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11 Attorneys for Plaintiffs and the Proposed Classes

12  
13 UNITED STATES DISTRICT COURT  
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION  
16

17 DONNA J. FORSYTH, ARUN VATTURI,  
18 DAN WEILAND, SHAFIQ RAHMAN, AND  
19 KEVIN ALVISO, for and on behalf of  
20 themselves and other persons similarly  
21 situated,

20 Plaintiffs,

21 vs.

22 HP INC. f/k/a/ HEWLETT-PACKARD  
23 COMPANY and HEWLETT PACKARD  
24 ENTERPRISE COMPANY,

24 Defendants.

Case No. 5:16-cv-04775-EJD

**CLASS ACTION**

**FOURTH AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Donna J. Forsyth, Arun Vatturi, Dan Weiland, Shafiq Rahman, and Kevin Alviso  
2 (“Plaintiffs”), on behalf of themselves and other persons similarly situated, hereby file this Fourth  
3 Amended Complaint against HP Inc. (formerly known as Hewlett-Packard Company) and Hewlett  
4 Packard Enterprise Company pursuant to the Court’s Order Granting in Part and Denying in Part  
5 Defendants’ Motion to Dismiss (ECF No. 381) dated May 18, 2020. As and for their claims against  
6 HP Inc. and Hewlett Packard Enterprise Company, Plaintiffs allege and state as follows:

7 **INTRODUCTION**

8 1. Defendants HP, Inc. (“HPI”) and Hewlett Packard Enterprise Company (“HPE”),  
9 through coordinated employment policies and practices, have unlawfully discriminated against  
10 Plaintiffs and other similarly situated employees because of their age.

11 2. Until November 1, 2015, HPI was doing business as Hewlett-Packard Company.  
12 Effective November 1, 2015, Hewlett-Packard Company was renamed HPI and, at the same time,  
13 HPI spun off its enterprise division to create a new entity: Defendant HPE. Hereinafter, the term  
14 “Hewlett-Packard Company” refers to both HPI and HPE, prior to November 1, 2015.

15 3. In 2012, under the direction of Ms. Meg Whitman, who was then its President and  
16 Chief Executive Officer (CEO), Hewlett-Packard Company began implementing a company-wide  
17 initiative to replace thousands of existing, older workers with new, younger employees.  
18 (hereinafter, referred to as the “Workforce Restructuring Initiative” or “Initiative”). The Initiative  
19 encompassed multiple workforce reduction plans implemented during Ms. Whitman’s tenure, both  
20 before and after Hewlett-Packard Company split into HPI and HPE.

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

24 5. Effective November 1, 2015, after Hewlett-Packard Company was renamed HPI  
25 and HPE was spun off as a separate entity, Ms. Whitman served as the Chair of the Board of  
26 Directors for HPI until July 26, 2017. She also served as the CEO for HPE until February 1, 2018  
27 and served on HPE’s Board of Directors until February 1, 2019.

28

1           6.       During Ms. Whitman’s tenure, both HPI and HPE continued to implement the  
2 Workforce Restructuring Initiative in concert with one another, shedding thousands of additional  
3 employees.

4           7.       Ms. Whitman repeatedly admitted that her goal was to make the entire organization  
5 younger. In pursuit of this goal, HPI and HPE have shed thousands of older workers, while at the  
6 same time aggressively recruiting younger employees to replace them.

7           8.       Ms. Whitman not only implemented and controlled the Workforce Restructuring  
8 Initiative, she also continued to exert control and substantial influence over the implementation of  
9 the Initiative after Hewlett-Packard Company was renamed HPI and HPE was formed, including  
10 by initiating new rounds of discriminatory terminations at both entities.

11          9.       HPI and HPE may contend that the Workforce Restructuring Initiative was always  
12 meant to be age-neutral. However, the Initiative and the programs and plans implemented under it  
13 have had a clear and substantially adverse impact on older employees.

14          10.      At worst, HPI and HPE each intentionally designed and carried out the Initiative to  
15 discriminate willfully against older workers in an effort to get younger. At best, the Initiative was  
16 comprised of facially neutral policies that disproportionately and adversely impacted both HPI’s  
17 and HPE’s older workers.

18          11.      Since the Workforce Restructuring Initiative was first implemented beginning in  
19 2012, it has involved a coordinated two-prong strategy: (1) pushing current, older workers out of  
20 both HPI (formerly Hewlett-Packard Company) and HPE, while (2) simultaneously hiring a large  
21 number of new, younger employees to replace them. As just one means of executing the first prong  
22 of this strategy, under Ms. Whitman’s direction, Hewlett-Packard Company (which later became  
23 HPI) implemented the “2012 Workforce Reduction Plan,” which continued to be implemented by  
24 both HPI and HPE as part of the greater Initiative (hereinafter, the pre- and post-split Workforce  
25 Reduction Plans initiated by Defendants during Ms. Whitman’s tenure are referred to collectively  
26 as the “WFR Plans”). Upon information and belief, the Workforce Restructuring Initiative is  
27 ongoing.

28



1 off in May 2016, when she was 62 years old. Plaintiff Forsyth was terminated while employed by  
2 HPE.

3 18. Plaintiff Arun Vatturi is a resident of the State of California. He worked at HPI  
4 (both when it was named Hewlett-Packard Company and after it was named HPI) until he was laid  
5 off in January 2016, when he was 52 years old. Plaintiff Vatturi was terminated while employed  
6 by HPI.

7 19. Plaintiff Dan Weiland is a resident of the State of Texas. He worked at HPI  
8 (formerly Hewlett-Packard Company) until he was laid off in July 2015, when he was 63 years  
9 old. Plaintiff Weiland was terminated while employed by HPI when it was still named Hewlett-  
10 Packard Company.

11 20. Plaintiff Shafiq Rahman is a resident of the State of Texas. He worked at HPE (and  
12 previously Hewlett-Packard Company, before HPE was spun off) until he was laid off in July  
13 2016, when he was 65 years old. Plaintiff Rahman was terminated while employed by HPE.

14 21. Plaintiff Kevin Alviso is a resident of the State of California. He worked at HPE  
15 (and previously Hewlett-Packard Company, before HPE was spun off) until he was laid off in  
16 October 2016, when he was 53 years old. Plaintiff Alviso was terminated while employed by HPE.

17 22. Defendant HP Inc. is a corporation organized under the laws of the State of  
18 California with its headquarters and principal place of business located at 1501 Page Mill Road,  
19 Palo Alto, California. HPI was previously named Hewlett-Packard Company. Effective as of  
20 November 1, 2015, Hewlett-Packard Company was renamed HPI.

21 23. Defendant Hewlett Packard Enterprise Company is a corporation organized under  
22 the laws of the State of Delaware with its headquarters and principal place of business located at  
23 6280 America Center Dr., San Jose, California. HPE was spun off from HPI effective November  
24 1, 2015.

25 24. It is undisputed that the corporate entity once known as Hewlett-Packard Company  
26 still exists but was renamed HPI effective November 1, 2015. In its 2015 Form 10-K, HPI states:

27 In connection with the Separation, *Hewlett-Packard Company*  
28 *changed its name to HP Inc.* Accordingly references to the  
'company' in this report refer to Hewlett-Packard Company with  
respect to events occurring on or prior to October 31, 2015 and to

1 HP Inc. with respect to events occurring after October 31, 2015.

2 **JURISDICTION AND VENUE**

3 25. This Court has subject matter jurisdiction over this action pursuant to the ADEA,  
4 29 U.S.C. § 621, *et seq.*

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

7 27. This Court has personal jurisdiction over Defendants because they are  
8 headquartered and do substantial business in the State of California.

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

12 **FACTUAL ALLEGATIONS**

13 ***HPI and HPE's Publicly Stated Goal to Get Younger***

14 29. Throughout the time that HPI and HPE were developing and carrying out the  
15 Workforce Restructuring Initiative, Ms. Whitman held senior leadership positions at both  
16 companies. She was the CEO of HPI when it was doing business as Hewlett-Packard Company  
17 and continued on as the Chair of HPI's Board of Directors (after November 1, 2015) and became  
18 the CEO of HPE (effective November 1, 2015). Throughout this time, Ms. Whitman publicly  
19 revealed that her overarching goal was to make HPI and HPE younger.

20 30. Ms. Whitman candidly admitted this objective when discussing the need to change  
21 the pre-split company's "labor diamond" into a "labor pyramid" or a "quite flat triangle" with large  
22 numbers of young people at its base. Specifically, during an October 2013 Securities Analyst  
23 Meeting, Ms. Whitman said:

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

And over the years, our labor pyramid doesn't look—has become  
not a triangle. It's become a bit more of a diamond. And ***we are  
working very hard to recalibrate and reshape our labor pyramid  
so that it looks like the more classical pyramid*** that you should have

1 in any company and particularly in ES. If you don't have *a whole*  
2 *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  
3 challenges.

4 . . . .

5 Now, that's not something that changes like that. Changing the same  
6 shape of your labor pyramid takes a couple of years, but we are on  
7 it, and *we're amping up our early career hiring, our college 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.)

8  
9 31. Two years later, at another Securities Analyst Meeting held in September 2015 (just  
10 before the anticipated name change to HPI and spin-off of HPE effective November 1, 2015),  
11 Ms. Whitman reiterated her position that her goal was to create a "labor pyramid" that was "quite  
12 flat," stating:

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

15  
16 32. In November 2015, more than three years after implementing the Initiative and the  
17 2012 WFR Plan, and as Ms. Whitman was continuing senior leadership positions at both HPI and  
18 HPE, Ms. Whitman again declared publicly during an interview on CNBC that the goal was for  
19 HPI and HPE to get younger:

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

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

24  
25 33. Notably, Ms. Whitman answered the CNBC interviewer's question about *job cuts*  
26 by saying that HPI and HPE would be doing a lot of additional *hiring* of "young" people. These  
27 statements demonstrated the true purpose of the Initiative: to reduce the *age* of the companies'  
28 workforces, not the size.

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

11           35.     HPI and HPE used uniform, near-verbatim paperwork when terminating Plaintiffs  
12 and other class members, who all received the same vaguely worded, boilerplate reasons for being  
13 terminated, regardless of which of entity they worked for after the name change and spin-off on  
14 November 1, 2015. Those notices at both HPI and HPE, before and after the split, generically state:  
15 “Employees were selected for the reduction in force because the job they were performing will no  
16 longer continue, their skill set was not applicable to the Company’s or organization’s operations  
17 going forward, and/or other employees were viewed as better qualified because of past  
18 performance and competency evaluation, which may include skills, abilities, knowledge and  
19 experience.” This broadly worded, proffered justification for firing these employees was merely a  
20 pretext for policies of overt age discrimination.

21           36.     Even when a terminated employee’s specific job title or position was eliminated,  
22 consistent with Ms. Whitman’s statements about the Workforce Restructuring Initiative generally,  
23 those positions were not truly eliminated, but were simply staffed with new, younger hires at both  
24 entities.

25                           ***Defendants’ Other Efforts to Eliminate Older Workers***

26           37.     In addition to terminating employees under the WFR Plans, HPI and HPE used  
27 other tactics to push current, older workers out—thereby further fulfilling the first prong of the  
28 Initiative. For example, in 2012 and 2014, Hewlett-Packard Company implemented early and

1 phased retirement programs under which employees having a combined number of years in terms  
2 of age and tenure were strongly encouraged to “voluntarily” phase out their employment.

3 38. In 2016, HPI initiated nearly the same phased retirement program it had  
4 implemented when it was doing business as Hewlett-Packard Company, and HPE also  
5 implemented similar retirement policies to strongly encourage older employees to leave the  
6 company. Indeed, as recently as 2020, HPE initiated a similar retirement program to encourage  
7 older employees to leave the company.

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

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

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

22 42. HPI, before spinning off HPE into its own company, also employed a bait-and-  
23 switch strategy with its employees regarding work-at-home policies. Specifically, just before  
24 implementing the 2012 WFR Plan, Hewlett-Packard Company adopted new employment policies  
25 that strongly encouraged employees to work remotely from home. But then, shortly after it initiated  
26 its 2012 WFR Plan, Hewlett-Packard Company (acting at Ms. Whitman’s direction) reversed  
27 course and suddenly required all employees to appear regularly at physical office locations. Not  
28 only was this a complete reversal of the prior policy (which was only recently implemented), in

1 many cases, the offices where these employees previously worked had been closed. Thus, many  
2 employees found themselves needing to make hour-plus long commutes to new offices that often  
3 did not even have room for them. This policy change disproportionately impacted older employees  
4 and amplified the ongoing hostility toward older workers.

5 43. Pursuant to their Workforce Restructuring Initiative, HPI and HPE also  
6 implemented bans on hiring employees who were terminated pursuant to any WFR Plan  
7 implemented by either HPI or HPE. In other words, HPI and HPE effectively blacklisted  
8 employees who were terminated under the WFR Plans by either company. This ensured that the  
9 current, older workers would not be re-hired by either HPI or HPE.

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

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

### 22 *Defendants’ Internal Policies to Hire Young Employees*

23 46. While pushing out older workers as part of the first prong of the Initiative, both HPI  
24 and HPE also hired (and continue to hire) thousands of new, younger workers as part of the  
25 Initiative’s second prong.

26 47. In other words, between the date when the so-called workforce “reduction” began  
27 in 2012 and the present, both HPI and HPE have continued to hire aggressively. The primary  
28 difference is that, since 2012, both HPI and HPE have hired a disproportionately large number of

1 new, younger employees (under the age of 40) to replace older employees (aged 40 and older) who  
2 were terminated.

3 48. Thus, neither HPI nor HPE were actually engaging in a workforce “reduction.”  
4 Rather, as Ms. Whitman admitted publicly, the Initiative has always been an effort to “recalibrate”  
5 (most modestly stated) or “fundamentally recreate” (most accurately stated) the workforces at both  
6 HPI and HPE with a “whole host of young people.” Regardless of which words are used, HPI and  
7 HPE have been engaging in illegal age discrimination.

8 49. The discriminatory intent is also shown by internal directives provided to hiring  
9 managers by senior management and the human resources departments at Hewlett-Packard  
10 Company (now HPI and HPE). For example, in August 2013, the combined companies’ human  
11 resources department distributed written guidelines stating that its “[n]ew corporate requisition  
12 policy requires 75% of all External hire requisitions be ‘Graduate’ or ‘Early Career’” employees.  
13 A similar policy of promoting “graduate” and “early career” hires has continued at both HPE and  
14 HPI in the years after the renaming and split occurred on November 1, 2015.

15 50. The use of the words “graduate” and “early career” in this August 2013 document  
16 (and others like it) provide additional evidence of the intent to discriminate against older workers  
17 in hiring decisions.

18 51. For purposes of the August 2013 directive, a “graduate” hire was someone who  
19 either was about to graduate or had graduated within the previous 12 months. Similarly, an “early  
20 career” hire was somebody who had completed his or her degree and had *up to* five years of  
21 experience related to the job for which they were applying.

22 52. Furthermore, across Hewlett-Packard Company, hiring managers were advised in  
23 writing to “look for and create opportunities to enhance [their] labor structure” through “Early  
24 Career hiring.”

25 53. Human resources employees at Hewlett-Packard Company were also told to “[h]elp  
26 convert or repurpose” the hiring managers’ “current requisitions, as appropriate, to Early Career  
27 requisitions.”  
28

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

7           55.     Despite knowing that it was improper, Hewlett-Packard Company (now known as  
 8 HPI) and HPE have used and benefitted from online job postings that contained blatantly  
 9 discriminatory statements. Such statements included:

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

- Recent college graduates preferred.

*Defendants' Age Discrimination Is Willful*

56. The Workforce Restructuring Initiative was designed by Ms. Whitman to achieve one discriminatory goal: to make the Hewlett-Packard organization, including its progeny HPI and HPE, younger. HPI and HPE knew that their practices of firing old and hiring young were discriminatory but pursued those practices regardless, making their age discrimination willful.

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

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

59. As seen in cases involving other types of illegal employment discrimination (*e.g.*, race or gender discrimination), stereotypical statements were made at Hewlett-Packard Company about large groups of employees based entirely on their age. For example, internal Hewlett-Packard Company documentation dated July 2015 stated that anyone born between 1930 and 1946 could be considered a “Traditionalist” who moves “slow and steady” and seeks “part time work.” As for “Baby Boomers” (born between 1946 and 1964), they were considered to be “rule breakers,” implying that they were undesirable. Conversely, when it came to “Millennials,” Hewlett-Packard Company made it clear that hiring new employees from this generation was highly desirable. Indeed, Hewlett-Packard Company specifically adopted strategies for “integrat[ing] millennials into the workforce” and “educat[ing] managers and others on millennial characteristics.” These attitudes toward different age groups continued at both HPI and HPE after Hewlett-Packard Company changed its name and HPE was spun off from Hewlett-Packard Company.

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

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

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

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

18                   ***Facial Neutrality of the Workforce Restructuring Initiative***

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

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

1 overwhelming majority of the early career and recent graduate hires by both HPI and HPE under  
2 the Workforce Restructuring Initiative were younger workers in their 20's or 30's.

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

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

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

### 21 *Statistical Evidence Showing Discrimination*

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

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1           69.     HPI and HPE provided “Attachment A” forms to terminated employees. However,  
2 these forms were drafted in a manner that underrepresented the discriminatory impact of the  
3 Initiative.

4           70.     The Attachment A forms did not include the job titles and ages of all employees in  
5 the pertinent “decisional unit” impacted by the layoffs. Indeed, they did not even define the  
6 employee’s “decisional unit.” Rather than provide the required data for the relevant “decisional  
7 unit,” HPI and HPE regularly provided Attachment A forms that improperly focused on a small  
8 group of employees that HPI and HPE deceptively suggested were part of the appropriate  
9 decisional unit, when in fact they were not.

10          71.     A preliminary statistical analysis of Attachment A forms provided to employees  
11 who were terminated by HPI (both before and after the name change) shows that older employees  
12 of HPI were significantly more likely to be terminated than younger employees, reaching a  
13 statistical confidence level of at least two standard deviations; in other words, the statistical level  
14 of confidence in this disparity is at least 95%.

15          72.     The same type of preliminary statistical analysis of Attachment A forms provided  
16 to employees who were terminated by HPE similarly shows that older employees of HPE were  
17 significantly more likely to be terminated than younger employees, likewise reaching a statistical  
18 confidence level of at least two standard deviations; in other words, the statistical level of  
19 confidence in this disparity is at least 95%.

20          73.     The disparity exists even though the Attachment A forms that HPI and HPE  
21 prepared and distributed to these former employees did not fully portray the negative impact of  
22 their employment policies on older employees. Indeed, HPI and HPE improperly crafted their  
23 Attachment A forms to understate the true impact of the employment terminations on older  
24 employees.

25          74.     If, instead, the Attachment A forms were accurate and properly identified all of the  
26 younger employees who were hired or retained pursuant to the Initiative, as well as the additional  
27 older workers who were terminated pursuant to the Initiative, then the known statistical disparity  
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1 between the impact on older employees in the Nationwide Classes or California Classes versus  
2 younger employees would be even greater.

3 *The Named Plaintiffs' Backgrounds*

4 Donna Forsyth

5 75. Plaintiff Donna Forsyth was hired by Hewlett-Packard Company on or about July  
6 12, 1999. Following the name change and spin-off on November 1, 2015, Ms. Forsyth became  
7 employed by HPE. Her most recent position was a Manager on the Capabilities Team in the Global  
8 Corporate Services organization. When her employment was terminated, Ms. Forsyth was working  
9 for HPE in Bellevue, Washington.

10 76. Ms. Forsyth performed her job duties in a satisfactory and competent manner. She  
11 always met or exceeded her employer's expectations.

12 77. Ms. Forsyth was involved with and knowledgeable about Hewlett-Packard  
13 Company's and HPE's graduate and early career hiring efforts. She has first-hand knowledge of  
14 the aggressive efforts used to hire younger "millennial" employees to replace the many thousands  
15 of employees terminated under the WFR Plans. She also has first-hand knowledge that the  
16 discriminatory practices described above which had originated at Hewlett-Packard Company  
17 continued at HPE.

18 78. In May 2016, HPE notified Ms. Forsyth, then 62 years old, that she was being  
19 terminated pursuant to a WFR Plan. Her last day of work at HPE was May 27, 2016.

20 79. Upon information and belief, and consistent with HPE's internal policies and  
21 practices as alleged in this Complaint, when Ms. Forsyth's employment was terminated, she was  
22 replaced with a "graduate" or "early career" hire who is significantly under the age of 40, or with  
23 someone else who is younger than her.

24 80. Ms. Forsyth filed a charge of discrimination with the Equal Employment  
25 Opportunity Commission (EEOC) that raised class-wide claims for relief on July 8, 2016. More  
26 than 60 days have passed since she filed that charge. She received a Notice of Right to Sue from  
27 the EEOC dated August 2, 2016. This lawsuit was filed within 90 days after receiving her Notice  
28 of Right to Sue. Ms. Forsyth has exhausted her administrative remedies.

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Arun Vatturi

81. Plaintiff Arun Vatturi was hired by Hewlett-Packard Company in 2001. Following the name change on November 1, 2015, Mr. Vatturi remained employed by HPI. His most recent position at the company was a Master Black Belt of PC Quality. When his employment was terminated, Mr. Vatturi worked for HPI in its Palo Alto, California offices.

82. Mr. Vatturi performed his job duties in a satisfactory and competent manner. He always met or exceeded his employer’s expectations.

83. Mr. Vatturi’s job was essentially to work on internal systems to improve procedures and save money. In one instance alone, Mr. Vatturi saved HPI more than \$70 million through the implementation of his ideas. He was one of the 0.5% of employees at Hewlett-Packard Company who received the company’s top performance review rating of “significantly exceeds expectations” in its forced ranking system.

84. Shortly before terminating Mr. Vatturi, and despite his stellar performance reviews, HPI moved him to a low-level data collection position working with two young independent contractors located in India.

85. In January 2016, HPI notified Mr. Vatturi, then 52 years old, that he was being terminated pursuant to a WFR Plan. His last day of work was January 22, 2016.

86. Upon information and belief, and consistent with HPI’s internal policies and practices as alleged in this Complaint, when Mr. Vatturi’s employment was terminated, he was replaced with a “graduate” or “early career” hire who is significantly under the age of 40, or with someone else who is younger than him.

87. Mr. Vatturi filed a charge of discrimination with the EEOC on July 5, 2016. In that EEOC charge, Mr. Vatturi raised class-wide claims for relief. He received a Notice of Right to Sue dated August 2, 2016. In addition, Mr. Vatturi filed the same charge of discrimination with the California Department of Fair Employment and Housing on July 5, 2016 and received a Notice of Right to Sue from that state agency dated July 6, 2016. More than 60 days have passed since Mr. Vatturi filed his discrimination charge. This lawsuit was brought within 90 days of receiving his Notice of Right to Sue. Mr. Vatturi has exhausted his federal and state administrative remedies.

Dan Weiland

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2 88. Plaintiff Dan Weiland was hired by Hewlett-Packard Company as an independent  
3 contractor in 2010. In February 2012, he was hired by Hewlett-Packard Company as a full-time  
4 employee. His most recent position at the company was Project/Program Manager and Acting  
5 Group Chief of Staff in the Test Operations & Technologies organization. When his employment  
6 was terminated, Mr. Weiland was working for HPI, then doing business as Hewlett-Packard  
7 Corporation, in its Houston, Texas offices.

8 89. Mr. Weiland performed his job duties in a satisfactory and competent manner. He  
9 always met or exceeded his employer's expectations.

10 90. In his last performance review before being laid off, Hewlett-Packard Company  
11 praised Mr. Weiland as a "solid contributor" who brought a "positive, 'can do' attitude" with him  
12 every day. Hewlett-Packard Company also said Mr. Weiland was "[a] pleasure to work with, well  
13 grounded, [had] outstanding dependability, and work ethic." In 2014, Mr. Weiland received the  
14 "Making a Difference" award.

15 91. On or about September 9, 2014, Hewlett-Packard Company notified Mr. Weiland  
16 that he was eligible to participate in the 2014 Phased Retirement program. His then-manager,  
17 Bland Quattlebaum, had several conversations with Mr. Weiland to try to persuade him to  
18 participate in the retirement program, which Mr. Weiland declined. Mr. Weiland wanted to  
19 continue working.

20 92. In July 2015, Hewlett-Packard Company (now known as HPI) notified  
21 Mr. Weiland, then 63 years old, that he was being terminated as part of a WFR Plan. His last day  
22 of work was July 24, 2015.

23 93. Upon information and belief, and consistent with the internal policies and practices  
24 of Hewlett-Packard Company (now known as HPI), as alleged in herein, when Mr. Weiland's  
25 employment was terminated, he was replaced with a "graduate" or "early career" hire who is  
26 significantly under the age of 40, or with someone else who is younger than him.

27 94. Mr. Weiland filed a charge of discrimination with the EEOC on October 5, 2015,  
28 raising class-wide claims for relief against Hewlett-Packard Company. Shortly after Hewlett-

1 Packard Company changed its name to HPI and spun off HPE effective November 1, 2015,  
2 Mr. Weiland notified the EEOC that he was charging both HPE and HPI with discrimination. Mr.  
3 Weiland received a Notice of Right to Sue letter dated August 11, 2016. More than 60 days have  
4 passed since this filing of his discrimination charge. This lawsuit was filed within 90 days of  
5 receiving his Notice of Right to Sue. Mr. Weiland has exhausted his administrative remedies.

6 Shafiq Rahman

7 95. Plaintiff Shafiq Rahman began working at Compaq in April 1997, which was  
8 acquired by Hewlett-Packard Company in 2002. Following the name change and spin-off on  
9 November 1, 2015, Mr. Rahman became employed by HPE. At the time of his termination, on  
10 July 29, 2016, Mr. Rahman was a Senior Engineer developing computer servers for HPE.

11 96. Throughout the nearly twenty years of his employment, Mr. Rahman performed his  
12 job duties in a satisfactory and competent manner, and consistently received positive reviews.  
13 Indeed, during a mid-year review that took place shortly before his termination, Mr. Rahman was  
14 told his performance was good and he should consider himself “safe” from termination.

15 97. Nevertheless, soon thereafter, on July 18, 2016, when Mr. Rahman was 65 years  
16 old, he was informed he was being terminated under a WFR Plan. His last day of work was July 29,  
17 2016.

18 98. Upon information and belief, and consistent with HPE’s internal policies and  
19 practices as alleged in this Complaint, when Mr. Rahman’s employment was terminated, he was  
20 replaced with a “graduate” or “early career” hire who is under the age of 40, or with someone else  
21 who is younger than him.

22 99. Mr. Rahman filed a charge of discrimination with the EEOC on September 29, 2016  
23 that raised class-wide claims for relief. More than 60 days have passed since the charge was filed.  
24 He has exhausted his administrative remedies.

25 Kevin Alviso

26 100. Plaintiff Kevin Alviso began working for the Hewlett-Packard Company in June  
27 1997. Following the name change and spin-off on November 1, 2015, Mr. Alviso became  
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1 employed by HPE. When he was terminated in October 2016, he was a Research and Development  
2 Manager for HPE.

3 101. Mr. Alviso consistently performed his job duties in a satisfactory and competent  
4 manner, and always met or exceeded his employer's expectations. He never received any negative  
5 performance reviews during his time at Hewlett-Packard Company and HPE. In fact, Mr. Alviso  
6 significantly exceeded his employer's expectations, and he received top ratings in each of his last  
7 five annual reviews.

8 102. On October 28, 2016, when he was 53 years old, Mr. Alviso was terminated under  
9 a WFR plan.

10 103. Upon information and belief, and consistent with the internal policies and practices  
11 of HPI (formerly Hewlett-Packard Company) and HPE, as alleged in this Complaint, when  
12 Mr. Alviso's employment was terminated, he was replaced with a "graduate" or "early career" hire  
13 who was under the age of 40, or with someone else who is younger than him.

14 104. Mr. Alviso filed a charge of discrimination with the EEOC on December 19, 2016,  
15 that raised class-wide claims for relief. More than 60 days have passed since the charge was filed.  
16 On January 18, 2017, the EEOC issued Mr. Alviso a Notice of Right to Sue. In addition, Mr. Alviso  
17 filed the same charge of discrimination with the California Department of Fair Employment and  
18 Housing on December 19, 2016 and received a Notice of Right to Sue from that state agency dated  
19 January 18, 2017. Mr. Alviso has exhausted his administrative remedies.

20 *Class Allegations*

21 105. Plaintiffs Weiland and Vatturi are representatives of the following class for  
22 purposes of the ADEA:

23 The "HPI Nationwide Class"

24 All individuals who had their employment terminated by HP, Inc.  
25 (including when HP, Inc. was named Hewlett-Packard Company)  
26 pursuant to a WFR Plan on or after December 9, 2014 for individuals  
27 terminated in deferral states; and on or after April 8, 2015 for  
28 individuals terminated in non-deferral states, and who were 40 years  
or older at the time of such termination.



1 discriminatory policies and practices described herein, and they were uniformly carried out  
2 through all levels of HPI and HPE.

3 110. Common questions of law and fact among Plaintiffs and the members of the  
4 Nationwide Classes include, but are not limited to:

- 5 (a) whether HPI and HPE (respectively) unlawfully terminated members of the  
6 Nationwide Classes in violation of the ADEA;
- 7 (b) whether HPI and HPE (respectively) engaged in a pattern and practice of age  
8 discrimination when selecting members of the Nationwide Classes for  
9 termination pursuant to the WFR Plans;
- 10 (c) whether HPI and HPE (respectively) through their WFR Plans willfully and  
11 intentionally discriminated against members of the Nationwide Classes because  
12 of their age;
- 13 (d) whether HPI and HPE (respectively) used common employment policies and  
14 practices that adversely impacted members of the Nationwide Classes; and
- 15 (e) whether HPI and HPE (respectively) provided purported reasons for laying off  
16 members of the Nationwide Classes pursuant to the WFR Plans that were  
17 pretextual.

18 111. Counts for violations of the ADEA may be brought and maintained as an “opt-in”  
19 collective action pursuant to 29 U.S.C. § 216(b), for all claims asserted by Plaintiffs, because their  
20 claims are similar to the claims of the members of their respective Nationwide Classes.

21 112. Plaintiffs and the members of the Nationwide Classes are similarly situated  
22 because, among other things, (a) they all worked for HPE or HPI (respectively) and are all aged  
23 40 and older, (b) they are all residents of the United States, (c) they were all subjected to the same  
24 company-wide policy of age discrimination, (d) they were all subjected to the same company-wide  
25 policies that adversely impacted them because of their age, (e) they were all terminated pursuant  
26 to the Workforce Restructuring Initiative and the WFR Plans because of their age, (f) they were  
27 all given the same boilerplate reason for having their employment terminated; and (g) they all  
28

1 declined to sign the Waiver and General Release Agreements (as defined in footnote 1) and an  
2 Agreement to Arbitrate Claims (as defined in footnote 2).

3 113. Individual variations among Plaintiffs and members of the Nationwide Classes,  
4 such as location, education, or job responsibilities, do not undermine the common issues at stake  
5 here. Plaintiffs allege a single scheme of age discrimination initiated at the very top of HPI and  
6 HPE and carried out through the entire structure of the companies. Regardless of where an  
7 individual worked in the United States or to which manager the individual reported, each member  
8 of each Nationwide Classes faced the same discrimination and discriminatory policies.

9 114. Plaintiff Arun Vatturi also seeks to represent the following class for purposes of his  
10 California state law claims pursuant to Rule 23 of the Federal Rules of Civil Procedure:

11 The “HPI California Class”

12 All individuals who had their employment terminated by HP, Inc.  
13 (including when HP, Inc. was named Hewlett-Packard Company) in  
14 California pursuant to a WFR Plan on or after August 18, 2012, and  
who were 40 years or older at the time of such termination.

15 115. Plaintiff Kevin Alviso also seeks to represent the following class for purposes of  
16 his California state law claims pursuant to Rule 23 of the Federal Rules of Civil Procedure:

17 The “HPE California Class”

18 All individuals who had their employment terminated by Hewlett  
19 Packard Enterprise Company in California pursuant to a WFR Plan  
20 on or after November 1, 2015, and who were 40 years or older at the  
time of such termination.

21 116. Excluded from the HPI and HPE California Classes (together, the “California  
22 Classes”) are: (a) individuals who signed a Waiver and General Release Agreement (as defined in  
23 footnote 1, *supra*); (b) individuals who signed an Agreement to Arbitrate Claims (as defined in  
24 footnote 2, *supra*); (c) any judge, justice or judicial officer presiding over this matter and the  
25 members of their immediate families and judicial staffs.

26 117. The California Classes consist of hundreds or thousands of former employees,  
27 which makes joining all members of these classes impracticable.  
28

1           118. The common questions of law and fact among Plaintiffs Vatturi, Alviso, and the  
2 California Classes' members include, but are not limited to:

- 3                   (a) whether HPI's and HPE's (respectively) conduct violated the California Fair  
4                   Employment and Housing Act;
- 5                   (b) whether HPI's and HPE's (respectively) conduct was unlawful or unfair in  
6                   violation of California's Unfair Competition Law;
- 7                   (c) whether HPI and HPE (respectively) engaged in conduct that constitutes an  
8                   unlawful employment practice in violation of public policy;
- 9                   (d) whether HPI and HPE (respectively) engaged in a pattern and practice of age  
10                  discrimination when selecting individuals for termination pursuant to the  
11                  Workforce Restructuring Initiative and the WFR Plans;
- 12                  (e) whether HPI and HPE (respectively) based their processes for selecting  
13                  employees for termination on reasonable factors other than age that were a  
14                  business necessity;
- 15                  (f) whether HPI and HPE (respectively) through the WFR Plans willfully and  
16                  intentionally discriminated against the members of the California Classes  
17                  because of their age;
- 18                  (g) whether HPI's and HPE's (respectively) discrimination had a disparate impact  
19                  on members of the California Classes; and
- 20                  (h) whether HPI and HPE (respectively) gave purported reasons for laying off  
21                  members of the California Classes pursuant to the WFR Plans that were  
22                  pretextual.

23           119. Plaintiffs Vatturi's and Alviso's claims and the relief sought for their claims are  
24 typical of the claims and relief sought for the California Classes. Like the members of the  
25 California Classes, Plaintiffs Vatturi and Alviso are aged 40 or older and worked for HPI and HPE,  
26 respectively, in California until they were terminated pursuant to the WFR Plans and did not sign  
27 a Waiver and General Release Agreement (as defined in footnote 1) or execute an Agreement to  
28 Arbitrate Claims (as defined in footnote 2). Plaintiffs Vatturi and Alviso were, therefore, subjected

1 to the same discriminatory policies and practices as the other members of their respective  
2 California Classes. The relief necessary to remedy Vatturi's and Alviso's claims is the same relief  
3 necessary to remedy the claims of the members of the California Classes in this case.

4 120. Plaintiffs Vatturi and Alviso will adequately represent the interests of the members  
5 of the California Classes. Plaintiffs Vatturi's and Alviso's interests are co-extensive with those of  
6 the California Classes. They seek to remedy the discriminatory employment policies, procedures  
7 and practices of both HPI and HPE and will fairly and vigorously pursue claims on behalf of the  
8 California Classes. Plaintiffs Vatturi and Alviso are willing and able to represent the California  
9 Classes fairly and vigorously as they pursue their individual claims in this action.

10 121. Plaintiffs Vatturi and Alviso have retained counsel who are qualified, experienced,  
11 and able to conduct this litigation and to meet the time and fiscal demands required to litigate an  
12 employment discrimination class action of this size and complexity. The combined interests,  
13 experience, and resources of Vatturi's and Alviso's counsel to litigate completely the individual  
14 and class claims at issue in this case satisfy the adequacy of representation requirement.

15 122. HPI and HPE have acted or refused to act on grounds that apply generally to all  
16 members of the California Classes. HPI and HPE have failed to create adequate incentives for their  
17 managerial and supervisory personnel to comply with laws regarding the employment policies,  
18 practices, and procedures described herein.

19 123. HPI and HPE have acted on grounds generally applicable to Plaintiffs Vatturi and  
20 Alviso and the California Classes by adopting and implementing systemic policies, practices, and  
21 procedures that are discriminatory. Disparate impact and systemic age discrimination have been  
22 HPI's and HPE's standard operating procedures rather than sporadic occurrences.

23 124. In addition, HPI and HPE have, in a discriminatory way, refused to act on grounds  
24 generally applicable to the California Classes by terminating class members pursuant to a WFR  
25 Plan based on their age.

26 125. HPI's and HPE's systemic discriminatory acts and refusals to act make it  
27 appropriate to grant the requested relief with respect to the California Classes.

28 126. All requirements of Rule 23(b) are satisfied here.

1 127. The common issues of fact and law affecting the claims of Plaintiffs Vatturi and  
2 Alviso, and the members of the California Classes predominate over any issues affecting only  
3 individual claims. The answers to the common questions listed above will be the same for Plaintiffs  
4 Vatturi and Alviso, and all members of the California Classes and will resolve all core issues in  
5 the case, once, on common evidence and on a class-wide basis.

6 128. Prosecution of these claims on a class-wide basis is the most efficient and  
7 economical means of resolving the questions of law and fact common to the claims of Plaintiffs  
8 Vatturi and Alviso, and the members of the California Classes.

9 129. Plaintiffs Vatturi and Alviso, and the members of the California Classes were  
10 injured by the same discriminatory policies and practices, and these injuries are redressable  
11 through systemic relief and class-wide remedies.

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

19 131. The cost of proving the disparate treatment and impact of the policies, procedures  
20 and practices of both HPI and HPE makes it impracticable for Plaintiffs Vatturi and Alviso, and  
21 members of the California Classes, to prosecute their claims individually.

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

25 **COUNT 1 –AGE DISCRIMINATION UNDER THE ADEA AGAINST HPI**  
26 **(On behalf of Plaintiffs Weiland and Vatturi and the HPI Nationwide Class)**

27 133. Plaintiffs hereby incorporate each paragraph above as though fully set forth here.  
28

1           134. This is a representative action under 29 U.S.C. §§ 626(b) and (c) and 29 U.S.C. §  
2 216(b) filed by the above-named Plaintiffs individually and on behalf of similarly situated persons  
3 who opt into this action by filing an appropriate notice.

4           135. As more fully set forth elsewhere in this Complaint, HPI (formerly doing business  
5 as Hewlett-Packard Company) engaged in an unlawful pattern or practice of age discrimination  
6 that adversely affected Plaintiffs and the members of the HPI Nationwide Class in violation of 29  
7 U.S.C. § 621, *et seq.*

8           136. Plaintiffs and the members of the HPI Nationwide Class were 40 years of age or  
9 older at the time of they were terminated.

10           137. HPI terminated Plaintiffs and the members of the HPI Nationwide Class because of  
11 their age and would not have terminated Plaintiffs or the members of the HPI Nationwide Class  
12 but for their age.

13           138. The unlawful pattern or practice of age discrimination by HPI alleged herein  
14 constitutes a willful violation of the ADEA. Plaintiffs' charges of discrimination filed with the  
15 EEOC asserted claims on behalf of both the Plaintiffs themselves and others similarly situated,  
16 and adequately placed HPI on notice that a collective action was forthcoming.

17           139. Plaintiffs and others similarly situated were adversely affected by the pattern or  
18 practice of unlawful, willful age discrimination by HPI as elsewhere described herein. Plaintiffs  
19 and all similarly situated individuals have suffered actual damages in an amount to be determined  
20 at trial. Plaintiffs and others similarly situated seek the opportunity to have their employment  
21 reinstated or, alternatively, front pay.

22           140. This is also a representative action under 29 U.S.C. §§ 626(b) and (c) and 29 U.S.C.  
23 § 216(b) filed by the above-named Plaintiffs individually and on behalf of similarly situated  
24 persons who opt into this action by filing an appropriate notice, and an individual action under the  
25 ADEA.

26           141. HPI used WFR Plans that had a significantly adverse or disproportionate impact on  
27 Plaintiffs and the members of the HPI Nationwide Class and caused Plaintiffs and the members of  
28 the HPI Nationwide Class to be terminated. HPI's policies and practices have had a disparate

1 impact on Plaintiffs and the members of the HPI Nationwide Class and were not based upon a  
2 reasonable factor other than age.

3 142. As set forth more fully above, HPI has utilized practices, policies and procedures  
4 that have disparately impacted former employees of HPI, resulting in an unlawful pattern or  
5 practice of age discrimination in violation of the ADEA, 29 U.S.C. § 621, *et seq.* There was no  
6 legitimate, non-discriminatory reason for its action, and any reasons HPI may advance are  
7 pretextual.

8 143. The above-named Plaintiffs and others similarly situated were disparately impacted  
9 by HPI's practices, policies and procedures, in violation of the ADEA.

10 144. As a direct and proximate result of the aforesaid age discrimination by HPI, each  
11 of the Plaintiffs and all others similarly situated have suffered damages in an amount to be  
12 determined at trial.

13 **COUNT 2 –AGE DISCRIMINATION UNDER THE ADEA AGAINST HPE**  
14 **(On behalf of Plaintiffs Forsyth, Rahman and Alviso and the HPE Nationwide Class)**

15 145. Plaintiffs hereby incorporate each paragraph above as though fully set forth here.

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

19 147. As more fully set forth elsewhere in this Complaint, HPE engaged in an unlawful  
20 pattern or practice of age discrimination that adversely affected Plaintiffs and the members of the  
21 HPE Nationwide Class in violation of 29 U.S.C. § 621, *et seq.*

22 148. Plaintiffs and the members of the HPE Nationwide class were 40 years of age or  
23 older at the time of they were terminated.

24 149. HPE terminated Plaintiffs and the members of the HPE Nationwide Class because  
25 of their age and would not have terminated Plaintiffs or the members of the HPE Nationwide Class  
26 but for their age.

27 150. The unlawful pattern or practice of age discrimination by HPE alleged herein  
28 constitutes a willful violation of the ADEA. Plaintiffs' charges of discrimination filed with the

1 EEOC asserted claims on behalf of both the Plaintiffs themselves and others similarly situated,  
2 and adequately placed HPE on notice that a collective action was forthcoming.

3 151. Plaintiffs and others similarly situated were adversely affected by the pattern or  
4 practice of unlawful, willful age discrimination by HPE as elsewhere described herein. Plaintiffs  
5 and all similarly situated individuals have suffered actual damages in an amount to be determined  
6 at trial. Plaintiffs and others similarly situated seek the opportunity to have their employment  
7 reinstated or, alternatively, front pay.

8 152. This is also a representative action under 29 U.S.C. §§ 626(b) and (c) and 29 U.S.C.  
9 § 216(b) filed by the above-named Plaintiffs individually and on behalf of similarly situated  
10 persons who opt into this action by filing an appropriate notice, and an individual action under the  
11 ADEA.

12 153. HPE used WFR Plans that had a significantly adverse or disproportionate impact  
13 on Plaintiffs and the members of the HPE Nationwide Class and caused Plaintiffs and the members  
14 of the HPE Nationwide Class to be terminated. HPE's policies and practices have had a disparate  
15 impact on Plaintiffs and the members of the HPE Nationwide Class and were not based upon a  
16 reasonable factor other than age.

17 154. As set forth more fully above, HPE has utilized practices, policies and procedures  
18 that have disparately impacted former employees, resulting in an unlawful pattern or practice of  
19 age discrimination in violation of the ADEA, 29 U.S.C. § 621, *et seq.* There was no legitimate,  
20 non-discriminatory reason for its action, and any reasons HPE may advance are pretextual.

21 155. The above-named Plaintiffs and others similarly situated were disparately impacted  
22 by HPE's practices, policies and procedures, in violation of the ADEA.

23 156. As a direct and proximate result of the aforesaid age discrimination by HPE, each  
24 of the Plaintiffs and all others similarly situated have suffered damages in an amount to be  
25 determined at trial.

26 **COUNT 3 – AGE DISCRIMINATION UNDER THE FEHA AGAINST HPI**  
27 **(On behalf of Plaintiff Vatturi and the HPI California Class)**

28 157. Plaintiffs hereby incorporate each paragraph above as though fully set forth here.

1           158. This is a representative action under the California Fair Employment and Housing  
2 Act, Cal. Gov't Code § 12900, *et seq.* ("FEHA"). The FEHA prohibits employers from  
3 discriminating on the basis of age. Cal. Gov. Code § 12940(a). Plaintiff Vatturi brings his FEHA  
4 claims on behalf of other similarly situated individuals.

5           159. HPI has engaged in a pattern and practice of discriminating against individuals aged  
6 40 and older by knowingly and intentionally firing a disproportionately large number of workers  
7 aged 40 and older while simultaneously hiring a disproportionately large number of workers under  
8 the age of 40.

9           160. As a direct and proximate result of HPI's intentional discrimination, Plaintiff  
10 Vatturi and other of similarly situated individuals have had their employment terminated.

11           161. HPI has used employment policies and practices related to hiring and firing that  
12 have had a disparate impact on the basis of age (discriminating against workers who are aged 40  
13 and older) that are not job-related for the positions at issue, not consistent with business necessity,  
14 and are not necessitated by a reasonable factor other than age.

15           162. HPI's conduct has been intentional, deliberate, willful, malicious, reckless, and  
16 conducted in callous disregard of the rights of Plaintiff Vatturi and class members, entitling them  
17 to punitive damages.

18           163. HPI's policies, procedures, and practices have produced a disparate impact on  
19 Plaintiff Vatturi and class members with respect to the terms and conditions of their employment.

20           164. HPI's actions constitute unlawful discrimination in violation of the FEHA.

21           165. Plaintiffs and others similarly situated seek the opportunity to have their  
22 employment reinstated or, alternatively, front pay.

23           166. Pursuant to California Government Code Section 12940(i), it is unlawful "for any  
24 person to aid, abet, incite, compel or coerce" discrimination forbidden by the act.

25           167. As a direct and proximate result of the aforesaid age discrimination by HPI,  
26 Plaintiff Vatturi and all similarly situated individuals have suffered damages in an amount to be  
27 determined at trial.

28

**COUNT 4 – AGE DISCRIMINATION UNDER THE FEHA AGAINST HPE**  
**(On behalf of Plaintiff Alviso and the HPE California Class)**

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

169. This is a representative action under the California Fair Employment and Housing Act, Cal. Gov't Code § 12900, *et seq.* ("FEHA"). The FEHA prohibits employers from discriminating on the basis of age. Cal. Gov. Code § 12940(a). Plaintiff Alviso brings FEHA claims on behalf of himself and all other similarly situated individuals.

170. HPE has engaged in a pattern and practice of discriminating against individuals aged 40 and older by knowingly and intentionally firing a disproportionately large number of workers aged 40 and older while simultaneously hiring a disproportionately large number of workers under the age of 40.

171. As a direct and proximate result of HPE's intentional discrimination, Plaintiff Alviso and similarly situated individuals have had their employment terminated.

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

173. HPE's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiff Alviso and others similarly situated entitling them to punitive damages.

174. HPE's policies, procedures, and practices have produced a disparate impact on Plaintiff Alviso and others similarly situated with respect to the terms and conditions of their employment.

175. HPE's actions constitute unlawful discrimination in violation of the FEHA.

176. Plaintiffs and others similarly situated seek the opportunity to have their employment reinstated or, alternatively, front pay.

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

1 178. As a direct and proximate result of the aforesaid age discrimination by HPE,  
2 Plaintiff Alviso and all similarly situated individuals have suffered damages in an amount to be  
3 determined at trial.

4 **COUNT 5 – AGE DISCRIMINATION IN VIOLATION OF**  
5 **PUBLIC POLICY AGAINST HPI**  
6 **(On behalf of Plaintiff Vatturi and the HPI California Class)**

7 179. Plaintiff Vatturi hereby incorporates each paragraph above as though fully set forth  
8 here.

9 180. HPI discriminated against Plaintiff Vatturi and the HPI California Class members  
10 by terminating their employment on the basis of their age.

11 181. HPI's discrimination constitutes an unlawful employment practice in violation of  
12 California public policy.

13 182. As a proximate result of HPI's discriminatory conduct, Plaintiff Vatturi and the HPI  
14 California Class members have been injured in their health, strength, and activity, all of which  
15 have caused and continue to cause them to suffer mentally and emotionally.

16 183. As a further proximate result of the conduct alleged herein, Plaintiff Vatturi and the  
17 HPI California Class members have lost earnings, lost employment opportunities, and will lose  
18 job benefits in an amount yet to be ascertained.

19 184. HPI discriminated on the basis of age with fraud, oppression, and malice. Plaintiff  
20 Vatturi and the HPI California Class members are therefore entitled to exemplary and punitive  
21 damages in an amount to be determined at trial.

22 **COUNT 6 – AGE DISCRIMINATION IN VIOLATION OF**  
23 **PUBLIC POLICY AGAINST HPE**  
24 **(On behalf of Plaintiff Alviso and the HPE California Class)**

25 185. Plaintiff Alviso hereby incorporates each paragraph above as though fully set forth  
26 here.

27 186. HPE discriminated against Plaintiff Alviso and the HPE California Class members  
28 by terminating their employment on the basis of their age.

187. HPE's discrimination constitutes an unlawful employment practice in violation of  
California public policy.

1 188. As a proximate result of HPE’s discriminatory conduct, Plaintiff Alviso and the  
2 HPE California Class members have been injured in their health, strength, and activity, all of which  
3 have caused and continue to cause them to suffer mentally and emotionally.

4 189. As a further proximate result of the conduct alleged herein, Plaintiff Alviso and the  
5 HPE California Class members have lost earnings, lost employment opportunities, and will lose  
6 job benefits in an amount yet to be ascertained.

7 190. HPE discriminated on the basis of age with fraud, oppression, and malice. Plaintiff  
8 Alviso and the HPE California Class members are therefore entitled to exemplary and punitive  
9 damages in an amount to be determined at trial.

10 **COUNT 7 – UNFAIR COMPETITION**  
11 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**  
12 **AGAINST HPI**

13 **(On behalf of Plaintiff Vatturi and the HPI California Class)**

14 191. Plaintiff Vatturi hereby incorporates each paragraph above as though fully set forth  
15 here.

16 192. HPI is a “person” as defined under California Business & Professions Code  
17 section 17021.

18 193. HPI’s discrimination against its older employees, as alleged herein, constitutes  
19 unlawful and/or unfair and/or fraudulent activity prohibited by the California Business &  
20 Professions Code § 17200, *et seq.* As a result of their unlawful or unfair acts, HPI reaped and  
21 continues to reap unfair benefits at the expense of Plaintiff Vatturi and the HPI California Class  
22 members.

23 194. Accordingly, Plaintiff Vatturi and the HPI California Class members are entitled to  
24 restitution with interest and other equitable relief.

25 **COUNT 8 – UNFAIR COMPETITION**  
26 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**  
27 **AGAINST HPE**

28 **(On behalf of Plaintiff Alviso and the HPE California Class)**

195. Plaintiff Alviso hereby incorporates each paragraph above as though fully set forth  
here.

1 196. HPE is a “person” as defined under California Business & Professions Code  
2 section 17021.

3 197. HPE’s discrimination against its older employees, as alleged herein, constitutes  
4 unlawful and/or unfair and/or fraudulent activity prohibited by the California Business &  
5 Professions Code § 17200, *et seq.* As a result of their unlawful or unfair acts, HPE reaped and  
6 continues to reap unfair benefits at the expense of Plaintiff Alviso and the HPE California Class  
7 members.

8 198. Accordingly, Plaintiff Alviso and the HPE California Class members are entitled  
9 to restitution with interest and other equitable relief.

10 **JURY DEMAND**

11 199. Plaintiffs hereby demand a trial by jury.

12 **PRAYER FOR RELIEF**

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

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

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

19 3. Designating the above-named Plaintiffs as representatives of the Nationwide  
20 Classes;

21 4. Designating Plaintiffs Arun Vatturi and Kevin Alviso as representatives of the  
22 California Classes;

23 5. Designating the undersigned as class counsel;

24 6. Awarding each of the Plaintiffs and all members of the Nationwide Classes and  
25 California Classes damages in an amount to be determined at trial, including but not limited to  
26 back pay and benefits, together with interest thereon;

27 7. Restoring each of the Plaintiffs and all members of the Nationwide Classes and  
28 California Classes to positions comparable to those from which they were terminated or, in lieu of

1 reinstatement, awarding each Plaintiff and all members of the Nationwide Classes and California  
2 Classes front pay and benefits for the period remaining until that person's expected retirement age;

3 8. Awarding each Plaintiff and all members of the Nationwide Classes liquidated  
4 damages pursuant to the ADEA in an amount equal to that person's back pay and benefits award,  
5 together with interest thereon;

6 9. Awarding Plaintiffs Arun Vatturi, Kevin Alviso and all members of the California  
7 Classes compensatory damages, restitution, and punitive damages pursuant to their state law  
8 claims;

9 10. Awarding Plaintiffs and all members of the Nationwide Classes and the California  
10 Classes their attorneys' fees and costs pursuant to the ADEA and California state law;

11 11. Awarding prejudgment interest, costs and disbursements; and

12 12. Awarding such other and further relief, including but not limited to declaratory,  
13 equitable or injunctive relief, as the Court and/or jury deems equitable, appropriate, and just.

14  
15 DATE: July 9, 2020

O'NEIL, CANNON, HOLLMAN,  
DEJONG & LAING S.C.

*/s/ Douglas P. Dehler*

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*Attorneys for Plaintiffs and the Proposed  
Classes*

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**ECF ATTESTATION**

I, Leland H. Belew, hereby attest, pursuant to United States District Court, Northern District of California Civil Local Rule 5-1(i)(3), that concurrence to the filing of this document has been obtained from the signatory hereto.

Date: July 9, 2020

By:           /s/ Leland H. Belew            
Leland H. Belew

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*Attorneys for Plaintiffs and the Proposed  
Classes*

# **EXHIBIT A**

**AGREEMENT TO ARBITRATE CLAIMS**

This Agreement to Arbitrate Claims (“Agreement”) is between me (hereafter “Employee”) and Hewlett Packard Enterprise Company (hereafter the “Company” or “HPE”) or the subsidiary by which Employee is employed. Any reference to the Company will be a reference also to all direct and indirect parent, subsidiary, partners, divisions, and affiliated entities, and all successors, predecessors, and assigns of any of them. The Federal Arbitration Act (FAA) (9 U.S.C. § 1 et seq.) shall govern this Agreement, which confirms a transaction involving commerce. The Parties expressly agree that this Agreement shall be construed, interpreted, and its validity and enforceability determined, in accordance with the FAA. The mutual obligations by the Company and by Employee to arbitrate differences provide mutual consideration for this Agreement. It is mutually agreed that any and all disputes or claims as defined below between Employee and the Company shall be submitted to arbitration under the following conditions.

1. **Scope of Agreement.** This Agreement applies to any past, present or future dispute arising out of or related to Employee’s application, employment and/or separation from employment with the Company and survives after the employment relationship ends. The Agreement applies to any dispute that the Company may have against Employee or that Employee may have against: (1) the Company; (2) its current and former officers, directors, principals, shareholders, owners, employees, or agents; (3) the Company’s benefit plans or the plan’s sponsors, fiduciaries, administrators, affiliates, or agents; and (4) all successors and assigns of any of them. Except as it otherwise provides, this Agreement is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration. This Agreement requires all such disputes to be resolved only by an arbitrator through final and binding arbitration and not by way of court or jury trial. With the exception of claims regarding the validity, scope, or enforceability (including unconscionability) of the Class Action Waiver, Collective Action Waiver, and Private Attorney General Waiver, addressed below, Employee and the Company agree to submit to the arbitrator all claims or issues regarding arbitrability, the validity, scope, enforceability, interpretation, or application of this Agreement, the arbitrator’s jurisdiction, as well as any gateway, threshold, or any other challenges to this Agreement, including claims that this Agreement is unconscionable.

2. **Covered Claims.** Except as it otherwise provides, this Agreement applies, without limitation, to disputes or claims arising out of or relating to Employee’s employment relationship with the Company, including, but not limited to: (i) discrimination or harassment based on race, creed, color, religion, sex, age, disability, leave status, national origin, ancestry, sexual orientation, marital status, veteran or military reserve status, or any other characteristic protected by federal, state or local law; (ii) retaliation, including, but not limited to, whistleblower status or retaliation for filing a workers’ compensation claim; (iii) torts, including, but not limited to, battery, defamation, invasion of privacy, infliction of emotional distress, or workplace injury not otherwise covered by applicable workers’ compensation laws; (iv) all employment related laws, including, but not limited to, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, Genetic Information Nondiscrimination Act, the Family and Medical Leave Act, the Worker Adjustment Retraining and Notification Act, and any amendments to these laws, and any such related or similar state or local laws; (v) any federal, state or local law or common law doctrine for breach of contract, promissory estoppel, wrongful discharge or conversion; (vi) claims under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), or any other claims concerning the Company’s benefit plans, that are not excluded below; (vii) claims under federal or state law, or under policy, program or contract (express or implied) regarding compensation or wages including, without limitation, claims for pay, minimum wage and overtime, wage or other penalties, benefits (except as excluded below), vacation, meal and rest breaks, classification, reimbursement of expenses, compensation, stock or incentive bonus plans; (viii) claims concerning trade secrets, unfair competition, the Uniform Trade Secrets Act, intellectual property rights and associated laws; and (ix) federal and state statutes, regulations, ordinances or other laws, if any, addressing any of the foregoing or similar subject matters, and all other state statutory and common law claims.

3. **Claims Not Covered By This Agreement.** This Agreement does not apply to claims for workers compensation benefits, state disability insurance and unemployment insurance benefits. This Agreement does not apply to claims asserted in a lawsuit filed on or before December 1, 2014. This Agreement does not apply to (a) claims for benefits under any ERISA-covered benefit plan sponsored by the Company or funded by insurance, which include their own dispute resolution procedure; provided however that this Agreement does apply to any claims for breach of fiduciary duty, for penalties, or alleging any other violation of ERISA, even if such breach of fiduciary duty claim is combined with a claim for benefits; (b) claims for benefits under any benefit plan sponsored by the Company which includes its own arbitration procedure; provided however, if such arbitration procedure is held to be not binding or unenforceable, then this Agreement does apply; and (c) claims under ERISA that may have a preclusive effect on the interests of other participants in a benefit plan sponsored by the Company. The Company and Employee may pursue temporary and/or preliminary injunctive relief in a court of competent

jurisdiction for tortious interference with prospective employment and/or the protection of confidential information and/or trade secrets, prevention of unfair competition, or enforcement of post-employment contractual restrictions related to same; provided, however, that all issues of final relief shall continue to be decided through arbitration, and the pursuit of the temporary and/or preliminary injunctive relief described herein shall not constitute a waiver of the parties' agreement to arbitrate by any party. Disputes that may not be subject to pre-dispute arbitration as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act are excluded from the coverage of this Agreement. This Agreement also shall not be construed to require the arbitration of any claims against a defense contractor that may not be the subject of a mandatory arbitration agreement as provided by any Department of Defense Appropriations Act and their implementing regulations.

4. **Administrative Agency Claims.** Regardless of any other terms of this Agreement, claims may be brought before and remedies awarded by an administrative agency if, and only if, applicable law permits access to such an agency even with the existence of an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)), the U.S. Department of Labor ([www.dol.gov](http://www.dol.gov)), the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)), or the Office of Federal Contract Compliance Programs ([www.dol.gov/esa/ofccp](http://www.dol.gov/esa/ofccp)). Nothing in this Agreement shall be deemed to stop or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's requirement to exhaust administrative remedies and procedures before making a claim in arbitration.

5. **Notice of Claim and Exhaustion of Internal Procedures.** All claims in arbitration are subject to the same statutes of limitation that would apply in court. The party bringing the claim must demand arbitration in writing and deliver the written demand by hand, overnight delivery or first class mail to the other party within the applicable statute of limitations period. The demand for arbitration shall include identification of the parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought. Any demand for arbitration made to the Company shall be provided to the Company's principal office located at 3000 Hanover Street, Palo Alto, CA 94304-1112, attention HPE General Counsel. Notice to the Employee shall be sent to the Employee's last known home address as reflected in HPE's system of record. The arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration. Before initiating arbitration, Employee must utilize, and nothing contained in this Agreement shall be construed to prevent or excuse Employee or the Company from utilizing, the Company's or applicable benefit plan's existing internal procedures for investigation and/or resolution of complaints, and this Agreement is not intended to be a substitute for the utilization of such procedures.

6. **Class, Collective and Representative Action Waivers.** Employee and the Company agree to bring any dispute in arbitration on an individual basis only, and not on a class, collective, or private attorney general representative action basis. Accordingly, the Employee and Company agree as follows:

(a) There will be no right or authority for any dispute to be brought, heard, or arbitrated as a class action ("Class Action Waiver"). The Class Action Waiver shall not be severable from this Agreement in any case in which (1) the dispute is filed as a class action; and (2) a civil court of competent jurisdiction finds the Class Action Waiver is unenforceable. In such instances, the class action must be litigated in a civil court of competent jurisdiction.

(b) There will be no right or authority for any dispute to be brought, heard, or arbitrated as a collective action ("Collective Action Waiver"). The Collective Action Waiver shall not be severable from this Agreement in any case in which (1) the dispute is filed as a collective action; and (2) a civil court of competent jurisdiction finds the Collective Action Waiver is unenforceable. In such instances, the collective action must be litigated in a civil court of competent jurisdiction.

(c) There will be no right or authority for any dispute to be brought, heard, or arbitrated as a private attorney general representative action ("Private Attorney General Waiver"). The Private Attorney General Waiver shall be severable from this Agreement in any case in which a civil court of competent jurisdiction finds the Private Attorney General Waiver is unenforceable. In such instances and where the claim is brought as a private attorney general, such private attorney general claim must be litigated in a civil court of competent jurisdiction.

(d) Although an Employee will not be retaliated against, disciplined, or threatened with discipline as a result of his or her exercising his or her rights under Section 7 of the National Labor Relations Act by the filing of or participation in a class, collective, or representative action in any forum, the Company may lawfully seek enforcement of this

Agreement and the Class Action Waiver, Collective Action Waiver and Private Attorney General Waiver under the FAA and seek dismissal of such class, collective, or representative actions or claims. Notwithstanding any other clause contained in this Agreement, any claim that all or part of the Class Action Waiver, Collective Action Waiver, or Private Attorney General Waiver is invalid, unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.

(e) The Class Action Waiver, Collective Action Waiver, and Private Attorney General Waiver shall be severable from this agreement in any case in which the dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration.

7. **Mandatory Mediation.** After submission of the written claim as set forth above, the parties shall submit the matter to non-binding mediation before a mutually selected neutral mediator. The Company shall pay the reasonable fees of the mediator and the expenses associated with the mediation. The International Institute for Conflict Resolution Prevention and Resolution (CPR) or some comparable independent mediation service shall be used to provide the mediator and the rules under which the mediation will be conducted. In the event the claim is not resolved through the mediation process, the claim shall be submitted to binding arbitration, as provided herein.

8. **Selection of the Arbitrator and Arbitration Rules.** The parties shall select the neutral arbitrator and/or arbitration sponsoring organization by mutual agreement. If the parties are not able to mutually agree to an arbitrator and/or arbitration sponsoring organization, the arbitration will be held through the American Arbitration Association ("AAA"), and except as provided in this Agreement, shall be in accordance with the then current Employment Arbitration Rules of the AAA. The AAA rules are available from the Company's Office of the General Counsel or from the AAA (currently they can be found at [www.adr.org/employment](http://www.adr.org/employment)). Unless the parties jointly agree otherwise, the Arbitrator shall be either an attorney who is experienced in employment law and licensed to practice law in the state in which the arbitration is convened, or a retired judge (the "Arbitrator"), and the arbitration shall take place in or near the city in which Employee is currently or was last employed by the Company, as reflected in the Company directory. In the event the parties mutually choose a sponsoring organization, or AAA is designated, the Arbitrator shall be selected as follows: The organization selected shall give each party a list of five (5) arbitrators drawn from its panel of arbitrators. Each party shall have ten (10) calendar days from the postmark date on the list to strike all names on the list it deems unacceptable. If only one common name remains on the lists of all parties, that individual shall be designated as the Arbitrator. If more than one common name remains on the lists of all parties, the parties shall strike names alternately from the list of common names until only one remains, with the party to strike first to be determined by a coin toss. If no common name remains on the lists of all parties, the selected organization shall furnish an additional list of five (5) arbitrators from which the parties shall strike alternately, with the party striking first to be determined by a coin toss, until only one name remains. That person shall be designated as the Arbitrator. Any party to this Agreement may be represented by an attorney selected by the party.

9. **Pre-Arbitration Procedures.** The Arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person, as the Arbitrator deems necessary. The Arbitrator shall have the power to entertain a motion to dismiss and/or a motion for summary judgment by either party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure.

10. **Substantive Law and Arbitration Proceeding.** The parties will arbitrate their dispute before the Arbitrator, who shall confer with the parties regarding the conduct of the hearing and resolve any disputes the parties may have in that regard. The arbitration shall be conducted consistent with the then-current AAA Rules (or such other rules as agreed upon by the parties) to the extent they are not inconsistent with any provision of this Agreement. The Arbitrator shall apply the substantive law including, but not limited to, applicable statutes of limitations, of the state of the Employee's work location, as reflected in the Company directory, at the time the dispute arises, or federal law, or both, as applicable to the claims asserted. The Arbitrator is without jurisdiction to apply any different substantive law. In arbitration, the parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses, and any disputes in this regard shall be resolved by the Arbitrator. The Federal Rules of Evidence shall apply. Within 30 days of the close of the arbitration hearing, any party will have the right to prepare, serve on the other party and file with the Arbitrator a brief.

11. **Confidentiality.** Except as may be permitted or required by law, as determined by the Arbitrator, neither a party nor an Arbitrator may disclose the existence, content (including all testimony, information and discovery materials), or results of any arbitration hereunder without the prior written consent of all parties.

12. **The Arbitrator's Award.** The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law, and no remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Agreement

13. **The Arbitrator's Written Decision.** The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration. The Arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.

14. **Arbitration Fees.** Each party will pay the fees for his, her, or its own attorneys, subject to any remedies to which that party may later be entitled under applicable law. In all cases where required by law, the Company will pay the Arbitrator's and arbitration fees. However, if under applicable law the Company is not required to pay all of the Arbitrator's and/or arbitration fees, such fee(s) will be apportioned between the parties in accordance with said applicable law, and any disputes in that regard will be resolved by the Arbitrator.

15. **Successors and Assigns.** This Agreement will inure to the benefit of the parties' heirs, successors and assigns. Employee agrees this Agreement may be assigned by the Company to a subsequent employer, successor, or assign without the need for further authorization or agreement from Employee.

16. **Entire Agreement.** This Agreement is the full and complete agreement relating to the formal resolution of employment-related disputes. Except as stated above regarding the Class Action Waiver, Collective Action Waiver, and Private Attorney General Waiver, in the event any portion of this Agreement is deemed unenforceable, the unenforceable provision will be severed from the Agreement and the remainder of this Agreement will be enforceable. Notwithstanding any contrary language, if any, in any Company policy or writing, this Agreement may not be modified, revised or terminated absent a writing signed by both parties.

17. **At-Will Employment.** This Agreement does not in any way alter the "at-will" status of my employment; Employee understands and agrees his/her employment with HPE is for an indefinite term and is terminable, with or without cause, at any time by either Employee or HPE.

**BY SIGNING BELOW, EMPLOYEE ACKNOWLEDGES THAT HE OR SHE HAS CAREFULLY READ THIS AGREEMENT AND AGREES TO ITS TERMS. EMPLOYEE AGREES THAT BY SIGNING THIS AGREEMENT, THE COMPANY AND EMPLOYEE ARE GIVING UP THEIR RIGHTS TO A JURY TRIAL AND THAT PURSUANT TO THE TERMS OF THIS AGREEMENT, WE ARE AGREEING TO ARBITRATE CLAIMS COVERED BY THIS AGREEMENT.**

**EMPLOYEE FURTHER AGREES THAT HIS/HER ELECTRONIC SIGNATURE ON OR ELECTRONIC ACCEPTANCE OF THIS AGREEMENT SHALL HAVE THE SAME BINDING EFFECT AS A HANDWRITTEN SIGNATURE AND ACCEPTANCE.**

**Hewlett Packard Enterprise Company**

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Alan May  
Executive Vice President, Human Resources

\_\_\_\_\_  
Employee Name Printed

\_\_\_\_\_  
Date

rev Sept. 2015