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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 IN RE HP PRINTER FIRMWARE
15 UPDATE LITIGATION

Case No. 5:16-cv-05820-EJD-SVK

16 **DECLARATION OF ELIZABETH A.
17 KRAMER IN SUPPORT OF PLAINTIFFS'
18 MOTION FOR FINAL APPROVAL OF
19 CLASS ACTION SETTLEMENT AND
20 MOTION FOR ATTORNEYS' FEES,
21 COSTS, AND SERVICE AWARDS**

Date: April 25, 2019

Time: 9:00 a.m.

Place: Courtroom 4

Judge: Hon. Edward J. Davila

1 I, Elizabeth A. Kramer, hereby declare under penalty of perjury:

2 1. I am an associate at the law firm Girard Sharp LLP and one of the attorneys of record for
3 Plaintiffs. I submit this declaration in support of Plaintiffs' motion for final approval of the class action
4 settlement with Defendant HP Inc. ("HP"), and Plaintiffs' motion for attorneys' fees, costs, and service
5 awards. I make this declaration based on my own personal knowledge, and if called to do so, could and
6 would testify to the matters contained herein.

7 2. The Court entered an order on November 19, 2018 granting Plaintiffs' motion for
8 preliminary approval and directing that the proposed notice program be carried out. Dkt. Nos. 114, 116.
9 If the Court grants final approval, the equitable relief and \$1.5 million cash fund will be secured for the
10 class, and this litigation will be resolved.

11 **I. FACTUAL AND PROCEDURAL BACKGROUND**

12 3. This litigation arose from the effects of technology known as Dynamic Security that HP
13 activated as part of a firmware update. Dynamic Security disabled HP inkjet printers if they were
14 equipped with certain third-party ink cartridges. Plaintiffs filed a class action on behalf of owners of
15 certain HP inkjet printers, alleging that HP's use of Dynamic Security violates unfair competition laws
16 and constitutes trespass to chattels, among other violations. Plaintiffs sought an injunction against HP's
17 continuing use of Dynamic Security, together with damages for the affected printer owners.

18 4. As alleged in their Consolidated Amended Complaint (CAC), Plaintiffs' HP printers
19 unexpectedly stopped working in September 2016. Dkt. No. 94, ¶ 1. Plaintiffs alleged that their failed
20 printers displayed an error message that the ink cartridges were "damaged or missing" when that was not
21 so. *Id.*, ¶ 2. Plaintiffs further alleged that HP issued a firmware update rendering its printers
22 incompatible with certain non-HP ink cartridges for the purpose of inducing purchases of its own higher-
23 priced replacement cartridges. *Id.*

24 5. In late 2016, consumers filed lawsuits against HP alleging that the Dynamic Security
25 firmware update violated California and federal laws. Four suits were filed:

26 a. *Bayse v. HP, Inc.*, No. 2:16-cv-01583-JEO (N.D. Ala. filed Sept. 26, 2016);

- b. *Doty v. HP*, No. 5:16-cv-02063-GHK-RAO (C.D. Cal. filed Sept. 28, 2016);
- c. *San Miguel v. HP Inc.*, No. 5:16-cv-05820-LHK (N.D. Cal. filed Oct. 7, 2016);
- d. *Ware v. HP Inc.*, No. 5:16-cv-06519-NC (N.D. Cal. filed Nov. 9, 2016).

6. On December 5, 2016, Plaintiffs in *San Miguel* filed a petition with the Judicial Panel on Multidistrict Litigation seeking to create an MDL in this District. MDL No. 2763.

7. HP moved to dismiss *San Miguel* on December 7, 2016 (Dkt. No. 19), and *Doty* on December 23, 2016 (*Doty* Dkt. No. 17). Plaintiffs in *San Miguel* opposed HP's motion to dismiss on January 6, 2017 (Dkt. No. 29), and Plaintiff in *Doty* opposed HP's motion to dismiss on January 26, 2017 (*Doty* Dkt. No. 20).

8. During this same time period, Girard Sharp initiated communications among the plaintiffs' attorneys to reach agreement as to the court in which the litigation should proceed.

9. On December 7, 2016, HP moved to stay or transfer *San Miguel* pursuant to the first-to-file rule. Dkt. No. 18. Plaintiffs in *San Miguel* opposed that motion on January 6, 2017. Dkt. No. 28.

10. Following an agreement among plaintiffs' counsel, the plaintiff in the Alabama case, *Bayse*, voluntarily dismissed his claims on December 15, 2016 (*Bayse* Dkt. No. 14), after which his attorney sought admission *pro hac vice* to assist in representing the *San Miguel* Plaintiffs (Dkt. No. 25).

11. On December 16, 2016, the Court issued an order relating *Ware* to *San Miguel* under Civil Local Rule 3-12(f)(3). Dkt. No. 22.

12. On December 27, 2016, HP and the *Doty* Plaintiff separately opposed the *San Miguel* Plaintiffs' MDL petition. MDL No. 2763, Dkt. Nos. 13, 15.

13. On January 18, 2017, an initial case management conference occurred, and the Court consolidated *San Miguel* and *Ware*. Dkt. No. 40.

14. The parties exchanged initial disclosures under Rule 26(a)(1) on January 20, 2017.

15. Class Counsel's continued coordination efforts succeeded, as the parties in *Doty* agreed to a transfer of that matter to the Northern District of California.

16. On January 24, 2017, the *San Miguel* Plaintiffs withdrew their MDL petition, explaining

1 that the *Doty* Plaintiff had agreed to stipulate to transfer his claims to the consolidated action in this
2 District. MDL No. 2763, Dkt. No. 21; *Doty* Dkt. Nos. 21-24.

3 17. On February 9, 2017, the Court denied as moot HP’s motion to transfer under the first-to-
4 file rule. Dkt. No. 53.

5 18. On February 23, 2017, the consolidated action was reassigned to this Court. Dkt. No. 54.
6 On March 14 and 15, 2017, pursuant to stipulation, the Court ordered the consolidation of *Doty* with the
7 already consolidated *San Miguel* action, with the new action to be captioned “*In re HP Printer Firmware*
8 *Update Litigation.*” Dkt. Nos. 58, 59.

9 19. Class Counsel conducted further fact investigation, including interviews with affected
10 consumers. On March 22, 2017, Plaintiffs filed a consolidated complaint asserting 11 claims for relief,
11 both statutory and common law. Dkt. No. 60. Plaintiffs brought claims for violations of the unfair
12 competition laws of California, Texas, Washington, and New Jersey, the Computer Fraud and Abuse Act,
13 18 U.S.C. § 1030, and California’s Computer Crime Law and for trespass to chattels and tortious
14 interference.

15 20. On April 21, 2017, HP moved to dismiss the consolidated complaint under Rules 9(b) and
16 12(b)(6), arguing, among other things, that it had no legal obligation to make its printers compatible
17 with all third-party cartridges, that it was entitled to protect its intellectual property, and that Plaintiffs
18 could not state computer intrusion claims because HP had authority to access the printers. HP also
19 argued that Plaintiffs failed to sufficiently allege violations of state consumer protection statutes.
20 Specifically, HP contended that Plaintiffs’ claims under the UCL’s “unfair” prong failed to adequately
21 tether HP’s conduct to a legislatively declared policy, and that Plaintiffs did not state a claim under the
22 CLRA and the UCL’s “fraudulent” prong because HP did not make any material misrepresentations or
23 have a duty to disclose facts with respect to Dynamic Security.

24 21. Plaintiffs opposed the motion; HP replied; and the Court heard oral argument on July 14,
25 2017. Dkt. Nos. 73, 74, 83.

26 22. After the motion to dismiss hearing, the parties continued with discovery. HP produced,
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1 and Class Counsel reviewed and analyzed, thousands of pages of documents relating to: the
2 development and implementation of Dynamic Security, information provided to HP printer end-users,
3 consumer complaints following the release of firmware updates containing Dynamic Security and HP's
4 handling of those complaints, HP's revenue and profit numbers for printers and ink cartridges, and other
5 relevant subjects.

6 23. Class Counsel carefully reviewed HP's privilege log and engaged defense counsel in
7 meet and confers concerning redactions and withheld documents. Class Counsel also served HP with
8 multiple sets of interrogatories aimed at identifying the printers affected by Dynamic Security and at
9 probing HP's defenses and purported justifications for employing Dynamic Security.

10 24. With the Girard Sharp firm acting as coordinator, Class Counsel efficiently allocated the
11 written discovery work, document review, and the many meet-and-confer sessions that took place
12 throughout the second half of 2017.

13 25. Working collaboratively to minimize the burden on the Court, the parties resolved a
14 number of potential discovery disputes through negotiations rather than motion practice.

15 26. Even with the parties' good-faith approach to discovery, developing the facts presented a
16 challenge. While various news outlets reported on the printer failures that occurred in September 2016,
17 there was almost no publicly available information about the technical aspects of Dynamic Security.
18 Understanding how Dynamic Security was installed, detected information about ink cartridges, disabled
19 certain printers, and generated the "missing or damaged" error message required substantial research and
20 analysis of HP's documents, as well as work with Plaintiffs' expert.

21 27. The technical aspects of Dynamic Security had important implications for several of
22 Plaintiffs' claims. For instance, the question of whether HP was authorized to access the printers for
23 purposes of the computer intrusion claims required an analysis of the firmware updates that delivered
24 Dynamic Security to the printers. Plaintiffs' submissions to the Court explained the technology and how
25 traditional legal concepts could be applied by, for example, analogizing the "push" firmware update (one
26 that occurs without the end user taking any action) to the intrusion element of the trespass claim.

1 28. Prior to filing the initial complaints, and continuing throughout the litigation, Class
2 Counsel researched the law to determine and refine their theories of liability, and to explain how the
3 conduct at issue—though relying on new technology associated with the “internet of things”—arguably
4 fell within the types of trade practices that courts have condemned as giving the actor an unfair
5 advantage in a product aftermarket.

6 29. Class Counsel argued based on their research that HP’s conduct illegally interfered with
7 the ink cartridge aftermarket and violated state consumer protection laws. To investigate the history of
8 HP’s efforts to protect its market share, and to test HP’s assertions concerning intellectual property,
9 Class Counsel examined HP’s infringement suits involving ink cartridge technology and patents.

10 30. Class Counsel also researched the law to respond to HP’s arguments and developed
11 strategies to probe HP’s assertions through additional discovery.

12 31. Class Counsel took Rule 30(b)(6) depositions of two HP corporate representatives.
13 Topics covered in those depositions included the technical aspects of Dynamic Security and the
14 firmware updates that delivered Dynamic Security to the printers, the individuals and business units at
15 HP responsible for Dynamic Security, HP’s development and implementation of Dynamic Security, and
16 HP’s then-current and anticipated future use of security features that may prevent third-party ink
17 cartridges from working in the HP printers at issue in this litigation.

18 32. Plaintiffs sought third-party discovery related to class certification and damages issues
19 from approximately 15 manufacturers and retailers. Class Counsel served subpoenas and negotiated
20 compliance with these non-parties.

21 33. On December 5, 2017, Class Counsel sent a Freedom of Information Act request to the
22 Federal Trade Commission, which granted the request in part and produced relevant documents on
23 February 15, 2018.

24 34. Class Counsel interviewed experts on the inkjet printer business and technology and
25 retained a consultant to assist counsel in their review and analysis of documents, and with depositions.
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1 The consultant also helped with the investigation and refinement of claims, providing analysis of key
2 facts and guiding additional discovery.

3 35. Plaintiffs produced documents and answered interrogatories in response to HP's
4 discovery requests. HP deposed each Plaintiff and conducted technical examinations of Plaintiffs'
5 printers in question and the computers to which those printers were connected. The technical
6 inspections, which experts retained by both parties attended, were performed pursuant to a protocol that
7 Class Counsel negotiated with HP. Class Counsel monitored the inspections in person.

8 36. On February 7, 2018, Plaintiffs filed a motion for class certification under Rules 23(b)(2)
9 and (c)(4). Dkt. No. 91. Plaintiffs sought certification of (1) a subclass of California printer owners
10 seeking injunctive relief under the UCL; and (2) a national class of consumers who experienced print
11 interruptions for purposes of adjudicating the liability elements of the CFAA and trespass-to-chattels
12 claims, with individualized damages proceedings to follow. Plaintiffs thereafter submitted the CAC,
13 which conforms to their class certification request. Dkt. Nos. 88, 92, 94.

14 37. Class Counsel researched the law supporting their class certification motion, and in
15 particular, their relatively novel approach of proposing issue certification under Rule 23(c)(4) in
16 conjunction with hybrid injunctive relief and damages classes. Additionally, to support a common
17 damages claim, Class Counsel researched and organized a 44-state survey of trespass-to-chattels law.

18 38. On March 29, 2018, the Court entered an order granting in part and denying in part HP's
19 motion to dismiss. Dkt. No. 97. The Court denied the motion to dismiss Plaintiffs' computer intrusion
20 claims under the Computer Fraud and Abuse Act ("CFAA") and the California Penal Code, and
21 Plaintiffs' common law trespass claims. *Id.* at 7-13. The Court also denied the motion to dismiss
22 Plaintiffs' statutory consumer fraud claims to the extent they were based on HP's error messages and
23 alleged material omissions. *Id.* at 16-17. The Court dismissed Plaintiffs' UCL unfairness and tortious
24 interference claims, among others, with leave to amend. *Id.* at 17-23.

1 39. With the benefit of the Court’s order, my colleagues and I spent several months
2 negotiating with counsel for HP seeking to narrow the range of issues in dispute and possibly resolve the
3 action in its entirety.

4 40. In early April 2018, the parties stipulated to stay the class certification proceedings
5 pending the parties’ efforts at settlement. In July 2018, after several months of active negotiation, the
6 parties reached an agreement in principle and asked the Court for 60 days to prepare the settlement
7 papers. Dkt. No. 170.

8 41. The parties spent the next two months negotiating and finalizing settlement
9 documentation and claims procedures. The parties spent significant time negotiating the exhibits to the
10 Settlement, including the plan of allocation and notice program. The parties also selected a claims
11 administrator through a competitive bidding process. On September 18, 2018, the parties signed the
12 Settlement Agreement (“Settlement”), a true and correct copy of which is attached hereto as **Exhibit A**.
13 The Settlement and exhibits thereto were also filed at Dkt. 110-2.

14 42. Plaintiffs moved for preliminary approval of the Settlement on September 18, 2018. The
15 Court held a hearing on November 8, 2018. After modifying the notice schedule at the Court’s direction,
16 Class Counsel submitted a revised proposed preliminary approval order, which the Court entered on
17 November 19, 2018. Dkt. Nos. 114, 116.

18 43. Class Counsel then communicated regularly with the Court-appointed claims
19 administrator, Epiq, to ensure the notice program was implemented in accordance with the Court’s order
20 and the claims process was optimized for ease of use by class members. This work included updates to
21 the Settlement website and monitoring the incoming claims in regular communication with Epiq.

22 **II. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

23 44. The Settlement solves the problems created by the implementation of Dynamic Security
24 on the Class Printers by prohibiting HP from using the software on those devices and compensating
25 individuals who experienced print interruptions and related costs. The Settlement precludes HP from
26 taking any action to employ Dynamic Security on the Class Printers “at any time, including by releasing
27 or otherwise making available firmware that enables Dynamic Security.” Ex. A § 2.3. HP will also

1 adopt internal customer service procedures to respond to class member inquiries regarding whether
2 Dynamic Security has been disabled on their Class Printer and to assist as appropriate. *Id.* Further, HP
3 will establish a \$1,500,000 non-reversionary fund for the benefit of the proposed settlement class
4 (“Settlement Class”). Ex. A §§ 1.32, 2.1. As discussed in Paragraphs 50 and 51 below, Class Counsel
5 believe the Settlement Fund is sufficient to pay a full or near-full recovery to all who submit valid
6 claims. Additionally, HP will pay (and has paid) all Administrative Expenses to fund the notice program
7 and the claims process. Ex. A §§ 1.1, 2.2. None of these payments will revert to HP. Ex. A §§ 2.2, 2.15,
8 7.4. Any award of attorneys’ fees and costs, and of service payments to Class Representatives, will be
9 paid separately by HP, and will not reduce the \$1.5 million available to the Settlement Class. Ex. A §
10 6.1.

11 45. This Settlement resulted from protracted negotiations over a period of months, with HP
12 vigorously defending its positions through experienced counsel. Counsel on both sides were thoroughly
13 informed of all of the factual and legal issues and of the strengths and weaknesses of the claims and
14 defenses.

15 46. Plaintiffs and Class Counsel believe this is a strong case on the facts and the law.
16 Continued litigation, however, would have presented significant risks and uncertainties: HP almost
17 certainly would have filed a motion to dismiss the claims alleged in the CAC, continued to press its
18 (untested) intellectual property defense, opposed class certification, and sought summary judgment.
19 Even if Plaintiffs’ claims had survived, there could have been no guarantee that the Court would have
20 accepted their proposed class definitions and bifurcated trial plan. As importantly, had Plaintiffs
21 prevailed through class certification and trial, even under Plaintiffs’ proposed trial plan, individuals
22 would have been required to come forward to prove up their individual damage claims, in a time-
23 consuming and more exacting procedure than the one made available under the Settlement.

24 47. Additionally, Plaintiffs learned through discovery that approximately one year into this
25 litigation, HP released a new firmware update that disabled Dynamic Security, and also placed a warning
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1 on its printer boxes that non-HP cartridges may be disabled. HP could have argued that Plaintiffs'
2 claims were effectively mooted as a result of these measures.

3 48. In deciding to enter into the Settlement, Plaintiffs and Class Counsel weighed the value
4 of the \$1.5 million cash fund and HP's promise not to reactivate Dynamic Security on any Class Printer
5 against the risks, uncertainty, expense, and time entailed in pressing the case toward trial. We
6 respectfully submit that the Settlement achieves the objectives of the litigation and, as such, is far better
7 than the prospects of continued litigation and should be approved as fair, adequate, and reasonable.

8 49. The participation of the class in the claims process thus far supports final approval. As of
9 February 5, 2019, the claims administrator had received 7,332 claims, comprising 2,698 documented
10 claims and 4,634 claims submitted without documentation.

11 50. Submitted claims are subject to review and approval by the claims administrator, and the
12 claims period will remain open until March 8, 2019. However, based on the information currently
13 available, assuming that all documented claims are valid, and estimating that the average documented
14 claim is \$100 (for a total of \$269,800 in valid documented claims), \$1,230,200 would remain in the
15 Settlement Fund after these documented claims are paid in full as provided in the Plan of Allocation.
16 That remaining sum, divided by the total number of claims received as of February 5, 2019, would result
17 in about \$168 to be paid *pro rata* to each claimant (in addition to payment of valid documented claims).

18 51. This estimated recovery compares favorably to what Plaintiffs could have expected to
19 recover even in a successful litigation. Suppose, for example, that Plaintiffs prevailed at trial on the
20 common liability issues, and individual class members then could submit proof of their out-of-pocket
21 expenses. While such individual expenses vary, a full set of HP replacement cartridges costs about \$100
22 and a replacement HP printer costs about \$150. *See* Dkt. No. 94, ¶¶ 26, 42 (allegations regarding Faust's
23 and Ware's out-of-pocket losses). As described in the preceding paragraph, the estimated *pro rata*
24 payment per claimant at this point would be about \$168 (in addition to payment of valid documented
25 claims). So the Settlement provides a complete or nearly complete recovery of Plaintiffs' estimated
26 individual damages and the similar damages of other class members. These claim awards, moreover,
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1 could be paid as soon as mid-May 2019—whereas a trial and resolution of any appeals in this case could
2 have taken years.

3 52. Class members’ reaction to the Settlement likewise supports final approval. While the
4 deadline to opt out or object to the Settlement has not yet passed, to date there have been no objections
5 and only five people have asked to opt out. Class Counsel have closely monitored communications
6 from class members, and spoken personally with many who called with questions about the litigation
7 and the claims procedure. We are aware of no particular difficulties encountered by class members in
8 understanding the notice or making claims, and all class members who had questions received timely
9 and complete responsive information from counsel or the claims administrator.

10 **III. NOTICE TO THE CLASS AND IMPLEMENTATION OF THE PLAN OF ALLOCATION**

11 53. The class received the best notice practicable under the circumstances, including direct
12 notice to all members who could be identified through reasonable effort.

13 54. The Court-appointed claims administrator, Epiq, carried out the notice program under the
14 supervisions of both parties. A detailed explanation of the notice program is set forth in the Declaration
15 of Cameron Azari (“Azari Decl.”), submitted herewith. Over 2 million class members received direct
16 notice by email or mail. Additionally, notice of the Settlement was provided to the appropriate federal
17 and state authorities as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

18 55. Class Members were informed of the terms of the Plan of Allocation in the Long Form
19 Notice and on the Settlement Website. There have been no objections to the Plan of Allocation.

20 56. Under the proposed Plan of Allocation (Dkt. No. 110-2, Ex. 3), claims will be processed
21 in two steps. First, claimants who submit supporting documentation for their out-of-pocket claims will
22 be paid in full. Then, the amount remaining in the fund will be divided and distributed *pro rata* to all
23 claimants.

24 57. The Plan of Allocation prioritizes documented claims both because they are
25 presumptively credible, and because the submission of documented claims approximates the individual
26 prove-up process that Plaintiffs suggested would follow a liability finding at a class trial. *See* Dkt. No.
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91 at 21-24. After payment of the documented claims, the Plan of Allocation treats all the claimants equally in a *pro rata* distribution of the remaining funds. This method of allocation is rational and fair, and merits approval.

IV. ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE PAYMENTS

58. Class Counsel seek an award of attorney's fees totaling \$2.75 million, reimbursement of litigation expenses of \$83,011.78, and service awards of \$5,000 each for the five individuals who served as class representatives. Plaintiffs' motion for attorney's fees, costs, and service awards sets out the legal basis for the requested awards.

59. Class Counsel are representing Plaintiffs on a contingency basis. In pursuing these claims, Class Counsel risked the outlay of substantial time and out-of-pocket expenses with no guarantee of recovery. HP is a large, well-resourced defendant and Plaintiffs challenged a business practice that they believe was intended to protect HP's market share and profits. Thus, we anticipated that the litigation would be lengthy and hard fought, heightening the risk of being uncompensated. Attorney time spent on this case would otherwise have been spent on other matters.

60. Girard Sharp LLP, the Law Offices of Todd M. Friedman, and the Joseph Saveri Law Firm dedicated the most resources to this case, with discrete projects assigned to Heninger Garrison Davis LLC and Karon LLC. For example, Christopher Hood of the Heninger firm provided valuable advice regarding deposition strategy, and Daniel Karon was instrumental in compiling the state-by-state compilation of trespass law. Girard Sharp acted as coordinating counsel to ensure effective and efficient management of the litigation. Class Counsel were careful to prevent the duplication and inefficiencies that might otherwise have resulted from multiple firms working on this case.

61. Class Counsel brought to this case many years of experience in consumer class actions and complex litigation, including specialized knowledge critical to the success of the case.

62. Here is a summary chart showing each firm's lodestar and expenses:

Firm	Lodestar	Expenses
Girard Sharp LLP	\$1,991,950	\$36,820.03

Firm	Lodestar	Expenses
Law Offices of Todd M. Friedman	\$413,855	\$13,763
Joseph Saveri Law Firm	\$246,209.50	\$28,020.83
Heninger Garrison Davis LLC	\$170,170	\$2,834.33
Karon LLC	\$135,914	\$1,573.59
TOTAL	\$2,958,099	\$83,011.78

63. Class Counsel seek an award of \$2,750,000 in attorneys' fees (or 0.93 times their documented lodestar) and \$83,011.78 in expenses, for a total of \$2,833,011.78. None of this amount will reduce or affect any of the relief otherwise provided under the Settlement.

64. Fee and expense information specific to Girard Sharp is provided below. Fee and expense information specific to each of the four other firms appears in its corresponding declaration.

65. Girard Sharp staffed this case with a team of experienced class action attorneys who performed tasks based on their skills, expertise, and experience. In prosecuting this action to a successful resolution, Girard Sharp dedicated a total of 3,785.9 hours of professional time, with a resulting lodestar of \$1,991,950. These figures reflect efficient staffing, work that the firm reasonably performed for the benefit of the class, and hourly rates that have been approved by courts and are consistent with market rates. Girard Sharp attorney time is summarized in **Exhibit B** to this declaration, which shows the hours spent, the category of work performed, the billing rate, and the total lodestar for each Girard Sharp attorney who has worked on this matter.

66. Girard Sharp attorneys prepared the *San Miguel* complaint and took the lead in drafting the consolidated and amended complaints, the opposition to the motion to dismiss, and the motion for class certification. My colleague Jordan Elias and I argued the motion to dismiss. I was primarily responsible for conferring with HP's counsel over the course of the case, and our managing partner Daniel Girard took the lead in deposing one of HP's 30(b)(6) witnesses, setting case strategy, and leading settlement negotiations. Former Girard Sharp associates Steven Pong and Alynia Phillips

1 reviewed and analyzed documents produced by HP and prepared review memoranda. My firm
 2 represented three of the class representatives, defended their depositions, and negotiated the protocol
 3 under which HP conducted technical inspections of the class representatives' printers and computers.
 4 Mr. Elias and I also worked to negotiate and document the Settlement, and prepared and argued the
 5 motion for preliminary approval.

6 67. The hourly rates for Girard Sharp employees are the current rates charged for our services
 7 in contingency matters as well as in non-contingent matters. For former personnel, the lodestar
 8 calculation is based on their billing rates in their final year of employment with the firm. Girard Sharp
 9 sets its hourly rates based on arm's length negotiations with sophisticated in-house counsel; peer law
 10 firm surveys published in The National Law Journal; and our independent review of the hourly rates
 11 charged by other plaintiffs' attorneys in comparable litigation.

12 68. Girard Sharp's billing rates have been approved in class action litigation throughout the
 13 United States. Below is a sample of cases in which courts approved the firm's rates:

- 14 • Order of Final Judgment and Granting Motion for Attorney's Fees and Expenses, *Larson*
 15 *v. John Hancock Life Ins. Co.*, No. RG16813803 (Alameda County Superior Court May
 8, 2018);
- 16 • *In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 4620695, at *2
 17 (N.D. Cal. Sept. 20, 2018);
- 18 • Order Granting Motion for Final Approval of Class Action Settlement and Order
 19 Granting Motion for Attorney's Fees and Costs and Class Representative Service
 20 Awards, *In re Yahoo Mail Litig.*, No. 5:13-cv-04980-LHK (N.D. Cal. Aug. 25, 2016),
 ECF No. 42;
- 21 • Order of Final Approval and Judgment, *Skold v. Intel Corp.*, No. 1:15-cv-039231 (Santa
 22 Clara County Superior Court Jan. 29, 2015), ECF No. 589;
- 23 • Order Granting Plaintiff's Motion for Attorneys' Fees and Costs, *Benner v. R.C.*
 24 *Chronicle Building, L.P.*, No. CGC-12-527401 (San Francisco County Superior Court
 April 2, 2015).

25 69. Based on my relevant experience and my knowledge of the type and quality of work
 26 performed on this case, I believe Girard Sharp's rates are commensurate with the rates charged by other
 27

1 firms with similar experience and expertise in the Bay Area market for legal services.

2 70. My firm's billing rates do not reflect charges for litigation expenses. Expense items are
3 billed separately; such charges are not duplicated in my firm's lodestar. **Exhibit C** shows the
4 \$36,820.03 in unreimbursed expenses that Girard Sharp reasonably incurred in furtherance of the
5 prosecution of this case. These include costs advanced in connection with expert witnesses, court
6 reporting services, legal research, travel, an ESI document review platform, and other customary
7 litigation expenses.

8 71. The expenses set forth in **Exhibit C** are reflected in my firm's books and records. I could
9 and would make these materials available to the Court upon request. These books and records are
10 prepared using invoices, receipts, check records, and other source materials and are an accurate record of
11 the expenses incurred. Third-party expenses are not marked up, meaning that the firm requests
12 reimbursement only for the amount actually billed by the third party.

13 72. Lastly, based on our experience in class actions and our personal knowledge of the time
14 and effort the five class representatives devoted to this litigation, Class Counsel believe that a \$5,000
15 service award to each class representative is fair and reasonable.

16 73. Contemporaneously with Plaintiffs' motion, each of the five class representatives submits
17 a declaration expressing their support for the Settlement and describing the work they did to pursue this
18 litigation for the benefit of the class and bring it to a favorable resolution.

19 74. Attached hereto as **Exhibit D** is a proposed final order and judgment.

20 75. Attached hereto as **Exhibit E** is proposed order granting Plaintiffs' motion for attorney's
21 fees, costs, and service awards.

22
23 I declare under penalty of perjury that the foregoing is true and correct. Executed in San
24 Francisco, California on February 7, 2019.

25 By: /s/ Elizabeth A. Kramer
26 Elizabeth A. Kramer

Exhibit A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN CALIFORNIA
SAN JOSE DIVISION

IN RE HP PRINTER FIRMWARE
UPDATE LITIGATION

Case No. 5:16-cv-05820-EJD-SVK

**SETTLEMENT AGREEMENT AND
RELEASE**

1 This Settlement Agreement and Release dated September 18, 2018 (the “Agreement”), is made
2 and entered into by and among: (i) Plaintiffs Richard San Miguel, DeLores Lawty, Richard Faust,
3 Christopher Ware, and James Andrews, on behalf of themselves and each of the members of the Class
4 (as defined herein), by and through their counsel in the instant action (“Class Counsel”), and (ii)
5 Defendant HP Inc. (“HP,” the “Company,” or “Defendant”), by and through its counsel of record. The
6 Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims
7 (as defined herein) as against Defendant, subject to the approval of the Court and the terms and
8 conditions set forth in this Agreement.

9 **I. RECITALS**

10 WHEREAS, on October 7, 2016, Plaintiffs Richard San Miguel and DeLores Lawty filed a
11 Complaint in this action (Dkt. 1);

12 WHEREAS, on March 15, 2017, the Court granted the Parties’ stipulation to consolidate this
13 action with the related actions, *Ware v. HP Inc.*, No. 5:16-cv-06519, and *Doty v. HP, Inc.*, No. 5:17-cv-
14 00521 (Dkt. 59);

15 WHEREAS, on March 22, 2017, Plaintiffs filed a Consolidated Complaint (Dkt. 60), which HP
16 moved to dismiss on April 21, 2017 (Dkt. 66);

17 WHEREAS, on July 14, 2017, the Parties appeared before this Court for argument on HP’s
18 motion;

19 WHEREAS, the Parties thereafter engaged in significant discovery into the claims and
20 defenses, including through review and analysis of thousands of pages of documents and the
21 depositions of each named Plaintiff and of two HP corporate representatives under Fed. R. Civ. P.
22 30(b)(6);

23 WHEREAS, on November 22, 2017, the Court granted the Parties’ stipulation regarding a
24 schedule for class certification proceedings (Dkt. 87);

25 WHEREAS, on February 7, 2018, Plaintiffs filed a Motion for Class Certification (Dkt. 91);

26 WHEREAS, on February 8, 2018, the Court granted the Parties’ stipulation regarding the filing
27 of the Amended Consolidated Complaint (Dkt. 88), which Plaintiffs thereafter filed (Dkt. 94);
28

1 WHEREAS, on March 29, 2018, the Court entered an order granting in part and denying in part
2 HP's Motion to Dismiss Plaintiffs' Consolidated Amended Complaint and permitting Plaintiffs to file a
3 second amended complaint (Dkt. 97);

4 WHEREAS, on April 3, 2018, the Court entered the Parties' stipulation to abate the then-
5 existing dates for the class certification proceedings (Dkt. 100), and on April 11, 2018, the Court
6 granted a further extension of the case schedule to allow the Parties to continue discussions on
7 streamlining the litigation in light of the Court's Order on HP's Motion to Dismiss (Dkt. 102);

8 WHEREAS, the Parties informed the Court that they were exploring resolution, and on May 31,
9 2018, the Court granted the Parties' request to allow additional time for those efforts by extending
10 Plaintiffs' deadline to file a second amended complaint to July 12, 2018 (Dkt. 105);

11 WHEREAS, on July 12, 2018, the Parties informed the Court that they had reached an
12 agreement in principle to settle this litigation (Dkt. 106);

13 WHEREAS, on July 13, 2018, the Court entered the Parties' stipulation providing for the
14 vacatur of then-existing case deadlines and a due date of September 11, 2018, for Plaintiffs' motion for
15 preliminary approval of class action settlement (Dkt. 107);

16 WHEREAS, Plaintiffs in entering into this Agreement recognize and acknowledge the expense
17 and time it would take to prosecute this action through trial and any subsequent appeals, and the risk
18 that this action could ultimately be unsuccessful in light of HP's defenses;

19 WHEREAS, HP has asserted and would assert numerous defenses to the claims alleged by
20 Plaintiffs and expressly denies each of the claims and allegations asserted against HP and any and all
21 liability arising out of the conduct alleged in the complaint;

22 WHEREAS, HP acknowledges that further litigation of this action could be protracted and
23 expensive, and HP has also taken into account the uncertainty and risks inherent in any litigation,
24 especially in complex cases such as this;

25 WHEREAS, Plaintiffs and HP have therefore each independently determined that it is desirable
26 and beneficial for this action to be fully and finally resolved in the manner and upon the terms and
27 conditions set forth in this Agreement; and
28

SETTLEMENT AGREEMENT AND RELEASE
CASE NO. 5:16-CV-05820-EJD-SVK

1 WHEREAS, by entering into this Agreement, HP does not admit any wrongdoing and this
2 Agreement is not and shall not constitute an admission of liability by HP.

3 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among
4 Plaintiffs (for themselves and the Class Members) and HP, by and through its counsel, that, subject to
5 the approval of the Court, the Litigation and the Released Claims shall be finally and fully
6 compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all
7 Settling Parties and their Related Parties (as defined below), upon and subject to the terms and
8 conditions of the Agreement, as follows.

9 **II. TERMS AND CONDITIONS OF AGREEMENT**

10 **1. Definitions**

11 As used in the Agreement the following terms have the meanings specified below:

12 1.1 “Administrative Expenses” means the cost of the notice program relating to this
13 Settlement and the reasonable costs of processing and administering claims and disbursements of
14 consideration, and other necessary and reasonable administrative expenses relating to this Settlement.

15 1.2 “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement
16 Agreement and Release.

17 1.3 “Authorized Claimant” means any Class Member whose claim for recovery has been
18 allowed pursuant to the terms of the Agreement.

19 1.4 “Claims Administrator” means Epiq Systems, or such other claims administrator as the
20 Court shall approve.

21 1.5 “Claims Deadline” means the date set forth in the Notice by which Class Members must
22 submit the Claim Form, which shall be one hundred and twenty (120) days after entry of the
23 Preliminary Approval Order or such other time as may be set by the Court.

24 1.6 “Claim Form” means a document, substantially in the form of **Exhibit 2** hereto, that a
25 Class Member must complete and submit to receive a payment from the Net Settlement Fund.

26 1.7 “Class” means all Persons who owned a Class Printer during the period from March 1,
27 2015 through December 31, 2017. Excluded from the Class are HP, its officers, directors, and
28 affiliates at all relevant times, members of their immediate families and their legal representatives,

1 heirs, successors or assigns, and any entity in which HP had or has a controlling interest. Also
2 excluded from the Class are those Persons who timely and validly request exclusion, as set forth
3 below.

4 1.8 “Class Printer” means any of the following product models:

- 5 • HP OfficeJet Pro 6230
- 6 • HP OfficeJet 6812
- 7 • HP OfficeJet 6815
- 8 • HP OfficeJet 6820
- 9 • HP OfficeJet Pro 6830
- 10 • HP OfficeJet Pro 6835
- 11 • HP OfficeJet Pro 8610
- 12 • HP OfficeJet Pro 8615
- 13 • HP OfficeJet Pro 8616
- 14 • HP OfficeJet Pro 8620
- 15 • HP OfficeJet Pro 8625
- 16 • HP OfficeJet Pro 8630
- 17 • HP OfficeJet Pro X551dw
- 18 • HP OfficeJet Pro X451dn
- 19 • HP OfficeJet Pro X451dw
- 20 • HP OfficeJet Pro X576dw
- 21 • HP OfficeJet Pro X476dn
- 22 • HP OfficeJet Pro X476dw

17 1.9 “Class Member” means a Person who falls within the definition of the Class as set forth
18 above and does not exercise their right to opt out of the Class before the Opt-Out Deadline.

19 1.10 “Court” means the United States District Court for the Northern District of California.

20 1.11 “Defendant,” “HP,” and the “Company” mean HP Inc., and its present and former
21 parents, subsidiaries, divisions, affiliates, and each of its respective present and former employees,
22 agents, officers, directors, controlling shareholders, attorneys, predecessors, and successors.

23 1.12 “Dynamic Security” means an HP-developed technology which causes Class Printers to
24 run authentication checks that change over time on installed ink cartridges to determine whether the
25 ink cartridges contain a non-HP security chip, and that may prevent Class Printers from operating with
26 any such ink cartridges.

27 1.13 “Effective Date,” or the date upon which this Settlement becomes “effective,” means the
28 date the Court has entered the Final Order and Judgment and the Final Order and Judgment has been

1 upheld through the resolution of all appeals and writs of certiorari, and through the expiration of all
2 time to appeal and file writs of certiorari, except that the Effective Date shall not be delayed by a
3 modification of or appeal from those parts of the Final Order and Judgment that (i) pertains to either
4 the Plan of Allocation or the Fee and Expense Award; and (ii) has no effect on this Agreement
5 becoming binding, effective, and final in its entirety between Releasing Plaintiffs, Class Members, and
6 Defendant.

7 1.14 “Escrow Account” means the segregated and separate escrow account designated and
8 controlled by the Escrow Agent at one or more national banking institutions into which the Settlement
9 Amount shall be deposited for the benefit of Class Members.

10 1.15 “Escrow Agent” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”), or other
11 neutral third party agreed to by the Settling Parties.

12 1.16 “Fee and Expense Award” means the order awarding attorneys’ fees and reimbursement
13 of actual costs and expenses incurred by Class Counsel in the Litigation.

14 1.17 “Final Approval Hearing” means the hearing to be requested by the Settling Parties and
15 conducted by the Court, following notice to the Class and an opportunity for Class Members to
16 exclude themselves from the Class or object to the Settlement, at which time Plaintiffs shall move the
17 Court to finally approve the fairness, reasonableness and adequacy of the Settlement and to enter the
18 final approval order.

19 1.18 “Final Order and Judgment” means an order, substantially in the form of **Exhibit 5**
20 hereto, to be entered by the Court in this Action granting final approval of this Settlement Agreement
21 and dismissing the Litigation with prejudice.

22 1.19 “Litigation” means the action captioned *In re HP Printer Firmware Update Litigation*,
23 Case No. 4:16-cv-05820-EJD-SVK.

24 1.20 “Net Settlement Fund” means the Settlement Fund less any Taxes and Tax Expenses
25 and other Court-approved deductions.

26 1.21 “Notice” means the Notices of Proposed Settlement of Class Action, which, subject to
27 Court approval, shall be substantially in the forms attached hereto as **Exhibit 1**.

1 1.22 “Objection Date” means the date set forth in the Notice by which Class Members must
2 object to the Settlement, which shall be seventy-five (75) days after entry of the Preliminary Approval
3 Order or such other time as may be set by the Court.

4 1.23 “Opt-Out Deadline” means the date set forth in the Notice by which Class Members
5 must request exclusion from the Class, which shall be seventy-five (75) days after entry of the
6 Preliminary Approval Order or such other time as may be set by the Court.

7 1.24 “Parties” or “Settling Parties” means Plaintiffs and HP collectively.

8 1.25 “Person” means an individual, corporation, limited liability corporation, professional
9 corporation, partnership, limited partnership, limited liability partnership, association, joint stock
10 company, joint venture, estate, legal representative, trust, unincorporated association, government or
11 any political subdivision or agency thereof, and any business or legal entity, and including any of their
12 heirs, successors, representatives, or assigns.

13 1.26 “Plaintiffs” means Richard San Miguel, DeLores Lawty, Richard Faust, Christopher
14 Ware, and James Andrews.

15 1.27 “Plan of Allocation” means the plan for allocating the Net Settlement Fund set forth in
16 **Exhibit 3** hereto, or such other plan for allocating the Net Settlement Fund approved by the Court.

17 1.28 “Preliminary Approval Order” means the Order Preliminarily Approving Settlement and
18 Providing for Notice, substantially in the form attached hereto as **Exhibit 4**.

19 1.29 “Related Parties” means, as applicable, each of a person or entity’s respective present
20 and former parents, subsidiaries, divisions, affiliates, and each of their and a person or entity’s
21 respective present and former employees, members, partners, principals, agents, officers, directors,
22 controlling shareholders, attorneys, agents, related or affiliated entities, predecessors, successors,
23 spouses, estates, heirs, executors, trusts, trustees, administrators, agents, representatives, and assigns,
24 in their capacity as such, and any entity in which a person or entity has a controlling interest.

25 1.30 “Released Claims” means, with respect to claims released by Plaintiffs, any and all
26 claims, rights, causes of action, liabilities, actions, suits, damages, or demands of any kind whatsoever,
27 known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that
28 relate to Dynamic Security and/or any representations regarding the ability to use third-party ink

1 cartridges with the Class Printers, and that were or could have been alleged in the Litigation.
2 “Released Claims” means, with respect to claims released by HP, any and all claims, rights, causes of
3 action, liabilities, actions, suits, damages, or demands of any kind whatsoever, known or unknown,
4 matured or unmatured, at law or in equity, existing under federal or state law, that arise out of or relate
5 in any way to the institution, prosecution or settlement of the Litigation and that could have brought by
6 HP against the named plaintiffs in the Litigation. Notwithstanding the foregoing, “Released Claims”
7 does not include claims relating to the enforcement of the Settlement.

8 1.31 “Releasing Plaintiffs” means Plaintiffs and each Class Member.

9 1.32 “Settlement Amount” means One Million Five Hundred Thousand Dollars
10 (\$1,500,000.00), which shall be paid to the Escrow Agent by HP, as detailed in Section 2 below,
11 within seven (7) days after the entry of the Final Order and Judgment.

12 1.33 “Settlement Fund” means the Settlement Amount, together with all interest and
13 accretions thereto and which may be reduced by payments or deductions as provided herein or by
14 Court order.

15 1.34 “Summary Notice” means the summary form of notice for postcard mailing, which,
16 subject to approval of the Court, shall be substantially in the form attached hereto as **Exhibit 1-B**.

17 1.35 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts, and other
18 charges of any kind (together with any and all interest, penalties, additions to tax and additional
19 amounts imposed with respect thereto) imposed by any governmental authority.

20 **2. The Settlement**

21 *a. Settlement Consideration*

22 2.1 Within seven (7) days after the entry of the Final Approval Order, HP shall pay or cause
23 to be paid the Settlement Amount in accordance with instructions to be provided by the Escrow Agent.
24 The Settlement Amount may be paid by wire transfer, by delivering to the Escrow Agent a check or
25 checks payable to the Settlement Fund, by any combination of those methods, or in any other manner
26 agreed upon by Plaintiffs and HP. Within seven (7) days of execution of this Agreement, the Escrow
27 Agent shall furnish to HP’s counsel adequate payment instructions consisting of wire transfer
28

1 instructions, instructions for payment by check, and a completed IRS Form W-9 for the Settlement
2 Fund, including an address and tax ID number.

3 2.2 HP shall pay all Administrative Expenses. The Parties will agree upon a plan for
4 necessary and reasonable Administrative Expenses, which will be made available to the Court upon
5 request. The Claims Administrator shall cause periodic invoices to be sent to HP reflecting
6 Administrative Expenses incurred, and HP shall timely reimburse the Claims Administrator for those
7 expenses. HP retains the right to dispute any expenses that are inconsistent with the Parties'
8 Administrative Expenses plan. In the event this Agreement receives preliminary but not final approval
9 and Administrative Expenses are incurred, payment of those expenses shall remain the sole obligation
10 of HP.

11 2.3. HP has released firmware that disables Dynamic Security for the Class Printers. HP will
12 not at any time take any action to employ Dynamic Security on the Class Printers, including by
13 releasing or otherwise making available firmware that enables Dynamic Security. Additionally, HP
14 will implement and maintain internal customer service procedures to respond to Class Member
15 inquiries regarding whether Dynamic Security has been disabled on their Class Printer and provide
16 assistance as appropriate.

17 *c. The Escrow Agent*

18 2.4. The Escrow Agent shall deposit the Settlement Amount plus any accrued interest in a
19 segregated Escrow Account maintained by the Escrow Agent.

20 2.5. The Escrow Agent may invest the Settlement Amount deposited pursuant to ¶ 2.1 hereof
21 in United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit
22 of the United States Government or an Agency thereof, or fully insured by the United States
23 Government or an Agency thereof, and may reinvest the proceeds of these instruments as they mature
24 in similar instruments at their then-current market rates. All risks related to the investment of the
25 Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne
26 by the Settlement Fund and Defendant shall have no responsibility for, interest in, or liability
27 whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions
28 executed by the Escrow Agent.

1 2.6. The Escrow Agent shall not disburse the Settlement Fund except as provided in the
2 Agreement and by an order of the Court.

3 2.7. Subject to further order(s) and/or directions as may be made by the Court, or as provided
4 in the Agreement, the Escrow Agent is authorized to execute such transactions as are consistent with
5 the terms of the Agreement. Defendant shall have no responsibility for, interest in, or liability
6 whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow
7 Agent in its capacity as such.

8 2.8. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia*
9 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such
10 funds shall be distributed pursuant to the Agreement and/or further order(s) of the Court.

11 2.9. Upon the occurrence of the Effective Date, neither Defendant nor any other person or
12 entity who or which paid any portion of the Settlement Amount shall have any right to the return of the
13 Settlement Fund or any portion thereof for any reason whatsoever (including, without limitation, the
14 number of Claim Forms submitted, the collective amount of recognized claims of Authorized
15 Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants
16 from the Net Settlement Fund), except as set forth in ¶ 7.5 below.

17 *d. Tax Provisions*

18 2.10. The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at
19 all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the
20 Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of
21 this ¶ 2.10, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the
22 earliest permitted date. Such elections shall be made in compliance with the procedures and
23 requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely
24 and properly prepare and deliver the necessary documentation for signature by all necessary parties,
25 and thereafter to cause the appropriate filing to occur.

26 2.11. For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the
27 regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent
28 shall timely and properly file all informational and other tax returns necessary or advisable with respect

1 to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-
2 2(k)). Such returns (as well as the election described in ¶ 2.10 hereof) shall be consistent with ¶ 2.10
3 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the
4 income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

5 2.12. All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect
6 to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be
7 imposed upon Defendant or its counsel with respect to any income earned by the Settlement Fund for
8 any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for
9 federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the
10 operation and implementation of these Tax provisions (including, without limitation, expenses of tax
11 attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or
12 failing to file) the returns described in ¶ 2.10) (“Tax Expenses”), shall be paid out of the Settlement
13 Fund; in all events Defendant and its counsel shall have no liability or responsibility for the Taxes or
14 the Tax Expenses. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of
15 Defendant and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes
16 payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as,
17 and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the
18 Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent
19 shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to
20 Authorized Claimants any funds necessary to pay such amounts, including the establishment of
21 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be
22 withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendant nor its counsel are responsible nor
23 shall they have any liability for any Taxes or Tax Expenses. The Settling Parties agree to cooperate
24 with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably
25 necessary to carry out these Tax provisions.

26 *d. Termination of Settlement*

27 2.13. If the Settlement Amount is not timely paid to the Escrow Agent pursuant to ¶ 2.1,
28 Plaintiffs may terminate the Settlement but only if (a) Class Counsel has notified Defendant’s counsel

1 in writing of Class Counsel's intention to terminate the Settlement, and (b) the Settlement Amount is
2 not transferred to the Escrow Agent within ten (10) days after Class Counsel have provided such
3 written notice. Failure by Class Counsel or the Escrow Agent to timely furnish adequate payment
4 instructions to HP pursuant to ¶ 2.1 shall not be a basis for termination under this section and any delay
5 in providing such instructions shall extend the period in which the Settlement Amount is be paid under
6 ¶ 2.1 by an equivalent number of days.

7 2.14. In the event that the Agreement is not approved, or fails to become effective for any
8 reason, the Settlement Fund, including accrued interest and less Taxes or Tax Expenses paid, incurred,
9 or due and owing in connection with the Settlement as provided for herein, shall be refunded to
10 Defendant pursuant to written instructions from counsel for Defendant.

11 2.15. Defendant acknowledges that it has no right to reversion of any portion of the Settlement
12 Fund unless the Agreement is not approved or fails to become effective for any reason.

13 **3. Preliminary Approval Order and Final Approval Hearing**

14 3.1 Promptly after execution of the Agreement, Plaintiffs shall submit the Agreement
15 together with its Exhibits to the Court and shall apply for entry of the Preliminary Approval Order,
16 requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Agreement; setting of
17 dates for the mailing of the Notice, Claims Deadline, Opt-Out Deadline, Objection Date, and Final
18 Approval Hearing; approval of the Claims Administrator; approval of the Notice; approval of the Claim
19 Form; and approval of the publication of the Summary Notice. The Notice shall include general
20 information regarding the terms of the Settlement set forth in the Agreement and the proposed Plan of
21 Allocation and the date of the Final Approval Hearing.

22 3.2 Any Class Member who wishes to opt out of the Class must submit a timely written
23 request for exclusion on or before the Opt-Out Deadline, in the manner specified in the Court's
24 Preliminary Approval Order and Notice. Any Class Member who does not submit a timely written
25 request for exclusion will be bound by all proceedings, orders and judgments in the Litigation, whether
26 or not he, she, or it timely submits a Claim Form.

27 3.3 Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of
28 the Settlement, or the application of Class Counsel for a Fee and Expense Award and/or for service

1 awards for Plaintiffs, must timely do so in the manner specified in the Court's Preliminary Approval
2 Order.

3 3.4 Plaintiffs will request that after notice to Class Members is given and Class Members
4 have had an opportunity to exclude themselves from the Class or object to the Settlement, the Court
5 hold the Final Approval Hearing and approve the settlement of the Litigation as set forth herein. At the
6 Final Approval Hearing, Class Counsel will also request that the Court approve the proposed Plan of
7 Allocation and the Fee and Expense Award.

8 3.5. For purposes of the Settlement only, the Parties stipulate to the certification of the Class
9 defined herein pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Parties stipulate to
10 certification, for settlement purposes only, of this Class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).
11 Defendant does not agree to class certification for any purpose other than to effectuate this Settlement.
12 Defendant expressly reserves its right to contest certification in the event this Settlement is not
13 approved or fails to become effective for any reason.

14 **4. Releases**

15 4.1 Upon the Effective Date, all Releasing Plaintiffs and anyone claiming through or on
16 behalf of any of them, shall be deemed to have fully, finally, and forever released, relinquished, and
17 discharged all Released Claims against Defendant. Upon the Effective Date, the Releasing Plaintiffs
18 shall be forever barred and enjoined from commencing, instituting, prosecuting or continuing to
19 prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or
20 administrative forum, asserting any Released Claim against Defendant.

21 4.2 Upon the Effective Date, Defendant shall be deemed to have fully, finally, and forever
22 released, relinquished, and discharged all Released Claims against the named plaintiffs in the
23 Litigation, and Class Counsel, whether arising under federal, state, common or foreign law. Upon the
24 Effective Date, Defendant shall be forever barred and enjoined from commencing, instituting,
25 prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity,
26 arbitration tribunal, or administrative forum, asserting Released Claims against any of the named
27 plaintiffs in the Litigation and Class Counsel.
28

1 4.3 In exchange for the releases and other consideration set forth herein, including full
2 payment of the Settlement Amount, Plaintiffs will dismiss Defendant with prejudice from the Litigation
3 as set forth herein.

4 4.4 The Settling Parties agree that the Court shall retain exclusive and continuing
5 jurisdiction over the Settling Parties and the Class Members to interpret and enforce the terms,
6 conditions, and obligations under this Agreement.

7 **5. Administration and Calculation of Claims, Final Awards and Supervision and**
8 **Distribution of the Settlement Fund**

9 5.1 The Claims Administrator, subject to such supervision and direction of the Court as may
10 be necessary or as circumstances may require, shall administer and calculate the claims submitted by
11 Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

12 5.2 The Court shall have and retain exclusive jurisdiction over the Settlement Fund, which
13 shall be applied to pay the Taxes and Tax Expenses described in the Tax Provisions herein and, after
14 the Effective Date, to distribute the Net Settlement Fund to Authorized Claimants as allowed by the
15 Plan of Allocation or the Court.

16 5.3 After the Effective Date, and in accordance with the Plan of Allocation, or such further
17 approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net
18 Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the
19 following.

20 5.4 Within one hundred twenty (120) days after the entry of the Preliminary Approval Order
21 or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall
22 be required to submit to the Claims Administrator a completed Claim Form.

23 5.5 Except as otherwise ordered by the Court, all Class Members who fail to timely submit a
24 valid Claim Form within such period, or such other period as may be ordered by the Court, or otherwise
25 allowed, shall be forever barred from receiving any payments pursuant to the Agreement and the
26 Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of
27 the Agreement, the releases contained herein, and the Final Order and Judgment. Notwithstanding the
28 foregoing, Class Counsel shall have the discretion (but not an obligation) to accept late-submitted

1 claims for processing by the Claims Administrator so long as the distribution of the Net Settlement
2 Fund to Authorized Claimants is not materially delayed thereby. Class Counsel shall also have the
3 right, but not the obligation, to advise the Claims Administrator to waive what Class Counsel deems to
4 be *de minimis* or formal or technical defects in any Claim Form submitted.

5 5.6 Claim Forms that do not meet the submission requirements may be rejected. Prior to
6 rejecting a claim in whole or in part, the Claims Administrator shall communicate with the claimant to
7 give him, her, or it the opportunity to remedy any curable deficiencies in the claim submitted. The
8 Claims Administrator shall notify all claimants whose claims the Claims Administrator proposes to
9 reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in
10 such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the
11 claimant so desires and complies with the requirements of ¶ 5.7 below.

12 5.7 If any claimant whose timely claim has been rejected in whole or in part for curable
13 deficiency wishes to contest such rejection, the claimant must, within twenty (20) days after the date of
14 mailing of the notice required in ¶ 5.6 above, serve upon the Claims Administrator a notice and
15 statement of reasons indicating the claimant's grounds for contesting the rejection along with any
16 supporting documentation, and requesting a review thereof by the Court.

17 5.8 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially
18 in accordance with the Plan of Allocation attached hereto, summarized in the Notice, and approved by
19 the Court.

20 5.9 Defendant and its Related Parties shall have no responsibility for, interest in, or liability
21 whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, the Escrow
22 Agent, or the Claims Administrator, or any of their respective designees or agents, in connection with
23 the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of
24 the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, or calculation
25 of claims to be paid to Authorized Claimants from the Settlement Fund; or (v) the payment or
26 withholding of Taxes or Tax Expenses, or any expenses or losses incurred in connection therewith. No
27 Person shall have any claim of any kind against Defendant or its Related Parties with respect to the
28 matters set forth in ¶¶ 5.1–5.9 hereof; and the Class Members, Plaintiffs, and Class Counsel release

1 Defendant and its Related Parties from any and all liability and claims arising from or with respect to
2 the administration, investment or distribution of the Settlement Fund.

3 5.10 No Person shall have any claim against Plaintiffs, Class Counsel or the Claims
4 Administrator, or any other Person designated by Class Counsel, based on determinations or
5 distributions made substantially in accordance with this Agreement and the settlement contained herein,
6 the Plan of Allocation, or further order(s) of the Court.

7 5.11 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation
8 of the Net Settlement Fund, including, but not limited to, any adjustments to an Authorized Claimant's
9 claim set forth therein, is not a part of this Agreement and is to be considered by the Court separately
10 from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth
11 in this Agreement, and any order or proceeding relating to the Plan of Allocation shall not operate to
12 terminate or cancel the Agreement or affect the finality of the Court's Final Order and Judgment
13 approving the Agreement and the settlement set forth herein.

14 **6. Class Counsel's Attorneys' Fees and Expenses; Service Awards**

15 6.1 Class Counsel shall apply to the Court for the Fee and Expense Award to be paid by HP.
16 HP reserves the right to oppose any application, except that HP shall not dispute that plaintiffs are
17 successful parties for purposes of California Code of Civil Procedure section 1021.5, and that Class
18 Counsel are entitled to reimbursement of out-of-pocket litigation costs actually and reasonably
19 incurred. HP reserves all arguments with respect to the amount of fees and costs to which Class
20 Counsel is entitled under the applicable law. HP shall pay Class Counsel the Fee and Expense Award
21 within ten (10) days after the Effective Date pursuant to instructions to be delivered by Class Counsel
22 within three (3) days after the Effective Date.

23 6.2. Subject to approval of the Court, HP shall pay each Plaintiff a service or incentive award
24 of \$5,000. Such awards shall be in addition to any individual payments to which each Plaintiff may be
25 entitled within the claims process. Such awards shall be paid by HP to Class Counsel, for delivery to
26 each Plaintiff, within ten (10) days after the Effective Date pursuant to instructions to be delivered by
27 Class Counsel within three (3) days after the Effective Date.
28

1 6.3 In the event that the Effective Date does not occur, or the Final Order and Judgment or
2 the order making the Fee and Expense Award is reversed or modified, or this Agreement is canceled or
3 terminated for any other reason, and such reversal, modification, cancellation, or termination becomes
4 final and not subject to review, and in the event that the Fee and Expense Award has been paid, then
5 Class Counsel, including its partners and/or shareholders who have received any portion of the Fee and
6 Expense Award shall, within twenty (20) days after receiving notice from HP’s counsel or from a court
7 of competent jurisdiction, refund to HP the Fee and Expense Award.

8 6.4 The procedure for and the allowance or disallowance by the Court of any applications by
9 any plaintiff’s counsel for attorneys’ fees and expenses, or any Plaintiff for a service or incentive
10 award, are to be considered by the Court separately from the Court’s consideration of the fairness,
11 reasonableness and adequacy of the settlement set forth in this Agreement, and any order or proceeding
12 relating to the Fee and Expense Application, or application for service award, or any appeal from any
13 order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the
14 Agreement, or affect or delay the finality of the Final Order and Judgment approving the Agreement
15 and the settlement of the Litigation set forth herein.

16 6.5. Defendant and its Related Parties are not entitled to any award of fees or expenses from
17 the Settlement Fund.

18 6.6 Defendant and its Related Parties shall have no responsibility for the allocation among
19 Class Counsel, or any other plaintiff’s counsel or Person who may assert some claim thereto, of any
20 Fee and Expense Award that the Court may make in the Litigation.

21 **7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

22 7.1 This Agreement shall be conditioned on the occurrence of all of the following events:

- 23 (a) the Court has entered the Preliminary Approval Order;
24 (b) the Court has entered the Final Order and Judgment; and
25 (c) the Settlement Amount has been deposited into the Escrow Account.

26 7.2 Upon the Effective Date, any and all remaining interest or right of Defendant in or to the
27 Settlement Fund, if any, shall be absolutely and forever extinguished.

1 7.3 HP may terminate this Agreement if, after the Opt-Out Deadline, the Claims
2 Administrator determines that the number of timely and valid opt-out requests exceeds 12,000 (the
3 “Opt-out Threshold”). Requests for exclusion from persons or entities who would not otherwise meet
4 the Class definition do not count toward the Opt-Out Threshold. If HP elects to terminate this
5 Agreement pursuant to this paragraph, it will give notice to Class Counsel within fourteen days after
6 the Claims Administrator determines and reports to the Parties the number of timely and valid opt-out
7 requests.

8 7.4 In the event that the Agreement or the settlement set forth in the Agreement is not
9 approved by the Court or otherwise fails to become effective in accordance with its terms, the Settling
10 Parties shall be restored to their respective positions in the Litigation as of March 30, 2018. In such
11 event, the terms and provisions of the Agreement, except ¶¶ 2.12–2.15, 6.3 and 7.3–7.5, shall be null
12 and void, have no further force and effect, and shall not be used in the Litigation or in any other
13 proceeding for any purpose, and any judgment or order entered by the Court in accordance with the
14 terms of the Agreement shall be treated as vacated, *nunc pro tunc*, and shall not be used in the
15 Litigation or in any other proceeding for any purpose. No order of the Court or modification or
16 reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any
17 service award, or any attorneys’ fees, costs, expenses, and interest awarded by the Court to Class
18 Counsel or any other plaintiff’s counsel shall operate to terminate or cancel this Agreement or
19 constitute grounds for cancellation or termination of the Agreement.

20 7.5 If the Effective Date does not occur, or if the Agreement is terminated pursuant to its
21 terms, HP shall remain obligated to reimburse the Claims Administrator for all Administrative
22 Expenses incurred by the Claims Administrator, and the Claims Administrator shall have no obligation
23 to repay any Administration Expenses for which it has been paid by HP.

24 **8. Miscellaneous Provisions**

25 8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this
26 Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement
27 all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing
28 terms and conditions of the Agreement.

1 8.2 The Settling Parties and their respective counsel agree that they will act in good faith
2 and will not engage in any conduct that could frustrate the purposes of this Agreement.

3 8.3 The Settling Parties and their respective counsel will not make any public statement that
4 is inconsistent with the Parties' objective of securing court approval of the Settlement.

5 8.4 The determination of the terms and conditions contained herein and the drafting of the
6 provisions of this Agreement have been by mutual understanding after negotiation, with consideration
7 by, and participation of, the Settling Parties and their counsel. This Agreement shall not be construed
8 against any Settling Party on the basis that it was the drafter or participated in the drafting. Any statute
9 or rule of construction that ambiguities are to be resolved against the drafting party shall not be
10 employed in the implementation of this Agreement and the Settling Parties agree that the drafting of
11 this Agreement has been a mutual undertaking.

12 8.5 The Settling Parties intend this Agreement to effect a final and complete resolution of all
13 disputes and claims between Releasing Plaintiffs, on the one hand, and Defendant, on the other hand,
14 with respect to the Litigation. The Settlement resolves claims which are contested and shall not be
15 deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling
16 Parties agree that during the course of the Litigation, the parties and their respective counsel at all times
17 complied with the requirements of Federal Rule of Civil Procedure 11 and California Code of Civil
18 Procedure § 128.7. The Settling Parties agree that the Settlement Amount and the other terms of the
19 settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was
20 reached voluntarily after consultation with competent legal counsel.

21 8.6 Neither this Agreement nor the settlement contained herein, nor any act performed or
22 document executed pursuant to or in furtherance of the Agreement or the Settlement (a) is or may be
23 deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,
24 the truth of any of the allegations in the Litigation of any wrongdoing, fault, or liability of Defendant or
25 its Related Parties, or that Plaintiffs or any Class Members have suffered any damages, harm, or loss; or
26 (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission
27 on the part of Defendant or its Related Parties in any civil, criminal, or administrative proceeding in
28 any court, administrative agency, or other tribunal.

SETTLEMENT AGREEMENT AND RELEASE
CASE NO. 5:16-CV-05820-EJD-SVK

1 8.7 Defendant may file this Agreement and/or the Final Order and Judgment in any other
2 action that may be brought against it in order to support a defense or counterclaim based on principles
3 of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any
4 theory of claim or issue preclusion or similar defense or counterclaim.

5 8.8 All agreements made and orders entered during the course of the Litigation relating to
6 the confidentiality of information shall survive this Agreement.

7 8.9 All of the Exhibits to the Agreement are material and integral parts hereof and are fully
8 incorporated herein by this reference.

9 8.10 The Agreement may be amended or modified only by a written instrument signed by or
10 on behalf of all Settling Parties or their respective successors-in-interest.

11 8.11 The Agreement and the Exhibits attached hereto constitute the entire agreement among
12 the parties hereto and no representations, warranties or inducements have been made to any party
13 concerning the Agreement or its Exhibits other than the representations, warranties, and covenants
14 contained and memorialized in such documents.

15 8.12 Class Counsel, on behalf of the Class, is expressly authorized to take all appropriate
16 action required or permitted to be taken by the Class Members they represent pursuant to the
17 Agreement to effectuate its terms.

18 8.13 Each counsel or other Person executing the Agreement or any of its Exhibits on behalf
19 of any party hereto warrants that such Person has the full authority to do so.

20 8.14 The Agreement may be executed in one or more counterparts. All executed counterparts
21 and each of them shall be deemed to be one and the same instrument. A complete set of executed
22 counterparts shall be filed with the Court. Signatures sent by facsimile or sent in PDF form via e-mail
23 shall be deemed originals.

24 8.15 The Agreement shall be binding upon, and inure to the benefit of, the successors and
25 assigns of the parties hereto.

26 8.16 The Court shall retain jurisdiction with respect to implementation and enforcement of
27 the terms of the Agreement, and all Settling Parties submit to the jurisdiction of the Court for purposes
28

1 of implementing and enforcing the settlement embodied in the Agreement and matters related to this
2 settlement.

3 8.17 Pending approval of the Court of the Agreement and its Exhibits, all proceedings in the
4 Litigation shall be stayed and all Class Members shall be barred and enjoined from prosecuting any of
5 the Released Claims against Defendant.

6 8.18 This Agreement and the Exhibits hereto shall be considered to have been negotiated,
7 executed and delivered, and to be wholly performed, in the State of California, and the rights and
8 obligations of the parties to the Agreement shall be construed and enforced in accordance with, and
9 governed by, the substantive laws of the State of California.

10 IN WITNESS WHEREOF, each of the parties hereto have caused the Agreement to be
11 executed, by their duly authorized attorneys, dated September 18, 2018.

12 **GIRARD GIBBS LLP**

13 /s/ Elizabeth A. Kramer
14 Daniel C. Girard (State Bar No. 114826)
15 Jordan Elias (State Bar No. 228731)
16 Elizabeth A. Kramer (State Bar No. 293129)
17 601 California Street, Suite 1400
18 San Francisco, CA 94104
19 Telephone: (415) 981-4800
20 Facsimile: (415) 981-4846
21 *dcg@girardgibbs.com*
22 *je@girardgibbs.com*
23 *eak@girardgibbs.com*

**LAW OFFICES OF TODD M. FRIEDMAN,
P.C.**

/s/ Todd M. Friedman
Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
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Woodland Hills, California 91367
Telephone: (877) 206-4741
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tfriedman@toddfllaw.com
abacon@toddfllaw.com

20 **JOSEPH SAVERI LAW FIRM, INC.**

21 /s/ Joseph R. Saveri
22 Joseph R. Saveri (SBN 130064)
23 Nicomedes S. Herrera (SBN 275332)
24 Kyla J. Gibboney (SBN 301441)
25 601 California Street, Suite 1000
26 San Francisco, California 94108
27 Telephone: (415) 500-6800
28 Facsimile: (415) 395-9940
jsaveri@saverilawfirm.com
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kgibboney@saverilawfirm.com
Counsel for Plaintiffs

1 **GIBSON, DUNN & CRUTCHER LLP**

2 /s/ Rodney J. Stone

3 Samuel G. Liversidge (State Bar No. 180578)

4 Rodney J. Stone (State Bar No. 145405)

5 333 South Grand Avenue

6 Los Angeles, CA 90071-3197

7 Telephone: (213) 229-7365

8 Facsimile: (213) 229-6365

9 *sliversidge@gibsondunn.com*

10 *rstone@gibsondunn.com*

11 *Counsel for Defendant HP Inc.*

EXHIBIT B

Name	Title	Hours By Category of Work					Hourly Rate	Lodestar
		1	2	3	4	5		
Girard, Daniel	Managing Partner	10.50	20.40	57.30	75.20	62.30	\$ 950.00	\$ 214,415.00
Sharp, Dena	Partner	0.20			10.80		\$ 665.00	\$ 7,315.00
Elias, Jordan	Partner	15.30	100.10	124.40	342.20	109.10	\$ 700.00	\$ 483,770.00
Nafisi, Esfand	Associate	31.50	66.30	21.40	68.00		\$ 550.00	\$ 102,960.00
Kramer, Elizabeth	Associate	27.40	117.80	592.60	265.70	177.80	\$ 540.00	\$ 637,902.00
Hikida, Christopher	Associate	5.60		1.60	16.70		\$ 425.00	\$ 10,157.50
Watts, Tom	Associate				45.60		\$ 400.00	\$ 18,240.00
Phillips, Alynia	Associate	111.10	6.50	384.20	172.40		\$ 390.00	\$ 262,938.00
Marchese, Michael	Associate	28.60	7.50	215.00	10.20		\$ 350.00	\$ 91,455.00
Pong, Steven	Associate	60.60	67.70	25.40	276.40		\$ 350.00	\$ 150,535.00
Arghavani, Miriam	Paralegal	7.30	7.90	0.80	17.80		\$ 225.00	\$ 7,605.00
Attar, Natalie	Paralegal	6.00	0.20	14.50			\$ 225.00	\$ 4,657.50
TOTAL		304.10	394.40	1437.20	1301.00	349.20		\$ 1,991,950.00

Titles:

P Partner
OC Of Counsel
A Associate
LC Law Clerk
PL Paralegal

Category of Work:

1 – Case Investigation and Factual Research
2 – Pleadings
3 – Discovery and Document Review
4 – Pretrial Motions and Hearings
5 – Settlement Negotiations and Motions

EXHIBIT C

GIRARD SHARP LLP

Categories	Total
Court Fees (filing, etc.)	\$ 400.00
Court Reporters/Transcripts	\$ 11,613.00
Computer Research	\$ 12,144.88
Reproduction/Duplication/Copies	\$ 5,209.20
Express Delivery/Messenger	\$ 1,047.49
Professional Fees/Services (expert, investigator, accountant, etc.)	\$ 11,510.15
Service of Process	\$ 188.40
Telephone/Fax/Postage	\$ 272.78
Travel: Air Transportation, Ground Travel, Meals, Lodging, etc.	\$ 6,879.46
Contributions to Litigation Fund	\$ 4,750.95 *
Miscellaneous: (Describe):	\$ 2,803.72
Total	\$ 56,820.03
Litigation Fund Contribution from Todd M Friedman PC and Joseph Saveri Law Firm	\$ (20,000.00) **
TOTAL EXPENSES	\$ 36,820.03

* Girard Sharp initially contributed \$10,000 to the Litigation Fund that it maintains. \$5,249 remains in the account. That amount is therefore reduced from the accounting on Girard Sharp's books only, as the Friedman and Saveri firms have included their full \$10,000 contributions as costs.

** These expenses include costs paid through the Litigation Fund. Since the Friedman and Saveri firms have included their \$10,000 contributions as costs, we deduct those amounts, so as to not double count.

EXHIBIT D

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN CALIFORNIA
SAN JOSE DIVISION**

IN RE HP PRINTER FIRMWARE UPDATE
LITIGATION

Case No. 5:16-cv-05820-EJD-SVK

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

1 This matter came before the Court for hearing pursuant to the Order Preliminarily Approving
2 Class Action Settlement and Providing for Notice, dated November 19, 2018 (“Preliminary Approval
3 Order”), on the motion of Plaintiffs for approval of the proposed class action settlement (the
4 “Settlement”) with Defendant HP Inc. (“HP”). Due and adequate notice has been given of the
5 Settlement as required by the Preliminary Approval Order. The Court has considered Plaintiffs’
6 Motion for Final Approval of Class Action Settlement, and the Court having considered all papers
7 filed and proceedings conducted herein, and good cause appearing therefor, it is hereby ORDERED,
8 ADJUDGED and DECREED as follows:

9 1. This Final Order and Judgment incorporates by reference the definitions in the
10 Settlement Agreement with HP dated September 18, 2018 (the “Agreement”), and all defined terms
11 used herein have the same meanings ascribed to them in the Agreement.

12 2. This Court has jurisdiction over the subject matter of this litigation and over all Parties
13 thereto.

14 3. The Court reaffirms its findings, rendered in the Preliminary Approval Order, that for
15 purposes of the Settlement, all prerequisites for maintenance of a class action set forth in Federal Rules
16 of Civil Procedure 23(a) and (b)(3) are satisfied. The Court hereby makes final its appointments of
17 Class Counsel and Class Representatives and its preliminary certification of the Settlement Class
18 consisting of all Persons who own or owned one or more of the following printers:

- 19 • HP OfficeJet Pro 6230
- 20 • HP OfficeJet 6812
- 21 • HP OfficeJet 6815
- 22 • HP OfficeJet 6820
- 23 • HP OfficeJet Pro 6830
- 24 • HP OfficeJet Pro 6835
- 25 • HP OfficeJet Pro 8610
- 26 • HP OfficeJet Pro 8615
- 27 • HP OfficeJet Pro 8616
- 28 • HP OfficeJet Pro 8620

- 1 • HP OfficeJet Pro 8625
- 2 • HP OfficeJet Pro 8630
- 3 • HP OfficeJet Pro X551dw
- 4 • HP OfficeJet Pro X451dn
- 5 • HP OfficeJet Pro X451dw
- 6 • HP OfficeJet Pro X576dw
- 7 • HP OfficeJet Pro X476dn
- 8 • HP OfficeJet Pro X476dw

9 Excluded from the Class are HP, its officers, directors, and affiliates at all relevant times, members of
10 their immediate families and their legal representatives, heirs, successors or assigns, and any entity in
11 which HP had or has a controlling interest. Also excluded from the Class are those Persons who
12 timely and validly request exclusion.

13 4. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final
14 approval of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the
15 best interests of the Settlement Class.

16 5. The Court finds that notice of this Settlement was given to Class Members in accordance
17 with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and
18 matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this
19 notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

20 6. The Court directs the Parties and the Claims Administrator to implement the Settlement
21 according to its terms and conditions, including the Plan of Allocation.

22 7. Upon the Effective Date, Plaintiffs and all Settlement Class Members shall be deemed to
23 have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished,
24 and discharged HP from all Released Claims. Upon the Effective Date, HP shall be deemed to have,
25 and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and
26 discharged Plaintiffs and all Settlement Class Members from all Released Claims.

27 8. Neither Class Counsel's application for attorneys' fees, reimbursement of litigation
28 expenses, and service awards for Plaintiffs, nor any order entered by this Court thereon, shall in any

1 way disturb or affect this Judgment, and all such matters shall be considered separate from this
2 Judgment.

3 9. Neither the Settlement, nor any act performed or document executed pursuant to or in
4 furtherance of the Settlement or its associated agreements, is or may be deemed to be or may be used
5 as an admission of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or
6 liability of HP, or (c) any fault or omission of HP in any proceeding in any court, administrative
7 agency, arbitral forum, or other tribunal.

8 10. Without affecting the finality of this Judgment, this Court reserves exclusive jurisdiction
9 over all matters related to administration, consummation, enforcement, and interpretation of the
10 Settlement, its associated agreements, and this Final Order, including (a) distribution or disposition of
11 the Settlement Fund; (b) further proceedings, if necessary, on the application for attorneys' fees,
12 reimbursement of litigation expenses, and service awards for Plaintiffs; and (c) the Settling Parties for
13 the purpose of construing, enforcing, and administering the Settlement. If HP fails to fulfill its
14 obligations under the Settlement, the Court retains authority to vacate the provisions of this Judgment
15 releasing, relinquishing, and discharging the Released Claims.

16 11. If the Settlement does not become effective under the terms of the Agreement, then this
17 Judgment shall be rendered null and void to the extent provided by and in accordance with the
18 Agreement and shall be vacated and, in such event, all orders entered and releases delivered in
19 connection herewith shall be null and void to the extent provided by and in accordance with the
20 Agreement.

21 12. The Action is hereby dismissed, with prejudice.

22 **IT IS SO ORDERED.**

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24 DATED: _____

25 HON. EDWARD J. DAVILA
26 UNITED STATES DISTRICT JUDGE
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EXHIBIT E

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE HP PRINTER FIRMWARE UPDATE
LITIGATION

Case No. 5:16-cv-05820-EJD-SVK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

1 Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards came on for hearing
2 before this Court on April 25, 2019. After due consideration of the facts of record, the
3 applicable legal standards, and the arguments of counsel, and for good cause shown, the Court
4 hereby ORDERS AS FOLLOWS:

5 1. The Motion for Attorneys' Fees, Costs, and Service Awards pursuant to Federal
6 Rules of Civil Procedure 23(h) and 54(d)(2) is **GRANTED**. Defendant HP Inc. shall pay Class
7 Counsel attorneys' fees in the amount of \$2,750,000 and cost reimbursements in the amount of
8 \$83,011.78, for a total award of \$2,833,011.78. This award of attorneys' fees is made pursuant
9 to California Code of Civil Procedure section 1021.5 and California Civil Code section 1780(e).
10 In support of this award, the Court finds as follows:

11 a. Plaintiffs succeeded on their claims, within the meaning of section 1021.5,
12 by securing (i) HP's agreement not to reenable Dynamic Security on the Class Printers, and (ii) a
13 non-reversionary \$1.5 million fund for class members. These benefits are significant and
14 required private enforcement to obtain. By enforcing the consumer protection laws, Plaintiffs
15 protected important rights affecting the public interest. For these reasons, section 1021.5 entitles
16 Class Counsel to a reasonable fee. *See MacDonald v. Ford Motor Co.*, 142 F. Supp. 3d 884
17 (N.D. Cal. 2015). And because Plaintiffs succeeded on their claim under the Consumers Legal
18 Remedies Act, section 1780(e) also mandates that Class Counsel be paid a reasonable fee.

19 b. Class Counsel's requested fee is reasonable. Class Counsel spent an
20 appropriate number of hours on this litigation, and their current hourly rates are consistent with
21 those prevailing in the market for similar services by lawyers with comparable skill. *See Blum v.*
22 *Stenson*, 465 U.S. 886, 895 n.11 (1984).

23 c. Class Counsel's base lodestar calculation amounted to \$2,958,099, and the
24 total attorneys' fee request amounted to \$2,750,000. When compared, these numbers imply a
25 negative multiplier of .93, which supports the reasonableness of the requested fee.

26 d. Further supporting the reasonableness of this fee is a consideration of the
27 lodestar-multiplier factors. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).
28 Both sides were well represented in this highly complex litigation, which centered on HP's use

1 of relatively novel security technology. Plaintiffs obtained substantial benefits for the class.
2 And Class Counsel prosecuted the case on a contingency basis, precluding other employment.

3 2. The litigation expenses awarded by this Order were reasonably incurred by Class
4 Counsel in furtherance of their prosecution of this action. The categories of expenses for which
5 class counsel seeks reimbursement are of the type routinely charged to clients and should be
6 reimbursed.

7 3. HP has agreed to pay service awards to each of the five class representatives in the
8 amount of \$5,000 each. These awards are hereby approved. *See Staton v. Boeing Co.*, 327 F.3d
9 938, 977 (9th Cir. 2003). HP shall pay the service awards to Class Counsel for distribution to the
10 class representatives.

11 **IT IS SO ORDERED.**

12
13 DATED:

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15 HON. EDWARD J. DAVILA
16 United States District Judge
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