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

21 DONNA J. FORSYTH, SIDNEY L. STATON
22 III, ARUN VATTURI, and DAN WEILAND,
23 for and on behalf of themselves and other
24 persons similarly situated,

25 Plaintiffs,

26 vs.

27 HP INC. and HEWLETT PACKARD
28 ENTERPRISE COMPANY,

Defendants.

Case No.

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Donna J. Forsyth, Sidney L. Staton III, Arun Vatturi, and Dan Weiland, on
2 behalf of themselves and other persons similarly situated, for their Complaint against HP Inc. and
3 Hewlett Packard Enterprise Company, allege as follows:

4 **INTRODUCTION**

5 1. In recent years, technology giant Hewlett Packard has made it a priority to
6 transform itself from an “old” company into a “younger” operation. On several occasions since
7 2012, HP has publicly admitted that its objective is to get younger. Striving to reach this goal, HP
8 has shed thousands of its older employees while at the same time aggressively recruiting much
9 younger employees to replace them.

10 2. Plaintiffs are employees who were recently laid off due to HP’s practice of illegal
11 age discrimination. Plaintiffs are representatives of a nationwide class of similarly-situated
12 individuals.

13 3. Plaintiffs Sidney Staton and Arun Vatturi are representatives of a class of
14 individuals who also have California state law claims, in addition to being representatives of a
15 nationwide class of people who have claims under federal law.

16 4. The purpose of this action is to recover damages and seek other relief available to
17 Plaintiffs and other class members under the Age Discrimination in Employment Act (ADEA), 29
18 U.S.C. § 621, et seq., as well as under the California Fair Employment and Housing Act (FEHA),
19 Government Code §§ 12900-12996, and other California state laws.

20 **THE PARTIES**

21 5. Plaintiff Donna Forsyth is a resident of the State of Washington. She worked at the
22 Hewlett Packard Enterprise Company (and previously Hewlett-Packard Company) until she was
23 laid off in May 2016, when she was 62 years old.

24 6. Plaintiff Sidney Staton is a resident of the State of California. He worked at
25 Hewlett-Packard Company until he was laid off in April 2015, when he was 54 years old.

26 7. Plaintiff Arun Vatturi is a resident of the State of California. He worked at HP,
27 Inc. (and previously Hewlett-Packard Company) until he was laid off in January 2016, when he
28 was 52 years old.

1 November 2015, the 2012 WFR Plan carried through to both HP, Inc. and Hewlett Packard
2 Enterprise Company, which implemented similarly-named WFR Plans. Throughout this
3 Complaint, HP's WFR Plans are referred to collectively as the "WFR Plans."

4 17. HP has employed various tactics to effectuate its publicly-stated goal of making
5 itself younger. In order to get younger, HP intentionally discriminated against its older employees
6 by targeting them for termination pursuant to the WFR Plans and then systematically replacing
7 them with younger employees.

8 18. HP also employed facially neutral programs that resulted in the disproportionate
9 termination of the employment of older employees as compared to younger ones. HP then
10 systematically replaced its older employees with younger hires.

11 19. Any excuse HP puts forth to justify its illegal age discrimination is a pretext.

12 **SUBSTANTIVE ALLEGATIONS**

13 ***HP's Publicly-Stated Goal to Get Younger***

14 20. While HP has been carrying out its drastic layoff plan, which is believed to be the
15 largest in American history, Meg Whitman, the CEO of former Hewlett-Packard Company, the
16 current CEO of Hewlett Packard Enterprise Company, and the current Chair of HP, Inc.'s board
17 of directors, has publicly made it abundantly clear that her overarching goal is for HP to get
18 younger.

19 21. As Ms. Whitman openly stated, more than once, her goal at HP has always been to
20 change HP's "labor diamond" into a "labor pyramid" or a "quite flat triangle" with large numbers
21 of young people at its base. Specifically, Ms. Whitman made the following statements during an
22 October 2013 Securities Analyst Meeting:

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

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

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

4

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

11 22. Ms. Whitman reiterated her position that HP needed to create a "labor pyramid"
12 that was "quite flat" during another Securities Analyst Meeting held in September 2015, stating:

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

17 23. In November 2015, more than three years after implementing the 2012 WFR Plan,
18 Ms. Whitman went on television to declare publicly that HP's goal was to get even younger still,
19 stating as follows during a CNBC interview:

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

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

27 24. These are just a few examples of Ms. Whitman's statements about what she
28 intended for HP as its senior officer or director. As Ms. Whitman made clear, HP's objective over
a period of years was to fire its older employees and replace them with younger ones.

29 25. To carry out Meg Whitman's orders, over a period of years, HP's senior
management team provided its managers throughout the country with two things simultaneously:
30 (a) specific numbers of employees to be permanently laid off; and (2) specific numbers of
31 requisitions for new hires. The layoff "slates" and "reqs" for new hires followed a distinct pattern.
32 An upper-level manager would order the layoff of a designated number of experienced older

1 on only a small group of employees that HP deceptively suggested were part of the appropriate
2 decisional unit, when in fact they were not.

3 29. Even the limited data from the Attachment A forms demonstrates, however, that
4 HP's employment practices in fact discriminated against older workers. Those practices had a
5 statistically significant disparate impact on older employees, who were significantly more likely
6 to have their employment terminated than younger employees.

7 30. For example, a preliminary analysis of Attachment A forms provided to HP
8 employees shows that older employees were significantly more likely to be terminated than
9 younger employees, reaching a statistical confidence level of three standard deviations—in other
10 words, to a statistical level of confidence in excess of 99%.

11 31. Furthermore, this significant statistical disparity (more than 3 standard deviations)
12 exists even though the Attachment A forms that HP prepared and distributed to former employees
13 did not fully portray the negative impact of HP's employment policies on older employees.
14 Indeed, HP improperly crafted its Attachment A forms far too narrowly and in such a manner as
15 to understate the true impact of the employment terminations on older employees.

16 32. If the Attachment A forms were accurate and properly identified all of the younger
17 employees who were not terminated or otherwise impacted by HP's employment practices, as
18 well as the additional older workers who were terminated, then the statistical disparity between
19 the impact on older employees versus younger ones would be even greater.

20 33. HP's illegal age discrimination is demonstrated by its use of employment policies
21 that on the surface appear to be facially neutral, but which unquestionably had a disparate
22 negative impact on older employees. Moreover, HP engaged in its discriminatory practices
23 willfully, with the clear intent to make the company younger based on the instructions of HP's
24 most senior management. As a result, HP committed age discrimination under both the disparate
25 impact and disparate treatment legal theories of liability.

HP's Other Efforts to Force Out Older Workers

1
2 34. In addition to laying off older workers in disproportionate numbers, HP adopted
3 employment policies and implemented other programs that were designed to force HP's older
4 workers out of the company, so that younger workers could take their places.

5 35. For example, in 2014 and 2016, HP implemented early phased retirement
6 programs under which HP employees over the age of 55 who had worked at HP for at least 10
7 years were encouraged to "voluntarily" phase out their employment with HP over a period of six,
8 12, or 18 months.

9 36. HP proposed that Plaintiff Dan Weiland take early phased retirement in September
10 2014. However, Mr. Weiland declined to retire voluntarily because he wanted to continue
11 working. Nevertheless, Mr. Weiland's supervisor tried to persuade Mr. Weiland to participate in
12 the program, even though it offered no significant benefits to Mr. Weiland. It was simply a way
13 for HP to apply pressure on Mr. Weiland to leave the company "voluntarily."

14 37. More recently, HP initiated a new early phased retirement program in 2016, which
15 was very similar to its 2014 program. By rebooting this program, HP was able to again apply
16 pressure on its older employees, including some who may have been too young to qualify for the
17 2014 program but who have now aged into eligibility for the 2016 program.

18 38. The 2014 and 2016 phased retirement programs put older employees in a dilemma
19 that works much to HP's advantage. During meetings where HP offers these phased retirement
20 programs to the older employees, the elephant in the room is looming. Each person is thinking,
21 like Mr. Weiland did: "If I turn down this phased retirement program, am I just going to be laid
22 off by HP anyway?" In Mr. Weiland's case, and in thousands of others, that very question was
23 answered in the way Mr. Weiland feared. After Mr. Weiland turned down the 2014 phased
24 retirement program, his employment was simply terminated as part of HP's WFR Plan.

25 39. HP adopted other policies that resulted in older employees being pressured to
26 leave the company. For example, before the 2012 WFR Plan was implemented, HP adopted new
27 employment policies that strongly encouraged HP's employees to work remotely from home.
28

1 44. The fact that HP intentionally hired a disproportionately large number of younger
2 workers to replace those it terminated is also supported by internal directives provided to HP's
3 hiring managers by senior management.

4 45. For example, in August 2013, HP's Human Resources department distributed
5 written guidelines stating that HP's "New corporate requisition policy requires **75%** of all
6 External hire requisitions be 'Graduate' or 'Early Career'" employees."

7 46. HP's use of the words "Graduate" and "Early Career" in this document
8 summarizing HP's new employment policy demonstrates its intent to hire younger workers.

9 47. As HP defined the term, a "Graduate" hire was someone who was about to
10 graduate or graduated within the previous 12 months.

11 48. An "Early Career" hire was somebody who had completed his or her degree and
12 had **up to** five years of experience related to the job for which they were applying.

13 49. Furthermore, across HP, managers were advised in writing to "look for and create
14 opportunities to enhance [their] labor structure" through "Early Career hiring."

15 50. HP's Human Resources employees were also instructed to "[h]elp convert or
16 repurpose" their "current requisitions, as appropriate, to Early Career requisitions."

17 51. HP's Human Resources department knew its focus on hiring younger employees
18 might raise some concerns with its older "long term" employees. In an internal memorandum, HP
19 management recognized a need to address the obvious—specifically, to "*[a]ddress [the] issue of*
20 *long term employees being perceive[d] as bypassed by the next gen[eration].*"

21 52. Nonetheless, to attract younger employees, HP continued to use online job
22 openings that contained blatant statements such as:

- 23 • This position is for a recent college graduate. To qualify, you must have
24 graduated with your Bachelor's or Master's degree within the last 12
25 months.
- 26 • In order to be considered for this role, you must have graduated within 12
27 months of the start date. . . [W]e can only consider graduates who have
28 graduated between August 2014 and September 2015.
- Must have graduated within 12 months of July, 2016.

- 1 • This position is for a recent college graduate. To qualify you must have received your last degree within the past 12 months.
- 2 • The candidate must be a recent graduate.
- 3 • We are looking for recent college graduate and early career candidates. . . .
- 4 • The successful candidate must be near degree completion (Dec 2015 or prior) or have graduated within the past 12 months.
- 5 • Must be a recent graduate (2015) or graduating by January 2016.
- 6 • Must have completed degree within the past 12 months.
- 7 • We are looking for a future, or recent (within 12 months) College Graduate. . . .
- 8 • This position is for a recent university graduate.
- 9 • First Level University degree awarded within the past 12 months.
- 10 • Recent (graduation date between July 2014 and September 2015 only) college graduate. . . .
- 11 • We are seeking candidates who have recently graduated. . . . Only applicants who have graduated within the past year (July 2014 - August 2015) will be considered for this role, and this will be verified during the background check.
- 12 • Recent college graduates preferred.

13 *HP's Age Discrimination Is Willful*

14 53. HP knew its practice of firing old and hiring young was discriminatory but it
15 continued doing it anyway, making its age discrimination willful.

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

20 55. Notably, HP did not suggest that it should rethink or reconsider its discriminatory
21 hiring practices, but decided it should simply avoid using certain words in its job postings and
22 advertisements, to “mitigate” the potential litigation risk.

23 56. In fact, as seen in other cases involving illegal employment discrimination (e.g.,
24 race or gender discrimination), HP made blanket, stereotypical statements about large groups of
25
26
27
28

1 employees based entirely on their age. For example, in internal documentation, HP stated that
2 anyone born between 1930 and 1946 could be considered a “Traditionalist” who moves “slow
3 and steady” and seeks “part time work.” As for “Baby Boomers” (born between 1946 and 1964),
4 HP considered them to be “rule breakers,” implying that this was undesirable. Conversely, when
5 it came to “Millennials,” HP made it clear that hiring new employees from this generation was
6 highly desirable. Indeed, HP specifically adopted strategies for “integrat[ing] millennials into the
7 workforce” and “educat[ing] managers and others on millennial characteristics.”

8 57. HP’s decision to define and refer to entire segments of its employees as “slow and
9 steady” or “rule breakers” based on the year in which those employees were born is not only
10 callous, but is at the heart of the very type of discrimination that the ADEA and similar California
11 laws were intended to prohibit. Furthermore, promoting such stereotypes only further exacerbates
12 unjustified biases against large portions of HP’s workforce based entirely on age.

13 58. Plaintiff Dan Weiland observed this first-hand from his then-supervisor, Mark
14 Wade, who described a recent phone call he had with HP’s human resources team as follows:

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

18 59. As these comments demonstrate, HP was certainly effective in communicating to
19 its hiring managers that HP had a clear desire to “refresh” its “golden workforce” with younger
20 employees.

21 *The Named Plaintiffs’ Background*

22 Donna Forsyth

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

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

1 \$70 million through the implementation of his ideas. He was one of the 0.5% of employees at HP
2 who received the company's top performance review rating of "significantly exceeds
3 expectations" in HP's forced ranking system.

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

7 78. In January 2016, HP notified Mr. Vatturi, then 52 years old, that he was being
8 terminated pursuant to HP's ongoing WFR Plans. His last day of work at HP was January 22,
9 2016.

10 79. Consistent with HP's internal policies and practices as alleged in this Complaint,
11 when Mr. Vatturi's employment was terminated, he was replaced with "Graduate" or "Early
12 Career" hires who were significantly under the age of 40.

13 80. Mr. Vatturi filed a charge of discrimination with the EEOC that raised class-wide
14 claims for relief. He received a Notice of Right to Sue notice dated August 2, 2016. Therefore,
15 Mr. Vatturi has exhausted his administrative remedies.

16 Dan Weiland

17 81. Plaintiff Dan Weiland was hired by Hewlett-Packard Company as an independent
18 contractor in 2010. In February 2012, he was hired by Hewlett-Packard Company as a full-time
19 employee. His most recent position at the company was Project/Program Manager and Acting
20 Group Chief of Staff in HP's Test Operations & Technologies organization. When his
21 employment was terminated, Mr. Weiland worked for Hewlett-Packard Corporation in its
22 Houston, Texas offices.

23 82. Mr. Weiland performed his job duties in a satisfactory and competent manner. He
24 always met or exceeded HP's expectations.

25 83. In his last performance review before being laid off, HP praised Mr. Weiland as a
26 "solid contributor" who brought a "positive, 'can do' attitude" with him every day. HP also said
27 Mr. Weiland was "[a] pleasure to work with, well grounded, [had] outstanding dependability, and
28 work ethic." In 2014, Mr. Weiland received HP's "Making a Difference" award.

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

3 91. Common questions of law and fact among Plaintiffs and the members of the
4 Nationwide Class include, but are not limited to: (a) whether HP unlawfully terminated
5 Nationwide Class members in violation of the ADEA, (b) whether HP engaged in a pattern and
6 practice of age discrimination when selecting members of the Nationwide Class for termination
7 pursuant to a WFR Plan, (c) whether HP through its WFR Plans willfully and intentionally
8 discriminated against members of the Nationwide Class because of their age, (d) whether HP's
9 common employment policies and practices adversely impacted members of the Nationwide
10 Class; and (e) whether HP's purported reasons for laying off members of the Nationwide Class
11 pursuant to a WFR Plan were pretextual.

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

15 93. Plaintiffs and the members of the Nationwide Class are similarly situated because,
16 among other things, (a) they all worked for HP and are all aged 40 and older, (b) they are all
17 residents of the United States, (c) they were all subjected to the same company-wide policy of age
18 discrimination, (d) they were all subjected to the same company-wide policies that adversely
19 impacted them because of their age, (e) they were all terminated pursuant to a WFR Plan because
20 of their age, and (e) they were all given the same boilerplate reason for being selected for the
21 WFR Plans.

22 94. Individual variations among Plaintiffs and members of the Nationwide Class, such
23 as location, education, or job responsibilities, do not undermine common issues at stake here.
24 Plaintiffs allege a single scheme of age discrimination initiated at the very top of HP and carried
25 out through the entire company. Regardless of where an individual worked in the United States or
26 to which manager the individual reported, each member of the Nationwide Class faced the same
27 discrimination and discriminatory policies.

28

1 99. Plaintiffs Staton and Vatturi will adequately represent the interests of the members
2 of the California Class. Staton's and Vatturi's interests are co-extensive with those of the
3 California Class. They seek to remedy HP's discriminatory employment policies, procedures and
4 practices and will fairly and vigorously pursue claims on behalf of the California class. Staton and
5 Vatturi are willing and able to represent the California Class fairly and vigorously as they pursue
6 their individual claims in this action.

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

12 101. HP has acted or refused to act on grounds that apply generally to all members of
13 the California Class, so that final injunctive relief or corresponding declaratory relief is
14 appropriate respecting the California Class as a whole pursuant to Rule 23(b)(2).

15 102. HP has failed to create adequate incentives for its managerial and supervisory
16 personnel to comply with laws regarding the employment policies, practices, and procedures
17 described herein.

18 103. HP has acted on grounds generally applicable to Plaintiffs Staton and Vatturi and
19 the California Class by adopting and implementing systemic policies, practices, and procedures
20 that are discriminatory. Disparate impact and systemic age discrimination are HP's standard
21 operating procedures rather than sporadic occurrences.

22 104. In addition, HP has, in a discriminatory way, refused to act on grounds generally
23 applicable to the California Class by terminating them pursuant to a WFR Plan based on their age.

24 105. HP's systemic discriminatory acts and refusals to act have made appropriate the
25 requested final injunctive and declaratory relief with respect to the California Class as a whole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 121. Plaintiffs and members of the Nationwide Class were 40 years of age or older at
21 the time they were terminated.

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

26 123. As set forth more fully above, HP has utilized practices, policies and procedures
27 that have disparately impacted former employees of HP, resulting in an unlawful pattern or
28 practice of age discrimination in violation of the ADEA, 29 U.S.C. § 621 et seq. There was no

1 legitimate, non-discriminatory reason for its action, and any reasons HP may advance are
2 pretextual.

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

5 125. Each of the above-named Plaintiffs has been disparately impacted by HP's
6 practices, policies and procedures, in violation of the ADEA.

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

10 **COUNT 2 – AGE DISCRIMINATION UNDER THE FEHA**
11 **(On behalf of Plaintiffs Sidney Staton and Arun Vatturi and the California Class only)**

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

14 128. This is a representative action under the California Fair Employment and Housing
15 Act, Cal. Gov't Code § 12900, *et seq.* ("FEHA"). The FEHA prohibits employers from
16 discriminating on the basis of age. Cal. Gov. Code § 12940(a). Plaintiffs Staton and Vatturi bring
17 their FEHA claims on behalf of themselves and a class of similarly situated individuals.

18 129. HP has engaged in a pattern and practice of discriminating against individuals
19 aged 40 and older by knowingly and intentionally firing a disproportionately large number of
20 workers aged 40 and older while simultaneously hiring a disproportionately large number of
21 workers under the age of 40.

22 130. As a direct and proximate result of HP's intentional discrimination, Plaintiffs
23 Staton and Vatturi and a class of similarly situated individuals have had their employment
24 terminated.

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

1 132. HP's conduct has been intentional, deliberate, willful, malicious, reckless, and
2 conducted in callous disregard of the rights of Plaintiffs Staton and Vatturi and the California
3 Class members, entitling them to punitive damages.

4 133. HP's policies, procedures, and practices have produced a disparate impact on
5 Plaintiffs Staton and Vatturi and the California Class members with respect to the terms and
6 conditions of their employment.

7 134. By reason of the continuous nature of HP's discriminatory conduct, which
8 persisted throughout the employment of Plaintiffs Staton and Vatturi and the California Class
9 members, they are entitled to application of the continuing violations doctrine to all violations
10 alleged herein.

11 135. HP's actions constitute unlawful discrimination in violation of the FEHA.

12 136. As a direct and proximate result of the aforesaid age discrimination by HP,
13 Plaintiffs Staton and Vatturi and all similarly situated individuals have suffered damages in an
14 amount to be determined at trial.

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

17 137. Plaintiffs Staton and Vatturi hereby incorporate each paragraph above as though
18 fully set forth here.

19 138. HP discriminated against Plaintiffs Staton and Vatturi and the California Class
20 members by terminating their employment on the basis of their age.

21 139. HP's discrimination constitutes an unlawful employment practice in violation of
22 California public policy.

23 140. As a proximate result of HP's discriminatory conduct, Plaintiffs Staton and Vatturi
24 and the California Class members have been injured in their health, strength, and activity, all of
25 which have caused and continue to cause them to suffer mentally and emotionally.

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

1 142. HP discriminated on the basis of age with fraud, oppression, and malice. Plaintiffs
2 Staton and Vatturi and the California Class members are therefore entitled to exemplary and
3 punitive damages in an amount to be determined at trial.

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

7 143. Plaintiffs Staton and Vatturi hereby incorporate each paragraph above as though
8 fully set forth here.

9 144. Each of the Defendants is a “person” as defined under California Business &
10 Professions Code § 17021.

11 145. HP’s discrimination against its older employees, as alleged herein, constitutes
12 unlawful and/or unfair and/or fraudulent activity prohibited by the California Business &
13 Professions Code § 17200. As a result of its unlawful and/or unfair and/or fraudulent acts, HP
14 reaped and continues to reap unfair benefits at the expense of Plaintiffs Staton and Vatturi and the
15 California Class members. HP should be enjoined from these activities.

16 146. Accordingly, Plaintiffs Staton and Vatturi and the California Class members are
17 entitled to restitution with interest and other equitable relief.

18 **JURY DEMAND**

19 147. Plaintiffs hereby demand a trial by jury.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs request that the Court make orders and enter judgment in their
22 favor and against HP as follows:

- 23 1. Making such orders as are necessary and appropriate to certify this case for
24 treatment as a collective action under the ADEA;
- 25 2. Making such orders as are necessary and appropriate to certify the California
26 claims for class relief;
- 27 3. Designating the above-named Plaintiffs as representatives of the Nationwide
28 Class;

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