continued at both HPE and HPI after the split.

20 53. The use of the words "graduate" and "early career" in this August 2013 document
21 (and others like it) provide additional evidence of the intent to discriminate against older workers
22 in hiring decisions.

23 54. As Hewlett-Packard Company defined the term for purposes of the August 2013
24 directive, a "graduate" hire was someone who either was about to graduate or had graduated
25 within the previous 12 months. Similarly, an "early career" hire was somebody who had
26 completed his or her degree and had *up to* five years of experience related to the job for which
27 they were applying.

28 55. Furthermore, across Hewlett-Packard Company, hiring managers were advised in

1 writing to “look for and create opportunities to enhance [their] labor structure” through “Early
2 Career hiring.”

3 56. Human resources employees at Hewlett-Packard Company were also told to
4 “[h]elp convert or repurpose” the hiring managers’ “current requisitions, as appropriate, to Early
5 Career requisitions.”

6 57. Hewlett-Packard Company’s human resources department knew, however, that
7 focusing on hiring younger employees might raise some concerns with its older “long term”
8 employees. Thus, in an internal memorandum issued in 2013, management demonstrated that
9 they knew there was a need to disguise the discriminatory hiring policies and, specifically, to
10 “*[a]ddress [the] issue of long term employees being perceive[d] as bypassed by the next*
11 *gen[eration].*” (emphasis added).

12 58. Despite knowing that it was improper, the HP Entities continued to use online job
13 openings that contained blatantly discriminatory statements such as:

- 14 • This position is for a recent college graduate. To qualify, you must have
15 graduated with your Bachelor’s or Master’s degree within the last 12
16 months.
- 17 • In order to be considered for this role, you must have graduated within 12
18 months of the start date. . . [W]e can only consider graduates who have
19 graduated between August 2014 and September 2015.
- 20 • Must have graduated within 12 months of July, 2016.
- 21 • This position is for a recent college graduate. To qualify you must have
22 received your last degree within the past 12 months.
- 23 • The candidate must be a recent graduate.
- 24 • We are looking for recent college graduate and early career candidates. . . .
- 25 • The successful candidate must be near degree completion (Dec 2015 or
26 prior) or have graduated within the past 12 months.
- 27 • Must be a recent graduate (2015) or graduating by January 2016.
- 28 • Must have completed degree within the past 12 months.
- We are looking for a future, or recent (within 12 months) College
Graduate. . . .
- This position is for a recent university graduate.
- First Level University degree awarded within the past 12 months.

- 1 • Recent (graduation date between July 2014 and September 2015 only)
college graduate. . . .
- 2 • We are seeking candidates who have recently graduated. . . . Only
3 applicants who have graduated within the past year (July 2014 - August
4 2015) will be considered for this role, and this will be verified during the
background check.
- 5 • Recent college graduates preferred.

6 ***The HP Entities' Age Discrimination Is Willful***

7 59. The Workforce Restructuring Initiative was designed by Ms. Whitman to achieve
8 one discriminatory goal: to make the Hewlett-Packard organization younger. The HP Entities
9 knew that their practice of firing old and hiring young was discriminatory but pursued those
10 practices regardless, making their age discrimination willful.

11 60. At one point, in 2014, Hewlett-Packard Company even acknowledged that it
12 “need[ed] to remove references to maximums or limits on years of experience in [its] posting[s],
13 job titles, classifications of jobs and policies as it relates to our Early Career definition to mitigate
14 any potential risk and litigation regarding discrimination of protected classes against our
15 employment practices.”

16 61. Notably, Hewlett-Packard Company did not suggest it should rethink or reconsider
17 its discriminatory employment practices, but decided it should simply avoid using certain words
18 in its job postings and advertisements to “mitigate” against the potential litigation risk.

19 62. As seen in cases involving other types of illegal employment discrimination (e.g.,
20 race or gender discrimination), stereotypical statements were made at Hewlett-Packard Company
21 about large groups of employees based entirely on their age. For example, internal Hewlett-
22 Packard Company documentation dated July 2015 stated that anyone born between 1930 and
23 1946 could be considered a “Traditionalist” who moves “slow and steady” and seeks “part time
24 work.” As for “Baby Boomers” (born between 1946 and 1964), they were considered to be “rule
25 breakers,” implying that they were undesirable. Conversely, when it came to “Millennials,”
26 Hewlett-Packard Company made it clear that hiring new employees from this generation was
27 highly desirable. Indeed, Hewlett-Packard Company specifically adopted strategies for
28 “integrat[ing] millennials into the workforce” and “educat[ing] managers and others on millennial

1 characteristics.” These attitudes toward different age groups continued at both HPI and HPE after
2 Hewlett-Packard Company split.

3 63. Referring to entire segments of employees as “slow and steady” or “rule breakers”
4 based on the year in which they were born is not only callous, but is at the heart of the very type
5 of discrimination that the ADEA and similar California laws were intended to prohibit.
6 Furthermore, promoting such stereotypes only further exacerbates unjustified bias against large
7 parts of the HP Entities’ workforce based solely on age.

8 64. Plaintiff Dan Weiland observed this first-hand during a team meeting involving his
9 then-supervisor, Mark Wade, who described a phone call with Hewlett-Packard Company’s
10 human resources team as follows:

11 The theme on the EER call was, you know, college, college,
12 college. Everything was about *refreshing HP’s golden workforce*.
13 That was kind of the theme. I think they woke up and said, “man,
everybody running around this place is old.” (emphasis added).

14 65. As these comments demonstrate, the HP Entities were effective in communicating
15 to their lower level managers that the Initiative was designed to “refresh” its “golden workforce”
16 with younger employees. In these ways, the HP Entities’ upper management directed its lower
17 level managers, both directly and indirectly, to select older workers to be terminated under the
18 WFR Plans.

19 *Facial Neutrality of the Workforce Restructuring Initiative*

20 66. As Ms. Whitman’s public statements and the other allegations set forth herein
21 demonstrate, the intent behind the Workforce Restructuring Initiative was (and still is) to
22 discriminate willfully against older workers to make the HP Entities younger. However, to hide
23 their discriminatory goals, the Defendants may claim that the Initiative and the policies
24 implemented in connection with that Initiative were age-neutral.

25 67. However, even if facially neutral, the HP Entities’ policies had a substantial
26 discriminatory impact on employees aged 40 and over. For instance, the mandate that 75% of all
27 new hires be “graduate” or “early career” hires does not, on its face, mention age. Hypothetically,
28 an older worker could be a recent college graduate, or starting a new career, such that the worker

1 might meet the definitions of an “early career” or “graduate” employee. However, in practice, the
2 overwhelming majority of the HP Entities’ early career and recent graduate hires under the
3 Initiative were younger workers in their 20’s or 30’s.

4 68. In addition, while the HP Entities’ upper management and human resources
5 departments arguably may have communicated facially neutral criteria to lower level managers
6 about who they should select to be terminated under the WFR Plans (i.e., instructions to fire more
7 tenured employees or those who work remotely), the HP Entities’ upper management and human
8 resources departments made the final decisions regarding which individuals to terminate under
9 the WFR Plans. Indeed, although lower level managers would initially be asked to select
10 individuals for termination, the HP Entities’ upper management and human resources
11 departments always could (and did) override those selections consistent with the discriminatory
12 intentions of the Initiative.

13 69. For example, when Plaintiff DeVere—himself a lower level manager—was asked
14 to select two employees from his team to be terminated under the WFR Plan, he selected two who
15 he felt had the worst performance: specifically, two younger, early career or graduate recent hires.
16 But, Mr. DeVere’s boss, a director named Mark Moreno, told Mr. DeVere he should not be laying
17 off recent graduates or early career hires. Nonetheless, Mr. DeVere submitted his selections to
18 HPE’s human resources department, which promptly vetoed his selections.

19 70. Instead, two older team members from Mr. DeVere’s team were fired. In addition,
20 two other workers over the age of 40 were terminated at about the same time—specifically, both
21 Mr. DeVere *and* Mr. Moreno.

22 ***Statistical Evidence Showing Discrimination***

23 71. In implementing the Workforce Restructuring Initiative, regardless of any facially
24 neutral criteria the HP Entities allegedly used, the end result was that older workers were
25 disproportionately selected to be laid off under the WFR Plans. Indeed, based on available data
26 regarding layoffs under the WFR Plans, the HP Entities clearly conformed to Ms. Whitman’s
27 publicly-stated goal of trying to make the companies younger. Older workers were statistically
28 more likely to be laid off under the WFR Plans than younger ones.

1 72. When the HP Entities fired or laid off employees under the WFR Plans, they also
2 routinely failed to comply with the Older Workers Benefit Protection Act (“OWBPA”), 29 U.S.C.
3 § 626(f). The HP Entities provided “Attachment A” forms to terminated employees, ostensibly to
4 comply with the requirements of the OWBPA. However, these forms did not comply with the
5 requirements of the OWBPA and were drafted in a manner that underrepresented the
6 discriminatory impact of the Initiative.

7 73. The Attachment A forms did not provide the data required by the OWBPA
8 because, *inter alia*, they did not include the job titles and ages of all employees in the pertinent
9 “decisional unit” impacted by the HP Entities’ layoffs. Indeed, they did not even define the
10 employee’s “decisional unit.” Rather than provide the required data for the relevant “decisional
11 unit,” the HP Entities regularly provided Attachment A forms that improperly focused on a small
12 group of employees that the HP Entities deceptively suggested were part of the appropriate
13 decisional unit, when in fact they were not.

14 74. A preliminary statistical analysis of Attachment A forms provided to former
15 employees shows that older employees were significantly more likely to be terminated than
16 younger employees, reaching a statistical confidence level of three standard deviations; in other
17 words, the statistical level of confidence in this disparity exceeds 99%.

18 75. The disparity exists even though the Attachment A forms that the HP Entities
19 prepared and distributed to former employees did not fully portray the negative impact of their
20 employment policies on older employees. Indeed, the HP Entities improperly crafted their
21 Attachment A forms to understate the true impact of the employment terminations on older
22 employees.

23 76. If, instead, the Attachment A forms were accurate and properly identified all of the
24 younger employees who were hired or retained pursuant to the Initiative, as well as the additional
25 older workers who were terminated pursuant to the Initiative, then the known statistical disparity
26 between the impact on older employees versus younger ones would be even greater.

27 //

28

1 ***The HP Entities' Waiver and General Release Agreement is Unenforceable***

2 77. After they were terminated, Mr. Staton, Ms. Becks, Mr. Kaplan and others
3 similarly situated executed a Waiver and General Release Agreement (“Release Agreement”)
4 provided to them. The Release Agreements and other WFR documentation are virtually identical
5 across the HP Entities because they are all implementing the same, unified policy. Indeed,
6 terminated employees are directed to submit their signed Release Agreement to the same building
7 for both HPI and HPE as they were for Hewlett-Packard Company.

8 78. The Release Agreement purported to waive age discrimination claims and other
9 ADEA rights. However, like thousands of similarly situated employees who signed verbatim or
10 near-verbatim Release Agreements, those signed by Mr. Staton, Ms. Becks and Mr. Kaplan were
11 not “knowing and voluntary” for purposes of the OWBPA.

12 79. Specifically, the Release Agreement is, among other things, internally inconsistent,
13 confusing, misleading, and unclear, and it contains provisions that violate the ADEA and
14 applicable regulations. Therefore, the Release Agreements signed by Mr. Staton, Ms. Becks,
15 Mr. Kaplan, and similarly situated individuals were not written in a manner calculated to be
16 understood by the average individual eligible for the WFR Plans.

17 80. Additionally, for the reasons explained above, the Attachment A forms supplied to
18 Mr. Staton, Ms. Becks, Mr. Kaplan, and others similarly situated did not inform them of the job
19 titles and ages of all individuals eligible or selected for the applicable WFR Plan as well as those
20 not eligible and not selected for the same in a manner calculated to be understood by the average
21 individual eligible to participate in the WFR Plans.

22 81. Moreover, the HP Entities also presented Mr. Staton, Ms. Becks, Mr. Kaplan, and
23 others similarly situated with a Severance Payment Estimate Statement (“Statement”) which, in
24 conjunction with the Release Agreement, misled the average employee regarding the amount of
25 consideration he or she would receive for signing the Release Agreement. The Statement
26 misleadingly includes the employee’s benefits under the Worker Adjustment and Retraining
27 Notification Act, 29 U.S.C. § 2101, *et seq.* (“WARN”) within the severance payment calculation,
28 and the Release Agreement confusingly implies that the WARN payment is part of the

1 consideration for waiving ADEA rights and claims.

2 82. Also, any alleged waiver of any ADEA right or claim contained in the Release
3 Agreement signed by any former employee is not legally valid under the OWBPA for the reasons
4 described above.

5 83. The Release Agreement also contains a provision that purports to waive the rights
6 held by Mr. Staton, Ms. Becks, Mr. Kaplan, and others similarly situated to bring or participate in
7 a collective action under the ADEA (the “Class Action Waiver”). However, the Class Action
8 Waiver is unenforceable because, *inter alia*, it was not entered into knowingly and voluntarily
9 under the OWBPA, for the reasons just described. As such, the Class Action Waivers signed by
10 Mr. Staton, Ms. Becks, Mr. Kaplan, and others similarly situated, are unenforceable and void. As
11 set forth in the Release Agreement, the validity of the Class Action Waiver must be resolved in
12 court, not in arbitration.

13 84. Further, while most provisions of the Release Agreement are severable if they are
14 deemed wholly or partially unenforceable, the Class Action Waiver is explicitly *not* severable
15 from the rest of the Release Agreement. Accordingly, because the Class Action Waiver is
16 unenforceable and void in this case (for the reasons discussed above), the *entire* Release
17 Agreement—including its arbitration provision—is void and unenforceable. As such, Mr. Staton,
18 Ms. Becks, Mr. Kaplan, and all similarly situated individuals who signed a Release Agreement
19 are not bound by the arbitration provision contained in the Release Agreement, and they may
20 proceed with this collective action.

21 *The Named Plaintiffs’ Background*

22 Donna Forsyth

23 85. Plaintiff Donna Forsyth was hired by Hewlett-Packard Company on or about July
24 12, 1999. Her most recent position was a Manager on the Capabilities Team in the Global
25 Corporate Services organization. When her employment was terminated, Ms. Forsyth was
26 working for Hewlett Packard Enterprise Company in Bellevue, Washington.

27 86. Ms. Forsyth performed her job duties in a satisfactory and competent manner. She
28 always met or exceeded her employer’s expectations.

1 that he was being terminated as part of a WFR Plan. His last day of work was July 24, 2015.

2 109. Upon information and belief, and consistent with the HP Entities' internal policies
3 and practices as alleged in this Complaint, when Mr. Weiland's employment was terminated, he
4 was replaced with a "graduate" or "early career" hire who is significantly under the age of 40, or
5 with someone else who is younger than him.

6 110. Mr. Weiland filed a charge of discrimination with the EEOC on October 5, 2015,
7 raising class-wide claims for relief against Hewlett-Packard Company. Shortly after Hewlett-
8 Packard Company split into HPE and HPI, Mr. Weiland notified the EEOC that he was charging
9 both HPE and HPI with discrimination. He received a Notice of Right to Sue dated August 11,
10 2016. More than 60 days have passed since this filing of his discrimination charge. This lawsuit
11 was filed within 90 days of receiving his Notice of Right to Sue. Mr. Weiland has exhausted his
12 administrative remedies.

13 Shafiq Rahman

14 111. Plaintiff Shafiq Rahman began working at Compaq in April 1997, which was
15 acquired by Hewlett-Packard Company in 2002. At the time of his termination, on July 29, 2016,
16 Mr. Rahman was a Senior Engineer developing computer servers for HPE.

17 112. Throughout the nearly twenty years of his employment, Mr. Rahman performed
18 his job duties in a satisfactory and competent manner, and consistently received positive reviews.
19 Indeed, during a mid-year review that took place shortly before his termination, Mr. Rahman was
20 told his performance was good and he should consider himself "safe" from termination.

21 113. Nevertheless, soon thereafter, on July 18, 2016, when Mr. Rahman was 65 years
22 old, he was informed he was being terminated under a WFR Plan. His last day of work was
23 July 29, 2016.

24 114. Upon information and belief, and consistent with the HP Entities' internal policies
25 and practices as alleged in this Complaint, when Mr. Rahman's employment was terminated, he
26 was replaced with a "graduate" or "early career" hire who is under the age of 40, or with someone
27 else who is younger than him.

28 115. Mr. Rahman filed a charge of discrimination with the EEOC on September 29,

1 2016 that raised class-wide claims for relief. More than 60 days have passed since the charge was
2 filed. He has exhausted his administrative remedies.

3 Ed Kaplan

4 116. Plaintiff Ed Kaplan was hired by the Hewlett-Packard Company in 1984. At the
5 time of his termination in 2016, Mr. Kaplan was a Quality Consultant for HPE.

6 117. During his more than 30 years with Hewlett-Packard Company and HPE,
7 Mr. Kaplan received only one less than average performance review, which was in 2009.
8 However, he was not placed on a performance plan as a result of this review. Otherwise, he
9 consistently performed his job duties in a satisfactory and competent manner, and always met or
10 exceeded his employer's expectations.

11 118. Mr. Kaplan's last day of work was July 8, 2016, when he was 63 years old.

12 119. Upon information and belief, and consistent with the HP Entities' internal policies
13 and practices as alleged in this Complaint, when Mr. Kaplan's employment was terminated, he
14 was replaced with a "graduate" or "early career" hire who is under the age of 40, or with someone
15 else who is younger than him.

16 120. Mr. Kaplan filed a charge of discrimination with the EEOC on October 5, 2016
17 that raised class-wide claims for relief. More than 60 days have passed since the charge was filed.
18 He has exhausted his administrative remedies.

19 Karen Becks

20 121. Plaintiff Karen Becks was hired by the Hewlett-Packard Company in February,
21 2004 (although she had also been performing contract work for Hewlett-Packard Company since
22 December, 2001). When terminated in 2016, Ms. Becks was an employee of HPE.

23 122. Ms. Becks consistently performed her job duties in a satisfactory and competent
24 manner, and she never received a negative performance review during her time with Hewlett-
25 Packard Company or HPE. Indeed, her 2015 performance evaluation described Ms. Becks as
26 "achiev[ing] expectations" and noted that she "maintained her performance and increased her
27 skills" even after recently moving into a new role.

28 //

Class Allegations

131. Plaintiffs are representatives of the following class for purposes of the ADEA:

The “Nationwide Class”

All individuals aged 40 and older who had their employment terminated by an HP Entity pursuant to a WFR Plan on or after December 9, 2014 for individuals terminated in deferral states; and on or after April 8, 2015 for individuals terminated in non-deferral states.

132. Plaintiffs and the members of the Nationwide Class were all: (a) aged 40 years or more at the time of termination, (b) terminated pursuant to Defendants’ Workforce Restructuring Initiative and common WFR Plans, and (c) terminated because of their age pursuant to common discriminatory employment policies, practices and procedures.

133. The HP Entities’ discriminatory practices and policies are centralized. As explained above, the HP Entities instituted company-wide policies of firing older employees (who were aged 40 years or older) and hiring a disproportionately large number of significantly younger employees (who were under the age of 40). This policy was carried out through the HP Entities’ upper management and human resources departments, as alleged in greater detail above. The HP Entities’ highest levels of management implemented the discriminatory policies and practices described herein, and they were uniformly carried out through all levels of the HP Entities.

134. Common questions of law and fact among Plaintiffs and the members of the Nationwide Class include, but are not limited to:

- (a) whether the HP Entities unlawfully terminated members of the Nationwide Class in violation of the ADEA;
- (b) whether the HP Entities engaged in a pattern and practice of age discrimination when selecting members of the Nationwide Class for termination pursuant to the WFR Plans;
- (c) whether the HP Entities through their WFR Plans willfully and intentionally discriminated against members of the Nationwide Class because of their age;
- (d) whether the HP Entities’ common employment policies and practices adversely

1 impacted members of the Nationwide Class; and

2 (e) whether the HP Entities' purported reasons for laying off members of the
3 Nationwide Class pursuant to the WFR Plans have been pretextual.

4 135. Counts for violations of the ADEA may be brought and maintained as an "opt-in"
5 collective action pursuant to 29 U.S.C. § 216(b), for all claims asserted by Plaintiffs, because
6 their claims are similar to the claims of the members of the Nationwide Class.

7 136. Plaintiffs and the members of the Nationwide Class are similarly situated because,
8 among other things, (a) they all worked for the HP Entities and are all aged 40 and older, (b) they
9 are all residents of the United States, (c) they were all subjected to the same company-wide policy
10 of age discrimination, (d) they were all subjected to the same company-wide policies that
11 adversely impacted them because of their age, (e) they were all terminated pursuant to the
12 Initiative and the WFR Plans because of their age, and (f) they were all given the same boilerplate
13 reason for having their employment terminated.

14 137. Individual variations among Plaintiffs and members of the Nationwide Class, such
15 as location, education, or job responsibilities, do not undermine the common issues at stake here.
16 Plaintiffs allege a single scheme of age discrimination initiated at the very top of the HP Entities
17 and carried out through the entire structure of the companies. Regardless of where an individual
18 worked in the United States or to which manager the individual reported, each member of the
19 Nationwide Class faced the same discrimination and discriminatory policies.

20 138. Plaintiffs Arun Vatturi and Sidney Staton also seek to represent the following class
21 for purposes of their California state law claims pursuant to Rule 23 of the Federal Rules of Civil
22 Procedure:

23 The "California Class"

24 All individuals aged 40 and older who had their employment
25 terminated by an HP Entity in California pursuant to a WFR Plan
on or after August 18, 2012.

26 139. The California Class consists of hundreds, if not thousands, of former employees
27 who were notified of their termination when they were aged 40 and older, making joinder of all
28 members of the class impracticable.

1 140. The common questions of law and fact among Plaintiffs Staton and Vatturi and the
2 members of the California Class include, but are not limited to:

3 (a) whether the HP Entities' conduct violated the California Fair Employment and
4 Housing Act;

5 (b) whether the HP Entities' conduct was unlawful, unfair or fraudulent in
6 violation of California's Unfair Competition Law;

7 (c) whether the HP Entities' conduct constitutes an unlawful employment practice
8 in violation of public policy;

9 (d) whether the HP Entities engaged in a pattern and practice of age discrimination
10 when selecting individuals for termination pursuant to the Initiative and the
11 WFR Plans;

12 (e) whether the HP Entities based their processes for selecting employees for
13 termination on reasonable factors other than age that were a business necessity;

14 (f) whether the HP Entities through the WFR Plans willfully and intentionally
15 discriminated against the California Class because of their age,

16 (g) whether the HP Entities' discrimination had a disparate impact on members of
17 the California Class; and

18 (h) whether the HP Entities' purported reasons for laying off members of the
19 California Class pursuant to the WFR Plans have been pretextual.

20 141. Plaintiffs Staton's and Vatturi's claims and the relief sought for their claims are
21 typical of the claims and relief sought for the California Class. Like the members of the California
22 Class, Staton and Vatturi are aged 40 or older and worked for one or more of the HP Entities in
23 California until they were terminated pursuant to the WFR Plans. Staton and Vatturi were,
24 therefore, subjected to the same discriminatory policies and practices as the other members of the
25 California Class. The relief necessary to remedy Staton's and Vatturi's claims is the same relief
26 necessary to remedy the claims of the members of the California Class in this case.

27 142. Plaintiffs Staton and Vatturi will adequately represent the interests of the members
28 of the California Class. Staton's and Vatturi's interests are co-extensive with those of the

1 California Class. They seek to remedy the HP Entities' discriminatory employment policies,
2 procedures and practices and will fairly and vigorously pursue claims on behalf of the California
3 Class. Staton and Vatturi are willing and able to represent the California Class fairly and
4 vigorously as they pursue their individual claims in this action.

5 143. Plaintiffs Staton and Vatturi have retained counsel who are qualified, experienced,
6 and able to conduct this litigation and to meet the time and fiscal demands required to litigate an
7 employment discrimination class action of this size and complexity. The combined interests,
8 experience, and resources of Staton's and Vatturi's counsel to litigate completely the individual
9 and class claims at issue in this case satisfy the adequacy of representation requirement.

10 144. The HP Entities have acted or refused to act on grounds that apply generally to all
11 members of the California Class, so that final injunctive relief or corresponding declaratory relief
12 is appropriate respecting the California Class as a whole pursuant to Rule 23(b)(2).

13 145. The HP Entities have failed to create adequate incentives for their managerial and
14 supervisory personnel to comply with laws regarding the employment policies, practices, and
15 procedures described herein.

16 146. The HP Entities have acted on grounds generally applicable to Plaintiffs Staton
17 and Vatturi and the California Class by adopting and implementing systemic policies, practices,
18 and procedures that are discriminatory. Disparate impact and systemic age discrimination have
19 been the HP Entities' standard operating procedures rather than sporadic occurrences.

20 147. In addition, the HP Entities have, in a discriminatory way, refused to act on
21 grounds generally applicable to the California Class by terminating class members pursuant to a
22 WFR Plan based on their age.

23 148. The HP Entities' systemic discriminatory acts and refusals to act make it
24 appropriate to grant the requested final injunctive and declaratory relief with respect to the
25 California Class.

26 149. All requirements of Rule 23(b)(3) are satisfied here.

27 150. The common issues of fact and law affecting the claims of Plaintiffs Staton and
28 Vatturi and the members of the California Class predominate over any issues affecting only

1 individual claims. The answers to the common questions listed above will be the same for
2 Plaintiffs Staton and Vatturi and all members of the California Class and will resolve all core
3 issues in the case, once, on common evidence and on a class-wide basis.

4 151. Prosecution of these claims on a class-wide basis is the most efficient and
5 economical means of resolving the questions of law and fact common to the claims of Plaintiffs
6 Staton and Vatturi and the members of the California Class.

7 152. Plaintiffs Staton and Vatturi and the members of the California Class were injured
8 by the same discriminatory policies and practices, and these injuries are redressable through
9 systemic relief and class-wide remedies.

10 153. In order to achieve such class-wide relief, Plaintiffs Staton and Vatturi will
11 establish the existence of systemic age discrimination as the premise for the relief they seek.
12 Without class certification, the same evidence and issues would be subject to re-litigation in a
13 multitude of individual lawsuits with an attendant risk of inconsistent adjudications and
14 conflicting obligations. Certification of the California Class is the most efficient and judicious
15 means of presenting the evidence and arguments necessary to resolve such questions for Plaintiffs
16 Staton and Vatturi, the California Class, and the HP Entities.

17 154. The cost of proving the disparate treatment and impact of the HP Entities' policies,
18 procedures and practices makes it impracticable for Plaintiffs Staton and Vatturi and members of
19 the California Class to prosecute their claims individually.

20 155. Class-wide liability and the relief sought herein present common issues capable of
21 class-wide resolution, which would advance the interests of the parties in an efficient manner
22 such that the requirements of Rule 23(c)(4) are also satisfied here.

23 **COUNT 1 –AGE DISCRIMINATION UNDER THE ADEA**
24 **(On behalf of all Plaintiffs and the Nationwide Class)**

25 156. Plaintiffs hereby incorporate each paragraph above as though fully set forth here.

26 157. This is a representative action under 29 U.S.C. §§ 626(b) and (c) and 29 U.S.C.
27 § 216(b) filed by the above-named Plaintiffs individually and on behalf of similarly situated
28 persons who opt into this action by filing an appropriate notice.

1 158. As more fully set forth elsewhere in this Complaint, the HP Entities engaged in an
2 unlawful pattern or practice of age discrimination that adversely affected Plaintiffs and the
3 members of the Nationwide Class in violation of 29 U.S.C. § 621, *et seq.*

4 159. Plaintiffs and the members of the Nationwide Class were 40 years of age or older
5 at the time of they were terminated.

6 160. The HP Entities terminated Plaintiffs and the members of the Nationwide Class
7 because of their age, and would not have terminated Plaintiffs or the members of the Nationwide
8 Class but for their age.

9 161. The unlawful pattern or practice of age discrimination by the HP Entities alleged
10 herein constitutes a willful violation of the ADEA. Plaintiffs' charges of discrimination filed with
11 the EEOC asserted claims on behalf of both the Plaintiffs themselves and others similarly
12 situated, and adequately placed the HP Entities on notice that a collective action was forthcoming.

13 162. Plaintiffs and others similarly situated were adversely affected by the pattern or
14 practice of unlawful, willful age discrimination by the HP Entities as elsewhere described herein.
15 Plaintiffs and all similarly situated individuals have suffered actual damages in an amount to be
16 determined at trial.

17 163. This is also a representative action under 29 U.S.C. §§ 626(b) and (c) and
18 29 U.S.C. § 216(b) filed by the above-named Plaintiffs individually and on behalf of similarly
19 situated persons who opt into this action by filing an appropriate notice, and an individual action
20 under the ADEA.

21 164. The HP Entities used WFR Plans that had a significantly adverse or
22 disproportionate impact on Plaintiffs and the members of the Nationwide Class and caused
23 Plaintiffs and the members of the Nationwide Class to be terminated. The HP Entities' policies
24 and practices have had a disparate impact on Plaintiffs and the members of the Nationwide Class
25 and were not based upon a reasonable factor other than age.

26 165. As set forth more fully above, the HP Entities have utilized practices, policies and
27 procedures that have disparately impacted former employees of the HP Entities, resulting in an
28 unlawful pattern or practice of age discrimination in violation of the ADEA, 29 U.S.C. § 621 *et*

1 *seq.* There was no legitimate, non-discriminatory reason for its action, and any reasons the HP
2 Entities may advance are pretextual. The HP entities at all times relevant acted as a joint or single
3 employer and/or the agent of the other.

4 166. The above-named Plaintiffs and others similarly situated were disparately
5 impacted by the HP Entities' practices, policies and procedures, in violation of the ADEA.

6 167. As a direct and proximate result of the aforesaid age discrimination by the HP
7 Entities, each of the Plaintiffs and all others similarly situated have suffered damages in an
8 amount to be determined at trial.

9 **COUNT 2 – AGE DISCRIMINATION UNDER THE FEHA**
10 **(On behalf of Plaintiff Arun Vatturi and the California Class only)**

11 168. Plaintiff hereby incorporates each paragraph above as though fully set forth here.

12 169. This is a representative action under the California Fair Employment and Housing
13 Act, Cal. Gov't Code § 12900, *et seq.* ("FEHA"). The FEHA prohibits employers from
14 discriminating on the basis of age. Cal. Gov. Code § 12940(a). Plaintiff Vatturi brings his FEHA
15 claim on behalf of himself and a class of similarly situated individuals.

16 170. The HP Entities have engaged in a pattern and practice of discriminating against
17 individuals aged 40 and older by knowingly and intentionally firing a disproportionately large
18 number of workers aged 40 and older while simultaneously hiring a disproportionately large
19 number of workers under the age of 40.

20 171. As a direct and proximate result of the HP Entities' intentional discrimination,
21 Plaintiff Vatturi and a class of similarly situated individuals has had his employment terminated.

22 172. The HP Entities have used employment policies and practices related to hiring and
23 firing that have had a disparate impact on the basis of age (discriminating against workers who
24 are aged 40 and older) that are not job-related for the positions at issue, not consistent with
25 business necessity, and are not necessitated by a reasonable factor other than age.

26 173. The HP Entities' conduct has been intentional, deliberate, willful, malicious,
27 reckless, and conducted in callous disregard of the rights of Plaintiff Vatturi and the California
28 Class members, entitling them to punitive damages.

1 174. The HP Entities’ policies, procedures, and practices have produced a disparate
2 impact on Plaintiff Vatturi and the California Class members with respect to the terms and
3 conditions of their employment.

4 175. The HP Entities’ actions constitute unlawful discrimination in violation of the
5 FEHA.

6 176. HPI and HPE at all times relevant aided and abetted, incited, compelled, coerced
7 and/or conspired with each other to carry out the discriminatory Workforce Restructuring
8 Initiative. At all times relevant, each Defendant knew that the other was engaging in unlawful
9 discrimination and provided substantial assistance or encouragement to the other in the
10 discriminatory acts described herein. The Initiative was designed to reduce the number of older
11 workers drastically between 2012 and 2017 to make the HP Entities younger. After Hewlett-
12 Packard Company split into HPI and HPE, Defendants agreed to continue to implement the
13 Initiative and took overt acts to continue the Initiative in furtherance of the discriminatory
14 policies.

15 177. Pursuant to California Civil Code Section 12940(i), it is unlawful “for any person
16 to aid, abet, incite, compel or coerce” discrimination forbidden by the act.

17 178. As a direct and proximate result of the aforesaid age discrimination by the HP
18 Entities, Plaintiff Vatturi and all similarly situated individuals have suffered damages in an
19 amount to be determined at trial.

20 **COUNT 3 – AGE DISCRIMINATION IN VIOLATION OF PUBLIC POLICY**
21 **(On behalf of Plaintiffs Sidney Staton and Arun Vatturi and the California Class only)**

22 179. Plaintiffs Staton and Vatturi hereby incorporate each paragraph above as though
23 fully set forth here.

24 180. The HP Entities discriminated against Plaintiffs Staton and Vatturi and the
25 California Class members by terminating their employment on the basis of their age.

26 181. The HP Entities’ discrimination constitutes an unlawful employment practice in
27 violation of California public policy.

28 182. As a proximate result of the HP Entities’ discriminatory conduct, Plaintiffs Staton

1 and Vatturi and the California Class members have been injured in their health, strength, and
2 activity, all of which have caused and continue to cause them to suffer mentally and emotionally.

3 183. As a further proximate result of the conduct alleged herein, Plaintiffs Staton and
4 Vatturi and the California Class members have lost earnings, lost employment opportunities, and
5 will lose job benefits in an amount yet to be ascertained.

6 184. The HP Entities discriminated on the basis of age with fraud, oppression, and
7 malice. Plaintiffs Staton and Vatturi and the California Class members are therefore entitled to
8 exemplary and punitive damages in an amount to be determined at trial.

9 **COUNT 4 – UNFAIR COMPETITION**
10 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200, ET SEQ**
11 **(On behalf of Plaintiffs Sidney Staton and Arun Vatturi and the California Class only)**

12 185. Plaintiffs Staton and Vatturi hereby incorporate each paragraph above as though
13 fully set forth here.

14 186. Each of the Defendants is a “person” as defined under California Business &
15 Professions Code § 17021.

16 187. The HP Entities’ discrimination against its older employees, as alleged herein,
17 constitutes unlawful and/or unfair and/or fraudulent activity prohibited by the California Business
18 & Professions Code § 17200. As a result of their unlawful and/or unfair and/or fraudulent acts,
19 the HP Entities reaped and continue to reap unfair benefits at the expense of Plaintiffs Staton and
20 Vatturi and the California Class members. The HP Entities should be enjoined from these
21 activities.

22 188. Accordingly, Plaintiffs Staton and Vatturi and the California Class members are
23 entitled to restitution with interest and other equitable relief.

24 **JURY DEMAND**

25 189. Plaintiffs hereby demand a trial by jury.

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28 //

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiffs request that the Court make orders and enter judgment in their
3 favor and against Defendants as follows:

4 1. Making such orders as are necessary and appropriate to certify this case for
5 treatment as a collective action under the ADEA;

6 2. Making such orders as are necessary and appropriate to certify the California
7 claims for class relief;

8 3. Designating the above-named Plaintiffs as representatives of the Nationwide
9 Class;

10 4. Designating Plaintiffs Sidney Staton and Arun Vatturi as representatives of the
11 California Class;

12 5. Designating the undersigned as class counsel;

13 6. Granting injunctive relief ordering Defendants to stop discriminating against their
14 older workers based on age;

15 7. Awarding each of the Plaintiffs and all members of the Nationwide Class and
16 California Class damages in an amount to be determined at trial, including but not limited to back
17 pay and benefits, together with interest thereon;

18 8. Restoring each of the Plaintiffs and all members of the Nationwide Class and
19 California Class to positions comparable to those from which they were terminated or, in lieu of
20 reinstatement, awarding each Plaintiff and all members of the Nationwide Class and California
21 Class front pay and benefits for the period remaining until that person's expected retirement age;

22 9. Awarding each Plaintiff and all members of the Nationwide Class liquidated
23 damages pursuant to the ADEA in an amount equal to that person's back pay and benefits award,
24 together with interest thereon;

25 10. Awarding Plaintiffs Sidney Staton and Arun Vatturi and all members of the
26 California Class compensatory damages, restitution, and punitive damages pursuant to their state
27 law claims;

28 11. Awarding Plaintiffs and all members of the Nationwide Class and the California

