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Superior Court of California,  
County of San Diego  
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5 Attorneys for Plaintiff

6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SAN DIEGO—CENTRAL**

9 BRYANT FONSECA, an individual, on  
behalf of himself and all others similarly  
10 situated, and on behalf of the general public,

11 Plaintiff,

12 vs.

13 HEWLETT-PACKARD COMPANY, a  
Delaware Corporation; HP ENTERPRISE  
14 SERVICES, LLC, a Delaware Limited  
Liability Company; HP, Inc., a Delaware  
15 corporation; and DOES 1-100, inclusive.

16 Defendants.

CASE NO.: 37-2017-00045630-CU-WT-CTL

**CLASS ACTION COMPLAINT FOR  
DAMAGES**

- 1) **DISPARATE TREATMENT – CALIFORNIA GOVERNMENT CODE § 12940(a)**
- 2) **DISPARATE IMPACT – CALIFORNIA GOVERNMENT CODE §§ 12940(A), 12941;**
- 3) **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 4) **FAILURE TO PREVENT DISCIMINATION;**
- 5) **VIOLATION OF THE CARTWRIGHT ACT – CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 16270, et seq.**
- 6) **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS Code §§ 16600 et seq.**
- 7) **UNFAIR COMPETITION – CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, et seq.**

**DEMAND FOR JURY TRIAL**

1 Bryant Fonseca (“Fonseca” or “Plaintiff”), individually and on behalf of all others  
2 similarly situated, allege the following:

3  
4 **INTRODUCTION**

5 1. This class action is brought by Plaintiff, on behalf of himself, and on behalf of  
6 all others similarly situated, and on behalf of the general public against Hewlett-Packard  
7 Company, a Delaware corporation and its successors, HP Enterprise Services, LLC, a Delaware  
8 Limited Liability Company, and HP Inc., a Delaware corporation (collectively, “HP”). Plaintiff  
9 alleges on information and belief, except for information on personal knowledge, as follows.

10 2. Plaintiff petitions this Court to allow him to represent and prosecute claims  
11 against HP in class action proceedings on behalf of all those similarly situated who are residing  
12 in the State of California.

13 **THE PARTIES**

14 3. At all material times, Mr. Fonseca was a resident of the County of San Diego in  
15 the State of California. At all material times, Mr. Fonseca was the employee of HP within the  
16 meaning of California Government Code section 12940.

17 4. At all material times, HP conducted business within the County of San Diego.  
18 HP’s headquarters and principal place of business are located in the city of Palo Alto,  
19 California. Palo Alto is the location where HP directs, controls, and coordinates its business  
20 operations.

21 5. The true names and capacities, whether individual, corporate, partnership,  
22 associate or otherwise of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff  
23 who therefore sues these defendants by such fictitious names under California Code of Civil  
24 Procedure section 474. Plaintiff will either seek leave to amend this Class Action Complaint or  
25 file a DOE statement to allege the true names and capacities of DOES 1 through 100, inclusive,  
26 when the same are ascertained. The DOE defendants together with HP are collectively referred  
27 to herein as “Defendants.”  
28

1           6.           Plaintiff is informed and believes, and thereon alleges, that Defendants are each  
2 responsible in some manner for one or more of the events and happenings that proximately  
3 caused the injuries and damages hereinafter alleged.

4           7.           Plaintiff is informed and believes, and thereon alleges, that Defendants  
5 knowingly and willfully acted in concert, conspired together and agreed among themselves to  
6 enter into a combination and systemized campaign of activity to cause the injuries and damages  
7 hereinafter alleged, and to otherwise consciously and or recklessly act in derogation of the  
8 rights of Plaintiff, the Age Discrimination Class (defined below), and the Antitrust Class  
9 (defined below). Defendants further violated the trust reposed by Plaintiff, the Age  
10 Discrimination Class, and the Antitrust Class by their negligent and or intentional actions. Said  
11 conspiracy, and Defendants' concerted actions, were such that, on information and belief, and  
12 to all appearances, Defendants represented a unified body so that the actions of one defendant  
13 was accomplished in concert with, and with knowledge, ratification, authorization and approval  
14 of each and every other defendant.

15           8.           Plaintiff is informed and believes and thereon alleges, that each and every  
16 defendant named in this Class Action Complaint, including DOES 1 through 100, inclusive, is,  
17 and at all times mentioned herein was, the agent, servant, alter ego, and or employee of each of  
18 the other defendants and that each defendant was acting within the course of scope of his, her or  
19 its authority as the agent, servant and or employee of each of the other defendants.  
20 Consequently, each and every defendant is jointly and severally liable to Plaintiff, the Age  
21 Discrimination Class, and the Antitrust Class for the damages sustained as a proximate result of  
22 their conduct.

23           9.           At all times herein mentioned, the Defendants, and each of them, were members  
24 of, and engaged in, a joint venture, partnership and common enterprise, and acted within the  
25 course and scope of said agency, employment, and enterprise. Defendants operate as a single  
26 enterprise to transact their business through unified operation and common control. At all times  
27 herein mentioned, the acts and omissions of various Defendants, and each of them, concurrently  
28 contributed to the various acts and omissions of each and every one of the other Defendants in

1 proximately causing the wrongful conduct, harm, and damages alleged here

2 10. At all times herein mentioned, Defendants, and each of them, approved,  
3 condoned and/or otherwise ratified each and every one of the acts or omissions complained of  
4 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the  
5 acts and omissions of each and every one of the other Defendants, thereby proximately causing  
6 the damages as herein alleged.

7 **JURISDICTION AND VENUE**

8 11. This Court has subject matter jurisdiction over this action pursuant to the  
9 California Constitution, Article VI, section 10, which grants the Superior Court, “Original  
10 Jurisdiction in all causes except those given by statute to other courts.” The causes of action  
11 alleged herein are not reserved for any court other than the Superior Court of California.  
12 Additionally, the statutes under which this action is brought do not specify any other basis for  
13 jurisdiction.

14 12. This Court has jurisdiction over each of the defendants because upon  
15 information and belief, each defendant is either a citizen of California, has sufficient minimum  
16 contacts in California, or otherwise intentionally avails itself of the California market so as to  
17 render the exercise of jurisdiction over it by the California courts consistent with traditional  
18 notions of fair play and substantial justice.

19 13. Venue as to HP is proper in this judicial district under California Code of Civil  
20 Procedure sections 395(a) and 395.5 as a portion of the acts complained of herein occurred in  
21 the County of San Diego. The injuries to Plaintiff occurred in the County of San Diego. HP  
22 either owns, maintains offices, transacts business, has an agent or agents within the County of  
23 San Diego, or otherwise is found within the County of San Diego. Further, Plaintiff was  
24 employed by HP in the County of San Diego.

25  
26 **ADMINISTRATIVE PREREQUISITES**

27 14. On November 3, 2017, Mr. Fonseca filed a charge against HP with the  
28 Department of Fair Employment and Housing (“DFEH”) concerning HP’s policy that targeted

1 himself and other employees aged 40 years and older through a pattern and practice of unlawful  
2 terminations. The DFEH issued Mr. Fonseca an immediate right-to-sue letter. (See Exhibit A.)  
3  
4

### 5 FACTUAL ALLEGATIONS

#### 6 **Bryant Fonseca was a Talented and Experienced Employee that had Loyal Serviced 7 HP for More Than 35 Years.**

8 15. Mr. Fonseca is currently 55 years old.

9 16. Mr. Fonseca was employed by HP for nearly 36 years. He worked out of HP's  
10 San Diego site, located in Rancho Bernardo.

11 17. Mr. Fonseca first worked for HP as a part of a summer program while he was in  
12 high school in 1978. For most of his career, Mr. Fonseca worked in the "CHIL" work group,  
13 where his title was "Procurement Ops Associate V." The CHIL group conducted research and  
14 development related to HP's all-in-one printers. Mr. Fonseca would work with vendors in order  
15 to obtain all supplies that the group required.

16 18. Over time, Mr. Fonseca's responsibilities began to increase dramatically. Mr.  
17 Fonseca became an expert at using the SAP program – a business software program that makes a  
18 business's purchasing department run more efficiently. Mr. Fonseca later became classified as  
19 a "SAP Super User."

20 19. In approximately August 2016, the CHIL work group was dissolved, and Mr.  
21 Fonseca began to work in an engineering support group.

#### 22 23 **HP's Employees Were Older, More Experienced, and Therefore More Expensive Than 24 the Employees at HP's Competitors.**

25 20. In 2012, the median age of HP's workforce was 39 years old, the oldest in the  
26 tech industry. With one-half of its workforce over the age of 39, HP's labor costs were higher  
27 than other tech companies. HP employees with 10-19 years of experience are paid an average  
28 of just over \$97,000 annually while employees with 20 or more years of experience are paid an  
average of just over \$110,000 annually. By contrast, HP employees with less than 1 year of

1 experience are paid an average of just over \$64,000 while employees with 1-4 years of  
2 experience are paid an average of just over \$65,000.

3  
4 **HP's Workforce Reduction Plan Sought to Replace Older, Experienced Employees  
5 with Younger, Cheaper Ones.**

6 21. On or about early 2012, HP implemented its "2012 U.S. Workforce Reduction  
7 Plan" ("Workforce Reduction Plan"), which was a scheme to terminate its older, higher paid  
8 employees and replace them with younger, lower paid employees. HP's Workforce Reduction  
9 Plan involuntarily terminates employees on a rolling basis. Although HP's Workforce  
10 Reduction Plan purports to lay off employees on a neutral basis, it actually is a companywide  
11 practice that disproportionately targets employees who are 40 years of age or older – a protected  
12 class – for termination.

13 22. HP has stated that its purpose in instituting the Workforce Reduction Plan was to  
14 realign its "organization to further stabilize the business and create more financial capacity to  
15 invest in innovation, but it's not enough. If [HP is] to position [itself] as the industry leader for  
16 the future, then [HP] must take additional actions that, while tough, are necessary to move [its]  
17 business forward. These actions include a reduction in [HP's] global workforce."

18 On October 9, 2013, HP's then-CEO Meg Whitman described HP's staffing objectives at the  
19 company's "Hewlett-Packard Securities Analyst Meeting". **Whitman explained that HP was**  
20 **aggressively seeking to *replace* older employees with younger employees.** On this topic,  
21 some of Whitman's comments include, but are not limited to:

- 22
- 23 • ". . . a question that is actually completely relevant for all large-cap IT  
24 companies, which is how do you keep up with this next generation of IT  
and how do you bring people into this company for whom it isn't  
something they have to learn, it is what they know."
  - 25 • ". . . we need to return to a labor pyramid that really looks like a triangle  
26 where you have a lot of early career people who bring a lot of knowledge  
27 who you're training to move up through your organization, and then  
people fall out either from a performance perspective or whatever."
  - 28 • "And over the years, our labor pyramid . . . [has] become a bit more of a  
diamond. And we are working very hard to recalibrate and reshape our  
labor pyramid so that it looks like the more classical pyramid that you

1 should have in any company and particularly in ES. If you don't have a  
2 whole host of young people who are learning how to do delivery or  
learning how to do these kinds of things, you will be in real challenges."

- 3 • "So, this has a couple of things. One is we get the new style of IT strength  
4 and skills. It also helps us from a cost perspective . . . if your labor  
5 pyramid isn't the right shape, you're carrying a lot of extra cost. The truth  
6 is we're still carrying a fair amount of extra costs across this company  
because the overall labor pyramid doesn't look the way it should."
- 7 • "Now, that's not something that changes like that. Changing the shape of  
8 your labor pyramid takes a couple of years, but we are on it, and we're  
9 amping up our early career hiring, our college hiring. And we put in place  
an informal rule to some extent which is, listen, when you are replacing  
someone, really think about the new style of IT skills."

10 23. HP's CFO Cathie Lesjak ("Lesjak") explained the scheme as a way to  
11 proactively shift the makeup of HP's workforce towards low-level recent graduates:

12  
13 "And the way I think about the restructuring charge . . ., it's  
14 basically catching up. It's actually dealing with the sins of the past in  
15 which we have not been maniacally focused on getting the attrition out  
16 and then just agreeing to replace anyway and not thinking through it  
17 carefully and thinking through what types of folks we hire as replacements  
18 . . . We hire at a higher level than what we really need to do. And the  
smarter thing to do would be to prime the pipeline, bring in fresh new  
grads, and kind of promote from within as opposed to hiring a really  
experienced person that is going to be much more expensive."

19 24. HP's Manager of Employee Relations for the Americas, Sheri Bowman,  
20 explained that it was critical for some HP organizations to reduce expenses, and one way they  
21 had done so was by changing the composition of their workforce:

22  
23 The focus within the different organizations has evolved a lot over the  
24 past four or five years because of the turnaround that we have been  
25 trying to achieve within the organization. And so there is a  
tremendous focus on increasing revenue, increasing client satisfaction  
to help increase revenue and reducing, you know, overall expenses.  
26 So that has just resulted in some organizations modifying their  
27 workforce to try to get to the right labor pyramid to achieve their  
business goals.

1                   **HP Executed the Workforce Reduction Plan That Targeted Older Employees.**

2  
3           25.       In November 2015, HP was still persistently eliminating the jobs of older, age-  
4 protected employees, like Mr. Fonseca, and replacing them with younger employees. Ms.  
5 Whitman confirmed as much in her public statements intended to reach the ears of HP  
6 investors:

7  
8                               “That should be it. I mean, that will allow us to right size our  
9 enterprise services business to get the right onshore/offshore mix, to  
10 make sure that we have a labor pyramid with lots of young people  
11 coming in right out of college and graduate school and early in their  
12 careers. That’s an important part of the future of the company . . .  
13 This will take another couple of years and then we should be done.”

14           26.       Consistent with HP’s strategy to eliminate the older members of its workforce in  
15 favor of younger workers, when selecting which employee to terminate under its Workforce  
16 Reduction Plan, HP’s goal is to single out those workers who it thinks “will not fit the bill long  
17 term in [the] team growing to [an advisory] position.”

18           27.       Although purportedly neutral on their face, HP’s terminations under its Workforce  
19 Reduction Plan are actually targeted to eliminate older, age-protected workers in grossly  
20 disproportionate numbers. As of October 2015, a total of 1,765 out of 2,076 California-based  
21 employees who were terminated under HP’s Workforce Reduction Plan (or over 85%) are 40 years  
22 of age, or older.

23           28.       HP’s Workforce Reduction Plan is implemented on a rolling basis. That is, it does  
24 not terminate HP’s employees all at once. But, it serves as a mechanism for HP to terminate  
25 members of a protected class of employees whenever it wants. Plaintiff is informed and believes  
26 that HP is *still* engaged in the systematic elimination of its age protected class of employees.

27           29.       Also, HP implements its Workforce Reduction Plan to carefully avoid triggering a  
28 Workforce Adjustment and Retraining Notification (“WARN”) event. A WARN Act event is  
triggered when a covered establishment terminates 50 employees in the same geographic region at  
any one time. If a WARN Act event is triggered, the company must provide terminated employees



1 with at least 60 days' notice of his or her termination, and pay them for 60 days' worth of pay. HP  
2 actively evades these requirements by not terminating 50 or more employees at any one time in the  
3 same geographic area.

4 **HP's "Fake" Measures that Purportedly Helped Terminated Employees to Retain**  
5 **Employment in a Different Capacity were Illusory.**

6 30. Theoretically, HP employees terminated under the Workforce Reduction Plan are  
7 encouraged to apply for other jobs at HP through HP's 60-day "Preferential Rehire Period." A  
8 termination is cancelled for any HP employee who is hired during this "Preferential Rehire  
9 Period." While the Preferential Rehire Period is supposed to be neutral in its application, it is not  
10 applied neutrally because it adversely impacts disproportionate numbers of age protected  
11 employees. In fact, during the Preferential Rehire Period, HP's older employees are almost never  
12 rehired. If an older employees are even offered a job, the job is rarely, if at all, comparable to the  
13 one that employee held before he or she was terminated.

14 31. From the time that the Workforce Reduction Plan was implemented in 2012 until  
15 approximately 2014, a terminated employee that was not rehired during the "Preferential Rehire  
16 Period" became ineligible for 12 months following termination – according to HP's written policy.  
17 Beginning in August 2014, employees terminated under the workforce reduction plan were made  
18 completely ineligible for rehire despite continuing to be told that they could take advantage of the  
19 Preferential Rehire Period. Simply put, the Preferential Rehire Period is a façade that masks the  
20 systematic terminations of Defendants' older employees by making it appear as though HP was  
21 interested in retaining these individuals.

22 32. Since August 2013, HP's Human Resources has incorporated written guidelines that  
23 require HP to hire mostly younger employees. Specifically, those guidelines state: "New corporate  
24 requisition policy requires 75% of all External hire requisitions be 'Graduate' or 'Early Career'  
25 employees." Thus, age-protected employees who were terminated under the Workforce Reduction  
26 Plan and who sought rehiring under the Preferential Rehiring Period, were fighting an uphill battle  
27  
28

1 against HP's inherent prerogative to hire a disproportionate percentage of younger "early career"  
2 and "recent graduates".<sup>1</sup>

3 33. Thus, available job postings included discriminatory language that made clear that  
4 HP was looking for a "younger" employee to fill those available jobs. Accordingly, age-protected  
5 employees were rejected for rehiring under the Preferential Rehire Period provision of the  
6 Workforce Reduction Plan in disparately greater numbers than their younger peers who applied  
7 either externally or pursuant to the Preferential Rehire Period provision.

8 34. HP also implemented an early retirement program in which employees of a certain  
9 age and tenure are eligible to "voluntarily" retire early. If the employee does not choose voluntary  
10 early retirement he or she may soon be unemployed. This retirement program presents age-  
11 protected employees with a Hobson's choice: either participate in the voluntary retirement  
12 program or risk being terminated under the Workforce Reduction Plan. The aforementioned  
13 dilemma works to HP's advantage.

14 35. The Workforce Reduction Plan also deters the recipient from looking for jobs  
15 from third party employers. Specifically, the Workforce Reduction Plan requires the employee  
16 to notify his or her manager "immediately" upon acceptance of employment with a  
17 "competitor" of HP, and the Workforce Reduction Plan further states: "If you accept a position  
18 with a competitor during the WFR Redeployment Period, you will terminate your Plan  
19 participation at that point you will not be eligible for the Cash Severance Pay."  
20

21 **HP Has Deliberately Avoided Confronting the Reality that Its Policies**  
22 **Disproportionately Impact Age Protected Employees.**

23 36. Older employees were well aware of the fact that many of their age-protected peers  
24 had been selected for termination under the Workforce Reduction Plan. In the engineering support  
25 group, older employees would advise each other not to disclose their age or how long they had  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Notably, the Equal Employment Opportunity Commission views the use of "new grad"  
and "recent grad" in job notices to be illegal because it discourages older applicants from  
applying.

1 worked at HP in order to avoid being selected for termination under the Workforce Reduction  
2 Program.

3 37. HP has an “Adverse Impact Team” that evaluates various HP employment practices  
4 to determine whether or not those practices impact a significant number or percentage of a  
5 particular protected class of employees. Although HP has an “Adverse Impact Team,” for  
6 unknown reasons, it does not investigate the facts related to whether or not the Workforce  
7 Reduction Plan adversely affects a class of *age* protected employees disproportionately.

8 38. According to its “HP 2016 Sustainability Report,” HP provides workforce data  
9 regarding its diversity in the United States, but tellingly provides no facts about its age-  
10 protected workforce data.

11 39. On or about February 2017, HP set forth a “diversity mandate” when it hires  
12 outside attorneys to defend it from lawsuits. If a law firm does not fit HP’s selective “diversity”  
13 requirements then it can withhold ten percent (10%) of the firm’s attorneys’ fees. Tellingly,  
14 “age” is not one of the criteria or factors included in this “diversity mandate.” This omission  
15 further evidences HP’s devaluation of age-protected class of persons.

16 40. Consequently, since July 2012 there have been approximately *forty* age  
17 discrimination charges filed against HP with the Department of Fair Employment & Housing  
18 (“DFEH”) and California Superior Court.

19 41. According to a January – February 2017 article published by AARP, HP has  
20 received more allegations of age discrimination than *any* other technology company in recent  
21 years.

22  
23 **Mr. Fonseca was Terminated under the Workforce Reduction Plan, and Was Not**  
24 **Rehired During Either the Redeployment Period or the Preferential Rehire Period**  
25 **Because He Was Replaced by Somebody Younger and Cheaper.**

26 42. On May 8, 2017, Mr. Fonseca was notified by his manager that his employment  
27 was being terminated pursuant to the Workforce Reduction Plan, and that his termination date  
28 would be May 19, 2017. In a letter, Mr. Fonseca was informed that “your position has been

1 eliminated.” He was never given any further details regarding why he had been selected for  
2 termination under the Workforce Reduction Plan.

3 43. Mr. Fonseca was informed that he would have two weeks as part of his  
4 “redeployment period” to find another job with HP. If he was able to successfully find another  
5 position during that time, then he would be allowed to continue to work without interruption. If  
6 he was not able to find another position at HP within the redeployment period, then he would be  
7 terminated and the 60-day “Preferential Rehire Period” would commence. During that time,  
8 Mr. Fonseca would be allowed to apply for jobs within HP, and if he was selected then he  
9 would be re-hired without having to undertake the approval process normally required for a  
10 rehire.

11 44. At the time that Mr. Fonseca was terminated, he was the oldest person in his  
12 work group. He had previously worked with other individuals that were older than him,  
13 however, they had already been terminated pursuant to the Workforce Reduction Plan.

14 45. Mr. Fonseca received excellent performance reviews. In his most recent  
15 performance review, his manager stated that he was one of the employees who “consistently  
16 achieve[s] their goals and demonstrate[s] HP’s Leader Attributes and Behaviors in achieving  
17 these goals. [His] contributions have a positive impact to the team, organization, and HP.”  
18 That review praised a number of Mr. Fonseca’s achievements, including work that he did with  
19 other labs and sites beyond what was required of his position. After listing the many  
20 contributions to HP that Mr. Fonseca had made during the period, his manager summarized,  
21 “That is an impressive list of accomplishments. Bryant, you’ve really stepped up with your  
22 additional responsibilities and done a great job.”

23 46. Mr. Fonseca also received numerous performance related awards within his  
24 department.

25 47. After his termination, Mr. Fonseca sought to be rehired by HP. Mr. Fonseca  
26 applied to two different positions within the company, both of which he was incredibly  
27 qualified. One position was located in Corvallis, Oregon. He did not receive any response  
28 whatsoever with regard to that position. The other position was in Vancouver, Washington. He

1 visited Vancouver in order to interview for this job. Ultimately, high-level management denied  
2 him this position without giving any explanation. As a result, Mr. Fonseca was not rehired by  
3 HP.

4 48. As part of his benefits package under the Workforce Reduction Plan, HP paid for  
5 Mr. Fonseca to receive a four-month career transition program from Lee, Hecht, Henderson - a  
6 firm focusing career counseling. Mr. Fonseca participated in this program, however, he found  
7 it to be largely ineffective because the career counselor was largely unavailable, and her advice  
8 was more or less, “Applying for jobs is worthless,” and getting a job is all about “Who you  
9 know.”

10 49. HP subsequently hired a new employee who was younger and less expensive  
11 than Mr. Fonseca to perform the tasks that he previously did. Despite submitting multiple job  
12 applications every day since his termination, Mr. Fonseca has yet to find gainful employment.

13 50. As a result of his unlawful termination, Mr. Fonseca has had to resort to  
14 government assisted welfare and food stamps in order to support his family and their three  
15 foster children.<sup>2</sup> Mr. Fonseca’s foster children have lost their medical care providers as well  
16 because his family was kicked off HP’s health insurance plan.

17  
18 **HP Conspired With 3D Systems, Inc. to Stop 3D Systems from Recruiting their**  
19 **Employees.**

20 51. HP also engaged in a “no poach” secret arrangement with 3D Systems, Inc., a  
21 California corporation (“3D Systems”). 3D Systems competes with HP to build various printer  
22 products, including 3D printers.

23 52. Technology employees, such as the employees who work for 3D Systems, are  
24 frequently in high demand due to their specialized technology skills and ability.

25 53. Throughout its existence, 3D Systems has hired many HP employees away from  
26 HP, including multiple high-level managers. While Mr. Fonseca worked for the CHIL group,  
27

28 <sup>2</sup> Mr. Fonseca has fostered approximately 35 children over the course of his life and has  
been the recipient of the Foster Parent of the Year award.

1 he saw a large number of other CHIL employees leave HP to work at 3D Systems.  
2 Furthermore, in approximately August 2016, soon after the CHIL group had been dissolved, the  
3 managers of that group held a meeting with all of that group's employees. At that meeting,  
4 employees were told that they were required to notify HP if they were offered a position with  
5 3D Systems.

6 54. Any employee that was offered a position with 3D Systems would not be  
7 allowed to receive the severance check that he or she would otherwise be entitled to under the  
8 Workforce Reduction Plan's release agreement, according to the individuals conducting the  
9 meeting. As a result, outgoing employees stopped seeking employment with 3D Systems after  
10 this meeting.

11 55. Upon Plaintiff's information and belief, HP conspired and combined with 3D  
12 Systems in order to stop 3D Systems from attempting to hire outgoing HP employees. Also  
13 upon Plaintiff's information and belief, 3D Systems subsequently ceased contact with outgoing  
14 HP employees regarding potential employment.

15 56. The intended and actual effect of this "no poach" conspiracy was that it  
16 restricted recruitment, fixed and suppressed employee compensation, and imposed unlawful  
17 restrictions on employee mobility.

18 57. HP's conspiracy and agreements restrained trade and the overarching conspiracy  
19 is *per se* unlawful under California law. Plaintiff and the Antitrust Class seek injunctive relief  
20 and damages for violations of the Cartwright Act (Cal. Bus. and Code §§ 16720, et seq.) and  
21 California Business and Professions Code sections 16600 and 17200, *et seq.*

22 58. In a lawfully competitive labor market, HP would have needed to consider the  
23 risk that a particular competitor would hire one of its employees when deciding whether to  
24 terminate that employee. The risk that an employee might begin working for a competitor also  
25 would have been prominent for HP in deciding how much it was willing to pay in order to  
26 retain that employee. Because of HP's agreement with 3D Systems, some of HP's employees  
27 became artificially disposable as their value to competitors was instantly eliminated. This  
28 allowed HP to terminate employees that it would not otherwise terminate because they did not

1 have to worry about whether the competitive labor market would drive their former employee  
2 to a competitor. HP and each of its co-participants would also have competed against each  
3 other for employees and would have hired employees according to the needs of their business  
4 and the going market rates for employee wages. And, in such a lawfully competitive labor  
5 market, the participants of the secret “no poach” agreements would have engaged in such  
6 employee hiring in direct competition with one another, resulting in employees accepting offers  
7 from the company who makes the most favorable offer of employment.

8         59.         Additionally, in a lawfully competitive labor market, an outgoing employee  
9 would have the ability to apply to all possible employers and then accept a position with the  
10 employer that offered him or her the highest salary. Employers would be incentivized to offer  
11 higher salaries to more valuable prospective employees in order to ensure that they were not  
12 outbid. Because of the agreement in this case (1) outgoing employees were restricted from  
13 seeking employment with 3D Systems, and were denied any salary offer that they might have  
14 made and (2) HP and other potential employers were not pressured to outbid 3D Systems for  
15 outgoing employees’ services, thus paid below-market rates for their employees’ services.

16         60.         The competitive marketplace helps to ensure that companies can benefit by  
17 taking advantage of rivals’ efforts expended soliciting, interviewing, and training skilled  
18 employees – provided they pay salaries sufficient to lure employees away from competitors.  
19 The competitive marketplace also benefits the public by fostering the flow of new non-  
20 proprietary information, skills, and technologies across competing industry leaders. And, for  
21 obvious reasons, this competitive process benefits our country’s work force by compensating  
22 employees for the fair market value of their skills, knowledge, and experience.

23         61.         For these reasons, competitive hiring serves as a critical role, particularly in the  
24 high technology industry where companies benefit from obtaining employees with advanced  
25 skills and abilities. By restricting hiring, employee salaries at competing companies are  
26 restricted and depressed, decreasing the pressure of an employee’s current employer to match a  
27 rival’s offer and vice versa. Restrictions on hiring also limit an employee’s leverage when  
28 negotiating his or her salary with his or her current employer. Furthermore, when companies

1 restrict hiring of rival companies' employees the wages of those employees are suppressed  
2 because companies are not bidding against each other. As a result, the effects of hiring  
3 restrictions impact all employees of participating companies.

4 62. Plaintiff and each member of the Antitrust Class was harmed by this secretive no  
5 poach arrangement. The elimination of competition and suppression of compensation and  
6 mobility had a negative cumulative effect on all Class members.

7  
8 **CLASS ALLEGATIONS**

9 63. This class action is properly brought under the provisions of California Code of  
10 Civil Procedure section 382, and, to the extent applicable, the procedural provisions of Rule 23  
11 of the Federal Rules of Civil Procedure, which have been adopted by the California Supreme  
12 Court for use by the trial courts of this State. Plaintiff brings this class action on behalf of  
13 himself and all others similarly situated, with Plaintiff proceeding as the representative member  
14 of the following classes defined as:

15 All current, former, or prospective employees who worked for HP in the  
16 State of California between April 22, 2012, and present who were at  
17 least 40 years old at the time HP selected them for termination under  
18 HP's Workforce Reduction Plan. ("Age Discrimination Class").

19 All natural persons employed by HP in California at any time from  
20 November 28, 2013 to the present. ("Antitrust Class").

21 64. To the extent equitable tolling applies to toll claims by the above-referenced  
22 Class' against Defendants, the class period should be adjusted accordingly.

23 65. This action has been brought and may properly be maintained as a class action,  
24 under California Code of Civil Procedure section 382 because a well-defined community of  
25 interest in the litigation exists and because the proposed class is easily ascertainable, and for the  
26 other reasons explained in this Class Action Complaint.

27 66. Numerosity: The persons who comprise Age Discrimination Class and the  
28 Antitrust Class (collectively, the "Plaintiff Classes") are so numerous that joinder of all such  
persons would be unfeasible and impracticable. The membership of Plaintiff Classes is



1 unknown to Plaintiff at this time; however, the Age Discrimination Class alone is at least one  
2 thousand seven hundred individuals, whose identities are readily ascertainable by inspection of  
3 HP's payroll records.

4 67. Commonality: Common questions of fact or law arising from HP's conduct  
5 exist, as described in this Complaint, as to all members of Plaintiff Classes, which predominate  
6 over any questions solely affecting individual members of the proposed class, including but not  
7 limited to:

- 8 • Whether HP's policies or practices relating to the Workforce Reduction Plan were  
9 based on discriminatory intent towards employees over 40 who were otherwise  
10 qualified for those positions;
- 11 • Whether HP's Workforce Reduction Plan had a disproportionate adverse impact on  
12 its California employees aged 40 or older;
- 13 • Whether HP's policy of selecting employees to terminate under its Workforce  
14 Reduction Plan had a disproportionate adverse effect on those California  
15 employees aged 40 or older;
- 16 • Whether HP's termination selection policy (i.e., the Workforce Reduction Plan)  
17 was a substantial factor in causing the Class member terminations (i.e., harm);
- 18 • Whether HP failed to adequately investigate, respond to, and/or appropriately  
19 resolve instances of age discrimination in the workplace;
- 20 • Whether HP failed to implement policies and practices to prevent discrimination  
21 against older employees.
- 22 • Whether HP's Workforce Reduction Plan was an unfair, unlawful, deceptive, and  
23 or fraudulent business practice;
- 24 • Whether an alternative or modification to the Workforce Reduction Plan existed  
25 that would have had less of an adverse impact on employees aged 40 years and  
26 older;
- 27 • Whether HP's anti-competitive conspiracies, associated agreements, and practices  
28 violated the Cartwright Act;
- Whether HP's anti-competitive conspiracies, associated agreements, and practices  
restrained trade, commerce, or competition violated Business and Professions Code  
section 16600, *et seq.*;
- Whether HP's anti-competitive conspiracies, associated agreements, and practices  
constituted unlawful or unfair business acts or practices in violation of California  
Business and Professions Code section 17220; and

- Whether HP’s anti-competitive conspiracies, associated agreements, and practices caused antitrust injury;

68. HP’s defenses, to the extent that any such defense is applied, are applicable generally to Plaintiff Classes and are not distinguishable to any degree relevant or necessary to defeat predominance in this case.

69. Typicality: Plaintiff’s claims are typical of the claims for the members of the Age Discrimination Class and Antitrust Class as a whole, all of whom have sustained and/or will sustain injuries, including irreparable harm, as a legal (proximate) result of HP’s common course of conduct as complained of in this operative complaint. Plaintiff’s class claims are typical of the claims of the Age Discrimination Class and Antitrust Class because HP used its policies and practices (i.e., its Workforce Reduction Plan, accompanying Preferential Rehire Period, and anti-competitive practices) to subject Plaintiff and each member of the Age Discrimination Class and Antitrust Class to identical unfair, unlawful, deceptive, and/or fraudulent business practices, acts, and/or omissions.

70. Adequacy: Plaintiff, on behalf of all others similarly situated, will fairly and adequately protect the interests of all members of the Age Discrimination Class and Antitrust Class in connection with which they have retained competent attorneys. Plaintiff is able to fairly and adequately protect the interests of all members of the aforementioned Classes because it is in Plaintiff’s best interests to prosecute the claims alleged herein to obtain full compensation due to them. Plaintiff does not have a conflict with either the Age Discrimination Class nor the Antitrust Class, and his interests are not antagonistic to either of those Classes. Plaintiff has retained counsel who are competent and experienced in representing employees in complex class action litigation

71. Superiority: Under the facts and circumstances set forth above, class action proceedings are superior to any other methods available for both fair and efficient adjudication of the controversy. A class action is particularly superior because the rights of each member of the Age Discrimination Class or Antitrust Class, inasmuch as joinder of individual members of either Class is not practical and, if the same were practical, said members of the Age

1 Discrimination Class or the Antitrust Class could not individually afford the litigation, such that  
2 individual litigation would be inappropriately burdensome, not only to said citizens, but also to  
3 the courts of the State of California.

4 72. Litigation of these claims in one forum is efficient as it involves a single  
5 decision or set of decisions that affects the rights of thousands of employees. In addition, class  
6 certification is superior because it will obviate the need for unduly duplicative litigation that  
7 might result in inconsistent judgment concerning HP's practices.

8 73. To process individual cases would increase both the expenses and the delay not  
9 only to members of the Age Discrimination Class, but also to HP and the Court. In contrast, a  
10 class action of this matter will avoid case management difficulties and provide multiple benefits  
11 to the litigating parties, including efficiency, economy of scale, unitary adjudication with  
12 consistent results and equal protection of the rights of each member of the Age Discrimination  
13 Class and Antitrust Class, all by way of the comprehensive and efficient supervision of the  
14 litigation by a single court.

15 74. This case is eminently manageable as a class. Defendants' computerized  
16 records, including meticulous payroll and personnel data, provide an accurate and efficient  
17 means to obtain information on the effect and administration of the Workforce Reduction Plan  
18 *en masse*, including class-wide damages, meaning class treatment would significantly reduce  
19 the discovery costs to all parties.

20 75. In particular, since HP is obfuscating the import of its Workforce Reduction  
21 Plan, misleading its employees, suppressing their wages and mobility, the Age Discrimination  
22 Class and Antitrust Class are neither sophisticated nor legally knowledgeable enough to be able to  
23 obtain effective and economic legal redress unless the action is maintained as a class action.  
24 Given the unlikelihood that many injured class members will discover, let alone endeavor to  
25 vindicate, their claims, class action is a superior method of resolving those claims.

26 76. There is a community of interest in obtaining appropriate legal and equitable  
27 relief for the common law and statutory violations and other improprieties, and in obtaining  
28 adequate compensation for the damages and injuries which HP's actions have inflicted upon

1 Plaintiff and the Age Discrimination Class or the Antitrust Class.

2 77. There is also a community of interest in ensuring that the combined assets and  
3 available insurance of HP are sufficient to adequately compensate the members of the Age  
4 Discrimination Class or Antitrust Class for the injuries sustained.

5 78. Notice of the pendency and any result or resolution of the litigation can be  
6 provided to members of the Age Discrimination Class or the Antitrust Class by the usual forms  
7 of publication, sending out to members a notice at their current addresses, establishing a  
8 website where members can choose to opt-out, or such other methods of notice as deemed  
9 appropriate by the Court.

10 79. Without class certification, the prosecution of separate actions by individual  
11 members of the Plaintiff Classes would create a risk of: (1) inconsistent or varying  
12 adjudications with respect to individual members of Age Discrimination Class and Antitrust  
13 Class that would establish incompatible standards of conduct for HP; or (2) adjudications with  
14 respect to the individual members of Age Discrimination Class and Antitrust Class that would,  
15 as a practical matter, be disparities of the interests of the other members not parties to the  
16 adjudication, or would substantially impair or impede their ability to protect their interest.

17 **FIRST CAUSE OF ACTION**

18 **Age Discrimination: Disparate Treatment – Cal. Govt. Code § 12900 *et seq.***

19 **(Plaintiff Bryant Fonseca, on Behalf of Himself and the Age Discrimination Class Against**  
20 **Defendants)**

21 80. Mr. Fonseca, on behalf of himself and the Age Discrimination Class, re-alleges and  
22 incorporates by reference, as though fully set forth herein, all of the preceding paragraphs.

23 81. Under the Fair Employment & Housing Act (“FEHA”), it is unlawful for an  
24 employer to use its employee’s age as a basis to terminate or lay off, refuse to hire, re-hire, or re-  
25 instate, or discriminate in compensation or in terms, conditions, or privileges of employment. (Cal.  
26 Govt. Code § 12940(a).)

27 82. The FEHA protects employees over the age of 40. (Cal. Govt. Code §§ 12926(b),  
28 12941(a).) Mr. Fonseca was an employee of HP over the age of 40—when HP fired Mr. Fonseca,

1 he was 55 years old. Thus, because Mr. Fonseca was an employee over the age of 40 at the time of  
2 his firing, he is in a class of persons protected by the FEHA. Likewise, all members of the Age  
3 Discrimination Class were aged 40 or over at the time of their termination pursuant to the  
4 Workforce Reduction Plan and are thus protected by the FEHA.

5 83. The FEHA covers “employers” who are “regularly employing five or more persons.”  
6 (Cal. Gov’t Code § 12926(d).) HP employs more than five persons and is therefore an employer  
7 under the FEHA.

8 84. As referenced above, Mr. Fonseca filed timely charges with the DFEH against  
9 Hewlett-Packard Company, HP Enterprise Services, LLC, and HP Inc. and received an immediate  
10 right to sue notice. Mr. Fonseca served the charge and right-to-sue letter upon Hewlett-Packard  
11 Company, HP Enterprise Services, LLC, and HP Inc.

12 85. Defendants’ terminating or laying off Mr. Fonseca and the members of the Age  
13 Discrimination Class because of their age constitutes willful, knowing, intentional, and unlawful  
14 discrimination in violation of the FEHA.

15 86. Defendants’ not re-hiring, re-instating, or hiring Mr. Fonseca and the members of the  
16 Age Discrimination Class, especially in comparable positions, because of their age constitutes  
17 willful, knowing, intentional, and unlawful discrimination in violation of the FEHA.

18 87. Defendants denying Mr. Fonseca and the members of the Age Discrimination Class  
19 the benefits of their employment with Defendants because of their age constitutes willful, knowing,  
20 intentional, and unlawful discrimination in violation of the FEHA.

21 88. Mr. Fonseca is informed and believes, and based thereon alleges, that his and the  
22 members of the Age Discrimination Class’s years of age was the substantial motivating factor in  
23 Defendants’ decision to terminate Plaintiff and the members of the Age Discrimination Class.

24 89. In addition to the conduct described above, Defendants have failed to prevent,  
25 respond to, adequately investigate, and/or appropriately resolve instances of age discrimination in  
26 the workplace.

27 90. As a direct and proximate result of Defendants’ willful, knowing, and intentional  
28 discrimination against Mr. Fonseca and the members of the Age Discrimination Class, Mr. Fonseca

1 and the members of the Age Discrimination Class have suffered and will continue to suffer pain and  
2 suffering, and extreme and severe mental anguish and emotional distress. Mr. Fonseca and the  
3 members of the Age Discrimination Class are therefore entitled to general and compensatory  
4 damages in an amount to be proven at trial.

5 91. As a direct and proximate result of Defendants' willful, knowing, and intentional  
6 discrimination against Mr. Fonseca and the members of the Age Discrimination Class, Mr. Fonseca  
7 and the members of the Age Discrimination Class have incurred and will continue to incur a loss of  
8 earnings and other employment benefits and job opportunities. Mr. Fonseca and the members of  
9 the Age Discrimination Class are therefore entitled to general and compensatory damages in  
10 amounts to be proven at trial.

11 92. Mr. Fonseca is informed and believes, and based thereon alleges, that Defendants'  
12 outrageous conduct directed at Mr. Fonseca and the members of the Age Discrimination Class  
13 described above, was done with malice, fraud, or oppression and with conscious and/or reckless  
14 disregard for the rights of Mr. Fonseca and the members of the Age Discrimination Class, and with  
15 the intent, design, and purpose of injuring them. Defendants, through their officers, managing  
16 agents, and or their supervisors, authorized, condoned, and or ratified the unlawful of all of the  
17 other defendants. Thus, Mr. Fonseca and the members of the Age Discrimination Class are entitled  
18 to exemplary or punitive damages from Defendants in amounts to be determined according to proof  
19 at trial.

20 93. As a further direct and proximate result of Defendants' actions, Mr. Fonseca and the  
21 members of the Age Discrimination Class are entitled to and seek their attorney fees and costs. (*See*  
22 *Cal. Govt. Code § 12965(b).*)

23 94. Mr. Fonseca and the members of the Age Discrimination Class also seek the  
24 "affirmative relief" or "prospective relief" afforded them under California Government Code  
25 section 12926(a).  
26  
27  
28

1 **SECOND CAUSE OF ACTION**

2 **Age Discrimination: Disparate Impact – Cal. Govt. Code §§ 12940(a), 12941**

3 **(Plaintiff Bryant Fonseca, on Behalf of Himself and the Age Discrimination Class Against**  
4 **Defendants)**

5 95. Mr. Fonseca, on behalf of himself and the Age Discrimination Class, re-alleges and  
6 incorporates by reference, as though fully set forth herein, all of the preceding paragraphs.

7 96. The FEHA protects employees over the age of 40. (Cal. Govt. Code §§ 12926(b),  
8 12941(a).) Mr. Fonseca was an employee of HP over the age of 40—when HP fired Mr. Fonseca,  
9 he was 55 years old. Thus, because Mr. Fonseca was an employee over the age of 40 at the time of  
10 his firing, he is in a class of persons protected by the FEHA. Likewise, all members of the Age  
11 Discrimination Class were aged 40 or over at the time of their termination pursuant to the  
12 Workforce Reduction Plan and are thus protected by the FEHA.

13 97. When Mr. Fonseca and the members of the Age Discrimination Class applied for  
14 other positions within HP and HP refused to select them for comparable positions within HP, Mr.  
15 Fonseca and the members of the Age Discrimination Class were aged 40 or over and were therefore  
16 in a class of persons the FEHA protects.

17 98. The FEHA covers “employers” who are “regularly employing five or more persons.”  
18 (Cal. Govt. Code § 12926(d).) HP employs more than five persons and is therefore an employer  
19 under the FEHA.

20 99. As part of its reduction in workforce, HP implemented its Workforce Reduction  
21 Plan.

22 100. HP’s Workforce Reduction Plan disproportionately selected for termination HP’s  
23 employees aged at least 40 years. Further, HP’s Workforce Reduction Plan disproportionately  
24 terminated the employment of HP’s employees aged at least 40 years. For example, among all  
25 those terminated under the Workforce Reduction Plan, over 85% were at least 40 years old. In  
26 other words, out of a total of 2,076 employees laid off under the Workforce Reduction Plan, 1,765  
27 were 40 years old or older. HP’s Workforce Reduction Plan adversely affected Mr. Fonseca and  
28 the members of the Age Discrimination Class through HP selecting and terminating them. Mr.  
Fonseca and the members of the Age Discrimination Class were also adversely affected by

1 Defendants not re-hiring, re-instating, or hiring Mr. Fonseca and the members of the Age  
2 Discrimination Class, especially in comparable positions.

3 101. HP's implementation of the Workforce Reduction Plan was a substantial factor in  
4 directly and proximately causing harm to Mr. Fonseca and the members of the Age Discrimination  
5 Class.

6 102. In addition to the conduct described above, Defendants have failed to prevent,  
7 respond to, adequately investigate, and/or appropriately resolve instances of age discrimination in  
8 the workplace.

9 103. As a substantial direct and proximate result of HP implementing the Workforce  
10 Reduction Plan to terminate Mr. Fonseca and the members of the Age Discrimination Class, Mr.  
11 Fonseca and the members of the Age Discrimination Class have suffered and will continue to suffer  
12 pain and suffering, and extreme and severe mental anguish and emotional distress. Mr. Fonseca and  
13 the members of the Age Discrimination Class are therefore entitled to general and compensatory  
14 damages in an amount to be proven at trial.

15 104. As a substantial direct and proximate result of HP implementing the Workforce  
16 Reduction Plan against Mr. Fonseca and the members of the Age Discrimination Class, Mr.  
17 Fonseca and the members of the Age Discrimination Class have incurred and will continue to incur  
18 a loss of earnings and other employment benefits and job opportunities. Mr. Fonseca and the  
19 members of the Age Discrimination Class are therefore entitled to general and compensatory  
20 damages in amounts to be proven at trial.

21 105. Mr. Fonseca is informed and believes, and based thereon alleges, that Defendants'  
22 outrageous conduct directed at Mr. Fonseca and the members of the Age Discrimination Class  
23 described above, was done with malice, fraud, or oppression and with conscious and/or reckless  
24 disregard for the rights of Mr. Fonseca and the members of the Age Discrimination Class, and with  
25 the intent, design, and purpose of injuring them. Defendants, through their officers, managing  
26 agents, and or their supervisors, authorized, condoned, and or ratified the unlawful of all of the  
27 other defendants. Thus, Mr. Fonseca and the members of the Age Discrimination Class are entitled  
28 to exemplary or punitive damages from Defendants in amounts to be determined according to proof



1 at trial.

2 106. As a further direct and proximate result of Defendants' actions, Mr. Fonseca and the  
3 members of the Age Discrimination Class are entitled to and seek their attorneys' fees and costs.  
4 (*See* Cal. Govt. Code § 12965(b).)

5 107. Mr. Fonseca and the members of the Age Discrimination Class also seek the  
6 "affirmative relief" or "prospective relief" afforded them under California Government Code  
7 section 12926(a).

### 8 **THIRD CAUSE OF ACTION**

#### 9 **Wrongful Termination in Violation of Public Policy**

#### 10 **(Plaintiff Bryant Fonseca, on Behalf of Himself and the Age Discrimination Class Against** 11 **Defendants)**

12 108. Mr. Fonseca, on behalf of himself and the Age Discrimination Class, re-alleges and  
13 incorporates by reference, as though fully set forth herein, all of the preceding paragraphs.

14 109. It is the public policy of the State of California, as expressed in the FEHA (Cal.  
15 Gov't Code § 12940, *et seq.*) and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, *et*  
16 *seq.*) that employers shall not subject employees to age discrimination and terminate employees  
17 because of age. This public policy of the State of California is one that benefits the public at large  
18 and guarantees the rights of employees to perform their work free from discrimination. Further  
19 public policy support for the wrongful termination claims of Mr. Fonseca and the members of the  
20 Age Discrimination Class is also found in California Labor Code sections 6300, 6400, and the  
21 California Constitution Article I, section 8.

22 110. As a direct and proximate result of Defendants' willful, knowing, and intentional  
23 discriminatory termination against Mr. Fonseca and the members of the Age Discrimination Class,  
24 Mr. Fonseca and the members of the Age Discrimination Class have suffered and will continue to  
25 suffer pain and suffering and extreme and severe mental anguish and emotional distress. Mr.  
26 Fonseca and the members of the Age Discrimination Class are thereby entitled to general and  
27 compensatory damages in amounts to be proven at trial.

28 111. As a direct and proximate result of Defendants' willful, knowing, and intentional

1 discriminatory termination against Mr. Fonseca and the members of the Age Discrimination Class,  
2 Mr. Fonseca and the members of the Age Discrimination Class have incurred and will continue to  
3 incur a loss of earnings and other employment benefits and job opportunities. Mr. Fonseca and the  
4 members of the Age Discrimination Class are thereby entitled to general and compensatory  
5 damages in amounts to be proven at trial.

6 112. Mr. Fonseca is informed and believes, and based thereon alleges, that Defendants  
7 directed the outrageous conduct directed at Mr. Fonseca and the members of the Age  
8 Discrimination Class, as described above, with malice, fraud, and or oppression and with conscious  
9 disregard for the rights of Mr. Fonseca and the members of the Age Discrimination Class and with  
10 the intent, design, and purpose of injuring them. Defendants, through their officers, managing  
11 agents and or their supervisors, authorized, condoned and or ratified the unlawful conduct of all of  
12 the other defendants. Thus, Mr. Fonseca and the members of the Age Discrimination Class are  
13 entitled to punitive or exemplary damages in a sum according to proof at trial.

14 113. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action  
15 against Defendants under California Code of Civil Procedure section 1021.5 and other applicable  
16 law. A successful outcome in this action will confer on the general public and a large class of  
17 persons (the Age Discrimination Class) both a pecuniary and nonpecuniary benefit and will result in  
18 the enforcement of important rights affecting the public interest. The necessity and financial burden  
19 of private enforcement furthermore make such an award appropriate.  
20

#### 21 **FOURTH CAUSE OF ACTION**

##### 22 **Failure to Prevent Discrimination – Cal. Govt. Code §§ 12900, *et seq.***

##### 23 **(Plaintiff Bryant Fonseca on Behalf of Himself and the Age Discrimination Class Against** 24 **Defendants)**

25 114. Mr. Fonseca, on behalf of himself and the Age Discrimination Class, re-alleges and  
26 incorporates by reference, as though fully set forth herein, all of the preceding paragraphs.

27 115. The FEHA protects employees over the age of 40. (Cal. Gov't Code §§ 12926(b),  
28 12941(a).) Mr. Fonseca was an employee of HP over the age of 40—when HP fired Mr. Fonseca,  
he was 55 years old. Thus, because Mr. Fonseca was an employee over the age of 40 at the time of

1 his firing, he is in a class of persons protected by the FEHA. Likewise, all members of the Age  
2 Discrimination Class were aged 40 or over at the time of their termination pursuant to the  
3 Workforce Reduction Plan and are thus protected by the FEHA.

4 116. The FEHA covers “employers” who are “regularly employing five or more persons.”  
5 (Cal. Govt. Code § 12926(d).) HP employs more than five persons and is therefore an employer  
6 under the FEHA.

7 117. HP subjected Mr. Fonseca and the members of the Age Discrimination Class to  
8 discrimination when HP selected Mr. Fonseca and the members of the Age Discrimination Class for  
9 termination under HP’s Workforce Reduction Plan. In addition, HP subjected Mr. Fonseca and the  
10 members of the Age Discrimination Class to discrimination when HP terminated Mr. Fonseca and  
11 the members of the Age Discrimination Class under the Workforce Reduction Plan. Mr. Fonseca  
12 and the members of the Age Discrimination Class were also subjected to discrimination by  
13 Defendants not re-hiring, re-instating, or hiring Mr. Fonseca and the members of the Age  
14 Discrimination Class, especially in comparable positions.

15 118. HP failed to take all reasonable steps to prevent Mr. Fonseca and the members of the  
16 Age Discrimination Class’s discriminatory selection and termination under HP’s Workforce  
17 Reduction Plan. HP’s failure to take reasonable steps to prevent Mr. Fonseca and the members of  
18 the Age Discrimination Class’s discriminatory termination under HP’s Workforce Reduction Plan  
19 was a substantial factor in causing harm to Mr. Fonseca and the members of the Age Discrimination  
20 Class.

21 119. As a substantial direct and proximate result of Defendants willfully, knowingly, and  
22 intentionally discriminating against Mr. Fonseca and the members of the Age Discrimination Class,  
23 Mr. Fonseca and the members of the Age Discrimination Class have suffered and will continue to  
24 suffer pain and suffering and extreme and severe mental anguish and emotional distress. Thus, Mr.  
25 Fonseca and the members of the Age Discrimination Class are entitled to general and compensatory  
26 damages in an amount to be proven at trial.

27 120. As a substantial direct and proximate result of Defendants’ willful, knowing, and  
28 intentional discrimination against Mr. Fonseca and the members of the Age Discrimination Class,  
Mr. Fonseca and the members of the Age Discrimination Class have incurred and will continue to

1 incur a loss of earnings and other employment benefits and job opportunities. Mr. Fonseca and the  
2 members of the Age Discrimination Class are therefore entitled to general and compensatory  
3 damages in amounts to be proven at trial.

4 121. Mr. Fonseca is informed and believes, and based thereon alleges, that Defendants'  
5 outrageous conduct directed at Mr. Fonseca and the members of the Age Discrimination Class  
6 described above, was done with malice, fraud, or oppression and with conscious and/or reckless  
7 disregard for the rights of Mr. Fonseca and the members of the Age Discrimination Class, and with  
8 the intent, design, and purpose of injuring them. Defendants, through their officers, managing  
9 agents, and or their supervisors, authorized, condoned, and or ratified the unlawful of all of the  
10 other defendants. Thus, Mr. Fonseca and the members of the Age Discrimination Class are entitled  
11 to exemplary or punitive damages from Defendants in amounts to be determined according to proof  
12 at trial.

13 122. As a further direct and proximate result of Defendants' actions, Mr. Fonseca and the  
14 members of the Age Discrimination Class are entitled to and seek their attorney fees and costs. (See  
15 Cal. Govt. Code § 12965(b).)

16 123. Mr. Fonseca and the members of the Age Discrimination Class also seek the  
17 "affirmative relief" or "prospective relief" afforded them under California Government Code  
18 section 12926(a).

19 **FIFTH CAUSE OF ACTION**

20 **Violation of the Cartwright Act – California Business and Professions Code §§ 16720 *et seq.***  
21 **(Plaintiff Bryant Fonseca, on Behalf of Himself and the Antitrust Class Against Defendants)**  
22

23 124. Mr. Fonseca, on behalf of himself and the Antitrust Class, re-allege and incorporate  
24 by reference, as though fully set forth herein, all of the preceding paragraphs.

25 125. Except as expressly provided in California Business and Professions Code sections  
26 16720 *et seq.*, every trust is unlawful, against public policy, and void. A trust is a combination of  
27 capital, skill, or acts by two or more persons for any of the following purposes:

- 28
- a. To create or carry out restrictions in trade or commerce.
  - b. To limit or reduce the production, or increase the price of

1 merchandise or of any commodity.

2 c. To prevent competition in manufacturing, making, transportation, sale  
3 or purchase of merchandise, produce or any commodity.

4 d. To fix at any standard or figure, whereby its price to the public or  
5 consumer shall be in any manner controlled or established, any article  
6 or commodity of merchandise, produce or commerce intended for  
7 sale, barter, use or consumption in this State.

8 126. HP, by and through its officers, directors, employees, agents or other representatives,  
9 has entered into an unlawful agreement, combination, and conspiracy in restraint of trade, in  
10 violation of California Business and Professions Code section 16720.

11 127. HP conspired with 3D Systems and entered into an unlawful trust agreement in  
12 restraint of trade and commerce by, among other things, restricting and limiting, to a substantial  
13 degree, competition among these defendants' skilled labor, and fixing the wages and salary ranges  
14 for said class members, all with the purpose and effect of suppressing class members' compensation  
15 and restraining competition in the market for services of members of the Antitrust Class.

16 128. As a direct and proximate result of HP's conduct members of the Antitrust Class  
17 were also injured by incurring suppressed compensation to levels lower than the members  
18 otherwise would have incurred in the absence of HP's unlawful trust, all in an amount to be proven  
19 at trial.

20 129. HP, Plaintiff, and other members the Antitrust Class are "persons" within the  
21 meaning of the Cartwright Act as defined in California Business and Professions Code section  
22 16702.

23 130. HP's practices and associated agreements are *per se* violations of the Cartwright Act,  
24 and their conduct violates the Cartwright Act.

25 131. As a result of the above violations, Plaintiff and the Antitrust Class have been  
26 damaged in an amount according to proof.

27  
28

1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Business and Professions Code §§ 16600 *et seq.***

3 **(Plaintiff Bryant Fonseca, on Behalf of Himself and the Antitrust Class Against Defendants)**

4 132. Mr. Fonseca, on behalf of himself and the Antitrust Class, re-allege and incorporate  
5 by reference, as though fully set forth herein, all of the preceding paragraphs.

6 133. Under California Business and Professions Code section 16600, *et seq.*, except as  
7 expressly provided for by section 16600, *et seq.*, every contract by which anyone is restrained from  
8 engaging in a lawful profession, trade, or business of any kind is to that extent void.

9 134. HP entered into, implemented, enforced agreements, and engaged in practices that  
10 are unlawful and void under Section 16600.

11 135. HP's practices, agreements, and conspiracy have included concerted action and  
12 undertakings among the Defendant and others with the purpose and effect of: (a) reducing open  
13 competition among Defendant and other companies for skilled labor; (b) reducing employee  
14 mobility; (c) reducing or eliminating opportunities for employees to pursue lawful employment of  
15 their choice; and (d) limiting employee professional betterment.

16 136. HP's practices, agreements, and conspiracy are contrary to California's settled  
17 legislative policy in favor of open competition and employee mobility, and are therefore void and  
18 unlawful.

19 137. HP's practices, agreements, and conspiracy were not intended to protect and were  
20 not limited to protecting any legitimate proprietary interest of Defendant.

21 138. HP's practices, agreements, and conspiracy do not fall within any statutory  
22 exception to Section 16600, *et seq.*

23 139. The acts done by HP and each of the parties to the anti-competitive practices and  
24 agreements as part of, and in furtherance of, their contracts, combinations or conspiracies were  
25 authorized, ordered, or done by their respective officers, directors, agents, employees, or  
26 representatives while actively engaged in the management of each defendant's affairs

27 140. Accordingly, Plaintiff and members of Antitrust Class seek a judicial declaration that  
28 Defendant's agreements and conspiracy are void as a matter of law under Section 16600, and a

1 permanent injunction enjoining HP from ever again entering into similar agreements in violation of  
2 Section 16600.

3 141. Although Plaintiff is unaware of the exact date that this conspiracy began, Plaintiff  
4 alleges upon information and belief that this cause of action accrued within the last four years.

5  
6 **SEVENTH CAUSE OF ACTION**

7 **Unfair Competition – California Business and Professions Code §§ 17200, *et seq.***

8 **(Plaintiff Bryant Fonseca on Behalf of Himself and the Age Discrimination Class and**  
9 **Antitrust Class Against Defendants)**

10 142. Mr. Fonseca, on behalf of himself and the Age Discrimination Class and Antitrust  
11 Class, re-allege and incorporate by reference, as though fully set forth herein, all of the preceding  
12 paragraphs.

13 143. The Unfair Competition Law (“UCL”), which is codified under California Business  
14 and Professions Code section 17200, *et seq.* prohibits acts of “unfair competition,” including any  
15 unlawful, unfair, fraudulent *or* deceptive business act *or* practice as well as “unfair, deceptive,  
16 untrue or misleading advertising.”

17 144. A plaintiff may bring a Business & Professions Code section 17204 claim even  
18 when the underlying statutory violation does not provide the plaintiff with a private right of action.  
19 (*See Safeway v. Superior Court* (2015) 238 Cal. App. 1138, 1147 [“[t]he statutory language  
20 referring to 'any unlawful, unfair *or* fraudulent' practice makes clear that a practice may be deemed  
21 unfair even if not specifically proscribed by some other law”].)

22 145. Defendants have engaged, and continue to engage, in unfair, deceptive, fraudulent,  
23 and unlawful business practices in California by practicing, employing, and utilizing the  
24 employment policies and practices outlined above, including, i.e., the various acts of discrimination  
25 and anti-competitive practices detailed herein.

26 146. Defendants engaged in unlawful or unfair competition by, among other things,  
27 engaging in conduct as alleged herein:

28 a. wherein the utility of such conduct, if any, is outweighed by the

1 gravity of the consequences to Plaintiff and the members of the  
2 Plaintiff Classes;

- 3 b. that is immoral, unethical, oppressive, unscrupulous, or substantially  
4 injurious to Plaintiff and the other members of the Plaintiff Classes;  
5 c. that undermines or violates the stated policies underlying California  
6 law which seek to protect employees aged 40 or over against age  
7 discrimination, and thus provide a sufficient predicate for claims for  
8 unfair competition;  
9 d. Violating the Cartwright Act; and  
10 e. Violation of the California Business and Professions Code sections §§

11 16600 *et seq.*

12 147. Defendants knew or should have known of their anti-competitive and discriminatory  
13 conduct as alleged herein.

14 148. Defendants committed fraudulent business practices by engaging in conduct, as  
15 alleged herein, that was and is likely to deceive employees acting reasonably under the  
16 circumstances. Defendants' fraudulent business practices include, but are not limited to, failing to  
17 disclose, concealing from, and/or failing to investigate whether Plaintiff and the members of the  
18 Age Discrimination Class were being selected for termination, terminated, and not re-hired due to  
19 their age, misrepresenting the reasons for those actions, including through reference to pretextual  
20 explanations related to job performance or qualifications, and/or failing to prevent, respond to,  
21 adequately investigate, and/or appropriately resolve instances of age discrimination in the  
22 workplace, including the adverse impact of Defendants' employment practices on employees aged  
23 40 or over.

24 149. Defendants also acted unlawfully and unfairly by engaging in anti-competitive  
25 practices to suppress wages of their respective workforce by restricting the ability of its employees  
26 from obtaining employment with other technology companies, to wit 3D Systems.

27 150. Defendants' use of such unfair, deceptive, fraudulent, and unlawful business  
28 practices constitutes unfair, deceptive, fraudulent, and unlawful competition, provides an unfair  
advantage over Defendants' competitors, and an unfair benefit to Defendants at the expense of



1 Plaintiff, the members of the Age Discrimination Class and Antitrust Class, and the general public.

2 151. During the class period, Defendants have engaged in unlawful, deceptive, fraudulent,  
3 and unfair business practices, proscribed by Business & Professions Code sections 17200, *et seq.*,  
4 including those described herein, thereby obtaining valuable property, money, and services from  
5 Plaintiff, members of the Age Discrimination Class and Antitrust Class, and all persons similarly  
6 situated, and have deprived Plaintiff, members of the Age Discrimination Class and Antitrust Class,  
7 and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their  
8 detriment.

9 152. By virtue of the direct injuries that Plaintiff and the members of the Plaintiff Classes  
10 have sustained from Defendants' wrongful conduct, Plaintiff and the members of the Plaintiff  
11 Classes have standing to sue in order to obtain the remedies that are available to them under the  
12 UCL.

13 153. The UCL authorizes restitutionary and injunctive relief to prevent unlawful,  
14 deceptive, unfair, or fraudulent business acts for practices, and both restitution and disgorgement of  
15 money or property wrongfully obtained by means of such unfair competition. (Cal. Bus. & Prof.  
16 Code § 17203.)

17 154. Plaintiff seeks, on his own behalf, and on behalf of the other members of the  
18 Plaintiff Classes and on behalf of the general public, equitable and injunctive relief, along with full  
19 restitution and disgorgement of monies, including interest, according to proof, to restore any and all  
20 monies withheld, acquired and/or converted by Defendants by means of the deceptive, unfair,  
21 fraudulent, and unlawful practices complained of herein.

22 155. The illegal, deceptive, fraudulent, and unfair conduct alleged herein is continuing,  
23 and there is no indication that Defendants will cease and desist from such activity in the future.  
24 Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,  
25 Defendants' illegal, deceptive, fraudulent, and unfair conduct will continue, i.e. they will continue  
26 to engage in practices that disparately impact and discriminate against employees on account of age.  
27 (*See Herr v. Nestle U.S.A., Inc.* (2003) 109 Cal. App. 4th 779, 789 — “injunctive relief under the  
28 UCL is an appropriate remedy where a business has engaged in an unlawful practice of  
discriminating against older workers.”)

1           156.     Plaintiff, the members of the Age Discrimination Class, and all persons in interest,  
2 are entitled to, and do seek restitution and such relief as may be necessary to disgorge the profits  
3 which HP acquired, or of which Plaintiff and the members of the Age Discrimination Class have  
4 been deprived, by means of the above-described unfair, unlawful, deceptive, and or fraudulent  
5 business practices.

6           157.     Plaintiff and the members of the Age Discrimination Class and Antitrust Class have  
7 no plain, speedy, and or adequate remedy at law to redress the injuries which they have suffered as  
8 a consequence of HP's unfair, unlawful, deceptive, and/or fraudulent business practices. As a result  
9 of the unfair, unlawful, deceptive, and/or fraudulent business practices described above, Plaintiff  
10 and the members of the Age Discrimination Class and Antitrust Classes have suffered and will  
11 continue to suffer irreparable harm unless HP, and each of the defendants, are restrained from  
12 continuing to engage in said unfair, unlawful, and/or fraudulent business practices.

13           158.     Plaintiff and the members of the Age Discrimination Class and Antitrust Class also  
14 request an order that HP identify, locate, and make restitution to affected members of the general  
15 public, and specifically those terminated under the Workforce Reduction Plan, all funds and the  
16 value of all things or property acquired by the acts of unfair competition and deceptive practices set  
17 forth above, and all additional orders necessary to accomplish this purpose, under California  
18 Business & Professions Code section 17203.

19           159.     For the four (4) years preceding the filing of this action, as a result of HP's unfair,  
20 deceptive, fraudulent, and unlawful business practices alleged herein, Plaintiff and the members of  
21 the Age Discrimination Class and Antitrust Class request restitution, damages to compensate them  
22 fully, and disgorgement of all monies and profits from HP in an amount according to proof at time  
23 of trial.

24           160.     Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action  
25 against Defendants under California Code of Civil Procedure section 1021.5 and other applicable  
26 law. A successful outcome in this action will confer on the general public and a large class of  
27 persons (the Age Discrimination and Antitrust Classes) both a pecuniary and nonpecuniary benefit  
28 and will result in the enforcement of important rights affecting the public interest. The necessity  
and financial burden of private enforcement furthermore make such an award appropriate.

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of himself individually and on behalf of Plaintiff Classes prays for  
3 relief and judgment against Defendant and any later named defendant, jointly and severally as  
4 follows:

- 5 1. Certification of the case as a class action and appointment of Plaintiff as Class  
6 Representative of each class and his counsel of record as Class Counsel;
- 7 2. All damages to which Plaintiffs and each member of the Age Discrimination  
8 Class and Antitrust Class are entitled due to Defendants' conduct, including,  
9 but not limited to, back pay, front pay, general and special damages for lost  
10 compensation and job benefits that they would have received but for the  
11 discrimination anti-competitive practices of Defendants;
- 12 3. To preliminarily and permanently enjoin Defendants from implementation of  
13 the Workforce Reduction Plan that disparately impacts and discriminates  
14 against employees on account of their age;
- 15 4. For an order requiring Defendants to restore to the general public all funds  
16 acquired by means of any act or practice declared by this Court to be unlawful  
17 or fraudulent or to constitute unfair competition under California Business and  
18 Professions Code section 17200, *et seq.*;
- 19 5. For restitution, including, without limitation, restitutionary disgorgement;
- 20 6. For affirmative or prospective relief;
- 21 7. For exemplary and punitive damages;
- 22 8. For attorneys' fees, expenses, and costs of suit;
- 23 9. For pre-judgment and post-judgement interest;
- 24 10. An order enjoining Defendants from continuing the unfair, deceptive,  
25 fraudulent, and unlawful business practices alleged herein; and
- 26 11. For all such other and further relief the Court may deem just and proper.

27 DATED: November 29, 2017

**HOGUE & BELONG**

28 *s/ Jeffrey Hogue*  
Jeffrey L. Hogue  
Tyler J. Belong  
Erik A. Dos Santos  
Attorneys for Plaintiff Bryant Fonseca on  
behalf of himself and all others similarly  
situated

**DEMAND FOR JURY TRIAL**

Plaintiffs Bryant Fonseca hereby demands a jury trial.

DATED: November 29, 2017

**HOGUE & BELONG**

*s/ Jeffrey Hogue*

Jeffrey L. Hogue

Tyler J. Belong

Erik A. Dos Santos

Attorneys for Plaintiff Bryant Fonseca on  
behalf of himself and all others similarly  
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