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

14
15 IN RE HP PRINTER FIRMWARE UPDATE
16 LITIGATION

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

**PLAINTIFFS' REPLY IN FURTHER
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

17
18
19 Date: April 25, 2019

20 Time: 9:00 a.m.

21 Place: Courtroom 4

22 Judge: Hon. Edward J. Davila

1 Plaintiffs moved for final approval of the Settlement on February 7, 2019. Dkt. 118. HP filed
2 a statement of non-opposition on March 26. Dkt. 131. Plaintiffs submit this reply to update the Court
3 on claims administration.

4 The claims period closed on March 8, and based on the information available to date,¹ the
5 claims process under the Settlement has been a success:

- 6 • Class members have made claims on 32,295 printers.
- 7 • The claims for 5,500 printers are supported with documentation, for total losses of about
8 \$325,500.
- 9 • All documented claims will be paid in full from the \$1.5 million fund.
- 10 • Subtracting the \$325,500 from the fund leaves \$1,174,500, which, divided by the 32,295
11 printers, yields a *pro rata* recovery of about \$36 each.

12 The number of printers that were the subject of eligible claims falls between the parties'
13 earlier estimates: HP said that only 10,000 printers were affected by Dynamic Security, while
14 Plaintiffs estimated as many as 50,000 were. *See* Dkt. 134-1, Reply Declaration of Elizabeth A.
15 Kramer (“Kramer Reply Decl.”) ¶ 18. The level of class member participation demonstrates that the
16 notice reached those who experienced print interruptions while using non-HP ink cartridges, that the
17 claims process was accessible, and that Class members view the Settlement as valuable. If the Court
18 approves the Settlement, the \$1.5 million will be paid in a single distribution. The claims
19 administrator anticipates that payments will go out to claimants as soon as July 2019. Plaintiffs will
20 file their Post-Distribution Accounting within 21 days after the distribution, as called for by the
21 Northern District’s Procedural Guidance for Class Action Settlements.

22 Of the approximately 3.5 million class members, two filed responses styled as objections and
23 19 opted out² of the Settlement. Both objections express consumer frustration at HP, but neither
24 individual criticizes the litigation or the Settlement. The extremely low number of objections and
25 opt-outs supports final approval: “This objection rate is low, even compared to objection rates in
26

27 ¹ The Declaration of Lindsey Marquez, of claims administrator Epiq, is being filed concurrently. The
28 claims numbers used in this brief are rounded for convenience. Numbers reported exclude claims that
the claims administrator has preliminarily rejected as ineligible.

² An updated proposed Final Order and Judgment is filed concurrently to include the list of persons
who requested exclusion from the Settlement.

1 other, similar class action settlements” and “weighs in favor of approval.” *Browning v. Yahoo! Inc.*,
 2 No. C04-01463 HRL, 2007 WL 4105971, at *12 (N.D. Cal. Nov. 16, 2007) (footnote omitted); *see*
 3 *also Noll v. eBay, Inc.*, 309 F.R.D. 593, 608 (N.D. Cal. 2015) (the Court found that a comparatively
 4 higher objection rate of 0.00025% “indicate[d] a favorable reaction by class members and their
 5 overall satisfaction with the Settlement.”); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013
 6 WL 1120801, at *8 (N.D. Cal. Mar. 18, 2013) (similar conclusion). Class members Marv Berkowitz
 7 and Anthony Noe have submitted declarations expressing support for the Settlement. Dkts. 134-1 &
 8 134-2.

9 Class member Patricia Brown writes that the litigation should have addressed HP practices
 10 unrelated to Dynamic Security that she considers unfair and deceptive. Ms. Brown’s complaints are
 11 outside the scope of the litigation, and any claim arising from them will not be released if the
 12 Settlement becomes final. *See* Kramer Reply Decl., Ex. A. Ms. Brown submits a declaration, filed
 13 concurrently, clarifying that she supports the Settlement and does not object to Plaintiffs’ motion for
 14 attorneys’ fees and reimbursement of expenses.

15 Class member Karen L. Smith states that she experienced print interruptions and a series of
 16 frustrating interactions with HP customer service, for which she believes an additional payment of
 17 \$150 “above the agreed settlement calculation and all costs associated with this request to be the
 18 responsibility of HP Printer Firmware” is warranted. Kramer Reply Decl., Ex. B. Class Counsel
 19 contacted Dr. Smith and assisted her in filing a claim. Kramer Reply Decl. ¶ 21. Dr. Smith
 20 ultimately chose to file a claim without documentation, and will receive the *pro rata* recovery. *See,*
 21 *e.g., Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2012 WL 381202, at *3 (N.D. Cal. Feb. 6,
 22 2012) (rejecting an objector’s argument that “she is deserving of more money . . . given her particular
 23 circumstances.”); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 248
 24 (S.D. Ohio 1991).

25 The Settlement with HP is a win for consumers and merits final approval.

26 Dated: April 11, 2019

Respectfully submitted,

GIRARD SHARP LLP

/s/ Jordan Elias

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ATTESTATION

I, Jordan Elias, am the ECF user whose identification and password are being used to file this motion. I hereby attest under penalty of perjury that concurrence in this filing has been obtained from all counsel listed above.

DATED: April 11, 2019

/s/ Jordan Elias
Jordan Elias

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2019, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system. I also caused a copy of the foregoing document to be served via email on counsel of record for all parties.

/s/ Jordan Elias
Jordan Elias