

C.A. No.: _____

competitor of HPE, when EMC is integrated with Dell's portfolio it will create one of the world's largest IT product companies that will be in a better position to compete head-to-head with HPE.

PARTIES

1. Plaintiff Hewlett Packard Enterprise Company is a Delaware corporation with its principal place of business at 3000 Hanover Street, Palo Alto, California 94304.

2. Defendant K.C. Choi is an individual, who upon information and belief currently resides at 1855 Carlisle Avenue, San Marino, California, 91108.

JURISDICTION AND VENUE

3. This action arises out of Defendant's breach of his post-employment obligations, specifically those included in his ARCIPD.

4. Jurisdiction and venue are proper because HPE is a Delaware corporation, and HPE and Choi expressly agreed that the venue for any legal action arising from his ARCIPD will be a federal or state court of competent jurisdiction located in the state of Delaware.

5. This Court has subject matter jurisdiction over this matter pursuant to, among other provisions, 10 Del. C. §341 Plaintiff primarily seeks injunctive relief.

6. Additionally, Defendant stipulated and consented to the personal jurisdiction of Delaware courts, and has expressly waived any right to object to any such court's exercise of jurisdiction on grounds of convenience or otherwise.

FACTUAL BACKGROUND

A. HPE'S BUSINESS

7. HPE is a business-focused organization with four divisions: Enterprise Group ("EG"), which works in servers, storage, networking, consulting and support; Enterprise Services; Software; and Financial Services.

8. HPE delivers high-quality, high-value products, consulting, and support services in a single package. HPE has industry-leading positions in servers, storage, wired and wireless networking, converged systems, software, services and cloud.

B. CHOI'S EMPLOYMENT AT HPE

9. Choi is a former senior executive of HPE. Most recently, Choi served as the Vice President, Global Solutions Architecture & Engineering for Hewlett Packard Enterprise Group. Previously, he served in a similar role for Hewlett Packard Company.

10. Choi was part of Senior Executive Leadership Team, which includes a select group including the Chief Executive Officer, the Vice Presidents of Research and Development (R&D), and the head of marketing, among others. In

this role, Choi was a highly compensated executive responsible for directing over 300 highly-skilled technical professionals around the nation and a headquarters staff of over 200. With over 25 years of experience in Hewlett Packard entities, he was not a low level or even mid-level employee. He was a high level executive in a position of significant responsibility and trust.

11. To perform his responsibilities for HPE, Choi learned and used extensive confidential information, proprietary information and trade secrets of HPE. As the leader in a global solutions position, Choi's work duties covered the entire United States and each of the foreign countries where HPE does business, and Choi's responsibilities involved substantial travel.

12. Choi was responsible for overseeing a headquarters team that provides tools, support, and content to support the global technical sales professionals for HPE solutions offerings. This team helps achieve customer business needs with solutions roadmaps and reference architectures, technical enablement for partner and internal technical sales professionals, central support for demonstration development, configurations and sizing, and global technical sales strategy and solutions.

13. In his role as Vice President, Choi worked intimately with the presales department. At HPE, presales helps marry the customer needs to HPE's company's services or products. This role is especially critical because HPE's products and

services are often heavily customizable, but also because HPE's customer needs may be unique. Thus, presales is responsible for understanding what the customer needs, developing an initial view of the solution, and then tailoring HPE's products or services to meet the customer's needs. Presales involves conducting a needs analysis, information gathering on client expectations, and technical baselines.

14. In short, presales works in concert with HPE's sales force and HPE's research and development department. For example, a sales executive will work with a customer about particular issues that they may need, but might not currently be addressed with the options known by or available to the sales executive. The sales executive may present these issues to presales, who will work with the sales executive to develop products and services that address the customer's needs and put solutions and supporting materials together for the sales executive to offer to the customer. In these instances, presales may work to create customer-specific customizations of HPE's products and services. In other instances, presales may be able to offer a configuration that has been done before, but which may be too technical for the sale executive to relay to the customer. In essence, Choi and his team served as experts in combining HPE's products and services into solutions for HPE's customers. Moreover, Choi was the worldwide leader of all HPE's employees who perform this work. Choi and his team were responsible for effectively communicating solutions architecture to the customer, third parties, and

the project teams – or working with other HPE employees who would make such communications.

15. Presales would also be involved in pricing and quoting these options to the customer. Presales works with the HPE sales team during the sales cycle providing value-based positioning, differentiators and demonstration to prospects and customers. Presales may be called upon to help sell or explain solutions to the customer, and may be an integral part in helping close the sale.

16. As part of the Senior Executive Leadership Team, Choi was the recipient of highly confidential strategic Company roadmaps, and, therefore, in Choi's role as Vice President, he had deep knowledge of the HPE's strategic roadmaps.

17. Choi was a joint host and sponsor of HPE's annual Worldwide Ambassador Summit Conference ("WWAS") where the Company would bring in the top R&D leadership of the company, as well as the top technical sales talent, to have deep discussions around strategic directions and longer term roadmaps as well as key field challenges and gaps. As a key participant in this event, Choi would see the vision, roadmap going forward, as well as key product gaps and issues.

18. Choi had meetings with the top R&D VP leaders where key strategic initiatives and status were discussed in detail.

19. Additionally, Choi had access to strategic initiatives and updates on activities. Specifically, in his role of leading the worldwide presales organization, Choi had visibility into the deepest and most strategic roadmaps HPE EG developed. These roadmaps are made available to only the most senior R&D leadership and other key executives. Roadmaps are considered extremely confidential.

20. In his role at HPE, Choi was privy to the Company's three year strategic roadmap. In other words, he would have access to and knowledge of the entire portfolio of anticipated goods and services for the next 3 years across the EG business, and insight into other HPE business units. These are long term business plans that including product development and marketing launch plans.

21. In short, Choi became inexorably and intimately knowledgeable about HPE's business model, including its client relationships, fees charged to clients, innovative methodologies, financial information, and their methods of operation.

22. Because of this knowledge and access to HPE's confidential and proprietary information, Choi would have the ability to point out gaps in HPE's offerings or to provide an inside-view critique based on information that no one outside of the organization would have, and this would not be isolated to just one narrow topic or product offering. Due to the access Choi had as a senior executive,

Choi developed a broad, comprehensive view of HPE from a leadership perspective.

23. In his position at HPE, Choi was the executive sponsor on a number of accounts, including by not limited to Charles Schwab Corporation, UnitedHealth Group and Amgen Inc. An “executive sponsor” is charged with building executive level relationships, providing industry knowledge and expertise, and personal facilitation to enable growth and development of the account. A key success factor to being an effective Executive Sponsor is spending time with the customer, listening to their business needs, and representing those needs internally within HPE to bring the best of HPE to the customer. Additionally, Choi had extensive relationships with HPE’s channel partners, who are third parties who sell HPE products and services to end customers.

24. Accordingly, Choi had extensive access to HPE’s confidential, proprietary and trade secret information.

C. CHOI AGREES TO TERMS CONTAINED IN THE ARCIPD

25. Throughout his employment Choi agreed to an Agreement Regarding Confidential Information and Proprietary Developments (“ARCIPD”) which was periodically updated and reaffirmed in its updated form by him. In February 2016, Choi agreed to the current version of his ARCIPD (the one that HPE seeks to enforce in this suit). As was frequently done at HPE, Choi electronically

acknowledged and signed this document, which is evidenced by the “Accepted 2/16/2016” notation on the bottom left of page 5 of the agreement. This notation only occurs in HPE’s document management system when the appropriate protocol for the individual’s electronic signature has been completed.

26. As part of this ARCIPD, Choi acknowledged that he would receive confidential information, which included but was not limited to “information on HPE organizations, staffing, finance, structure, information of employee performance, compensation of others, research and development, manufacturing and marking, files, keys, certificate, passwords and other computer information, as well as information that HPE receives from others under an obligation of confidentiality.” Exhibit A, ¶2.

27. Choi agreed:

“that a simple agreement not to disclose or use HPE’s Confidential Information, trade secrets, or Proprietary Developments after my employment by HPE ends would be inadequate, standing alone, to protect HPE’s legitimate business interests because some activities by a former employee who had held a position like [his] would, by their nature, compromise such Confidential Information, trades secrets, and Proprietary Developments as well as the goodwill and customer relationships that HPE will pay me to develop for the company during my employment by HPE. I recognize that activities that violate HPE’s rights in this regard, whether or not intentional, are often undetectable by HPE until it is too late to obtain any effective remedy, and that such activities will cause irreparable injury to HPE.”

Exhibit A, ¶7.

28. In order to prevent this kind of irreparable harm and protect HPE's trade secrets, Choi specifically agreed that, for a period of twelve months following the end of his employment with HPE, he would not:

... provide services to a Competitor in any role or position (as an employee, consultant, or otherwise) that would involve Conflicting Business Activities

29. The Agreement defines a "Competitor" as "an individual, corporation, other business entity or separately operated business unit of any entity that engages in a Competing Line of Business." Exhibit A, ¶7.

30. "Competing Line of Business" is defined as a "business that involves a product or service offered by anyone other than HPE that would replace or compete with any product or service offered or to be offered by HPE with which I had material involvement while employed by HPE ..." Exhibit A, ¶7.

31. "Conflicting Business Activities" is defined as:

"job duties or other business-related activities in the United States or in any other country where the HPE business units in which [Choi] work[ed] do business, or management or supervision of such job duties or business-related activities, if such job duties or business-related activities are the same or similar to the job duties or business-related activities in which [Choi] participate[d] or as to which [Choi] receive[d] Confidential Information or trade secrets in the last two years of [his] employment with HPE." Exhibit A, ¶7.

32. Choi further agreed that "given the nature of my role as an executive level employee, my duties involve my having access to Confidential Information

relevant to a national or larger geographic area such that Conflicting Business Activities is appropriately a nationwide or larger restriction.” *Id.*

33. Choi agreed that these provisions were so essential to HPE, that

...if I violate this Agreement (particularly the Protective Covenants), HPE will be entitled to (i) injunctive relief by temporary restraining order, temporary injunction and/or permanent injunction, (ii) where permitted by law, recovery of attorneys’ fees and costs incurred by HPE in obtaining such relief and (iii) any other legal and equitable relief to which HPE may be entitled.

Exhibit A, ¶10.

34. Finally, Choi agreed that if he violated the ARCIPD, HPE would be entitled to recover any incentive awards to him (whether cash or equity, including those under the stock incentive plan it maintains), in the three years prior to the end of his employment (hereafter the “Forfeiture Period”). *Id.* at ¶ 10.

D. HPE’S STOCK AGREEMENTS WITH CHOI

35. As additional consideration for the ARCIPD, Choi was provided stock and stock options. HPE maintains a stock incentive plan (“Plan”) which provides certain high-level employees, such as Choi, an opportunity to participate in the Company as a shareholder. The purpose of this Plan, and the awards made pursuant to it, is to encourage ownership in the Company by key personnel whose long-term employment is considered essential to the Company's continued progress and, thereby, encourage recipients to act in the shareholders' interest and share in the Company's success. An important purpose of these stock-related awards is to

align and connect the executive's interests in the internal affairs and success of the corporation with those of its shareholders. Throughout his employment, Choi was awarded Restricted Stock Units and Non-Qualified Stock Options in a series of Grant Agreements and Stock Notification and Award Agreements. For a number of these agreements, Choi received the benefit of the award within the three year period preceding the end of his employment. These agreements are collectively referred to hereafter as Choi's "Stock Agreements" (Exhibits B & C).¹ Choi electronically acknowledged and signed these Stock Agreements.

36. The current ARCIPD and the Stock Agreements are inextricably linked. In order to obtain an award under the Stock Agreements, Choi had to agree to abide by terms of a current ARCIPD:

In addition to any other eligibility criteria provided for in the Plan, the Company may require that the Employee execute a separate document agreeing to the terms of a current arbitration agreement and/or a current ARCIPD, each in a form acceptable to the Company and/or that the Employee be in compliance with the ARCIPD throughout the entire Restriction Period and through the date the RSU is to be granted or settled. If such separate documents are required by the Company and the Employee does not accept them within 75 days of the Grant Date or such other date as of which the Company shall require in its discretion, this RSU shall be canceled and the Employee shall have no further rights under this Grant Agreement. Exhibit B, ¶17; see also Exhibit C, ¶16.

¹ Defendant Choi was awarded numerous Restricted Stock Units and Non-Qualified Stock Options during his employment. As examples, and in the interest of efficiency and brevity in this pleading, HPE only includes two of the latest awards as exhibits and has not included a copy of every single award issued to Choi but can and will provide the remainder as exhibits if needed.

37. Moreover, the Stock Agreements contain language making it clear that the ARCIPD and Stock Agreement award are mutually dependent items of consideration. The following is an example:

“Notwithstanding Section 18(f), the Company’s obligations under this Grant Agreement and the Employee’s agreement to the terms of an arbitration agreement and/or an ARCIPD, if any, are mutually dependent. In the event that the Employee breaches the arbitration agreement or the Employee’s ARCIPD is breached or found not to be binding upon the Employee for any reason by a court of law, then the Company will have no further obligation or duty to perform under the Plan or this Grant Agreement.” Exhibit B, ¶18(f) (emphasis added); see also Exhibit C ¶17(d).

38. In the last three years of his employment (with HPE and its predecessor Hewlett-Packard Company), Choi agreed to enter into stock and/or stock option agreements conveying to him over 70,000 shares or options to purchase shares in the corporation (with a current value in excess of \$700,000). He would not have received this opportunity to participate in HPE as a shareholder “but for” his agreement to abide by his ARCIPD.

E. CHOI RESIGNS HIS EMPLOYMENT TO WORK FOR EMC

39. As of June 22, 2016, Choi resigned his employment from HPE to accept a job at EMC. EMC initially claimed the position he was accepting was not competitive, but as more information concerning the true nature of his specific position with EMC has been revealed, it has become evident that this is not the case. EMC competes directly with HPE in many areas. EMC does offer products

and services that would replace or compete with products and services offered or to be offered by HPE. The latest information provided by EMC indicates that Choi's new position would involve participation in this part of EMC's business.

40. Additionally, EMC has recently announced that Dell Inc. will acquire EMC. The companies have announced that "[t]he transaction creates the industry-leader in the extremely attractive high-growth areas of the \$2 trillion IT market with complementary product and solutions portfolios, sales teams and R&D investment strategies. The transaction combines two of the world's greatest technology franchises—with leadership positions in Servers, Storage, Virtualization and PCs—and brings together strong capabilities in the fastest growing areas of our industry, including Digital Transformation, Software Defined Data Center, Hybrid Cloud, Converged Infrastructure, Mobile and Security."²

41. EMC has indicated that Choi's new title will be the Senior Vice President, Global Systems Engineering. The information most recently provided to HPE indicates this global position would involve participating in and/or Conflicting Business Activities.

42. EMC has provided HPE the job description applicable to Choi, and summarized his responsibilities as:

Reporting into the President of Global Sales, this leadership role is focused on leading, growing and aligning EMC's Global Sales

² <http://www.emc.com/futureready>

Engineering organization. Core responsibilities are centered on resource alignment and org. segmentation based on global sales strategies and account mapping. Additional focus is concentrated on continually training and always motivating a world-class organization of talented sales engineers and SE management. This position interacts deeply across sales, sales operations, product engineering & product management, and large account teams across the federation of EMC organizations with the shared objective of generating product and services sales leading to continuously high customer satisfaction levels.

43. Based on what EMC has indicated to HPE, Choi's new position at EMC involves a list of duties and management and supervision responsibilities that are the same as, or substantially similar in function and purpose to those he had while employed by HPE. EMC has reported that Choi will have six direct reports whose job titles are: VP, Presales Americas; VP, Global Presales (Operations Lead); VP, Presales EMEA; VP, Presales APJ; Sr. Director, Systems Engineer (responsible for Global Accounts); Executive Assistant. There are approximately 3300 EMC employees who will report to Choi through his six direct reports. *Id.* Additionally, EMC states that Choi will have one indirect matrix report who has the title of Sr. Director and who will be responsible for the shared services support function for Presales. *Id.* EMC states that in his new role, he will be focused on "leading, growing and aligning EMC's Global Systems Engineering organization" and that his core responsibilities "are centered on sales engineer readiness, alignment and organization segmentation on global sales strategies and account mapping." Just as he had done at HPE, at EMC Choi will maintain executive level

relationships with customers and partners. In essence, his portfolio at EMC serves a function or purpose that is the same as, or very similar in many material respects for which he was responsible at HPE.

44. EMC competes directly with HPE. While EMC's product and services offerings may be different in some respects from HPE's, Choi's intimate knowledge of HPE's business will allow him to know the comparative strengths and weaknesses of HPE's solutions when a customer is presented with a side-by-side comparison of HPE and EMC's products/services. Choi will know feature by feature the advantages and disadvantages of any solution offered by HPE when compared to an offering from EMC. Additionally, Choi would be in a position to inform EMC of areas where it needs to develop different services and products to keep up with HPE, and where HPE is focusing its research and development efforts for the next three (3) years. Thus, Choi will be in a position to displace HPE's business in favor of EMC.

45. The services provided by EMC are in direct competition with those provided by HPE.

46. By accepting employment with EMC, Defendant Choi is in violation of his ARCIPD agreement.

47. As a direct and proximate result of Defendant Choi's actions, HPE has been, and will continue to be, damaged in an amount which is impossible to ascertain with certainty.

48. Unless Defendant Choi is enjoined as requested below, HPE's trade secrets will be compromised and it will suffer irreparable harm – a fact Defendant Choi has already stipulated to in his ARCIPD.

F. MANDATORY ARBITRATION AGREEMENT

49. Defendant Choi and HPE are also party to a mandatory arbitration agreement – an Agreement to Arbitrate Claims dated February 16, 2016 (the "Arbitration Agreement") (Exhibit D).

50. Under this Arbitration Agreement:

The Company and Employee may pursue temporary and/or preliminary injunctive relief in a court of competent jurisdiction for tortious interference with prospective employment and/or the protection of confidential information and/or trade secrets, prevention of unfair competition, or enforcement of post-employment contractual restriction related to same; provided, however that all issues of final relief shall continue to be decided through arbitration, and the pursue of the temporary and/or preliminary injunctive relief described herein shall not constitute a waiver of the parties' agreement to arbitrate by an party.

Arbitration Agreement, ¶ 3. Choi electronically acknowledged and agreed to this Arbitration Agreement.

51. A demand for arbitration has been, or will be made by Plaintiff HPE at or near the same date this Complaint is filed.

COUNT ONE
BREACH OF CONTRACT – ARCIPD

52. Plaintiff HPE incorporates the foregoing Paragraphs as though fully set forth herein.

53. Choi entered into a binding Agreement with HPE.

54. In reliance on the promises Defendant Choi made in the Agreement, HPE, among other things, gave Choi access to its trade secrets and confidential and proprietary information and placed Choi in a sensitive and confidential position with respect to HPE's employees, clients, and business partners.

55. Choi's Agreement contains a valid and enforceable non-competition covenant, pursuant to which he agreed that, during his employment and for a twelve month period of time following termination of his employment with HPE, he would not work for a competitor such as EMC in a role like the one he has accepted with EMC.

56. Choi is expected to begin working for EMC in a role that violates his ARCIPD in the near future, if he has not done so already.

57. HPE performed its obligations to Choi.

58. Choi has breached, or threatens to breach his ARCIPD agreement by going forward in a role with EMC that violates the Protective Covenants in his ARCIPD.

59. HPE is damaged and will continue to be damaged and irreparably harmed as a result of Choi's breach of his ARCIPD agreement.

COUNT II INJUNCTIVE RELIEF

60. Plaintiff incorporates the foregoing Paragraphs as though fully set forth herein.

61. Unless Defendant is enjoined from working for EMC, Plaintiff will be irreparably harmed.

62. Plaintiff has already suffered and will continue to suffer irreparable injury and harm to its business, and monetary damages are an inadequate redress for such continuing injury

63. Plaintiff has no adequate remedy at law and is entitled to injunctive relief.

64. There is a substantial likelihood that Plaintiff will prevail on the merits of this case.

65. The harm Plaintiff will suffer in the absence of injunctive relief outweighs any harm to Defendant if an injunction is granted.

66. There will be no harm to the public interest, and in fact the public interest will be served, if the Court grants Plaintiff's request for injunctive relief.

PRAYER FOR RELIEF

Wherefore, Hewlett Packard Enterprise Company requests this Court to:

A. Enter a temporary restraining order and preliminary injunction ordering Choi to abide by the terms of his ARCIPD, including but not limited to, avoiding participation in the following conduct:

(1) providing services to EMC in the position of Senior Vice President, Global Systems Engineering, to the extent these services involve providing, managing or supervising any job duties or business-related activities that are the same as or similar to the job duties or business-related activities Choi participated in or received Confidential Information or trade secrets about in the last two years of his employment with HPE, within the United States or in any other country where HPE does business;

(2) knowingly (in person or through assistance to others) participating in soliciting or communicating with any customer of HPE in pursuit of a competing line of business for EMC if Choi either had business-related contact with that customer or received Confidential Information about that customer in the last two years of his employment at HPE;

(3) knowingly (in person or through assistance to others) participating in soliciting or communicating with an HPE employee for the purpose of persuading or helping the HPE employee to end or reduce his or her employment relationship with HPE if Choi either worked with that HPE

employee or received Confidential Information about the HPE employee in the last two years of his employment with HPE; and

(4) knowingly (in person or through assistance to others) participating in soliciting or communicating with an HPE Supplier for the purpose of persuading or helping the HPE Supplier to end or modify to HPE's detriment an existing business relationship with HPE if Choi either worked with that HPE Supplier or received Confidential Information about that HPE Supplier in the last two years of his employment with HPE;

(5) disclosing, or using for the benefit of EMC or any other party other than HPE, the Proprietary Developments or Confidential Information (inclusive of trade secrets) of HPE as defined in the ARCIPD;

or, if the ARCIPD is not enforceable as written, an order requiring Choi to abide by the ARCIPD to such lesser degree or within such lesser limitations (such as time, geography, or scope of activity) as would be enforceable;

B. In the event that Choi refuses to abide by his arbitration agreement for any final relief requested by HPE, enter an order referring this dispute to arbitration for any and all awards of final relief, and enjoining Defendant Choi from the pursuit of any legal action or proceeding challenging the enforcement of the ARCIPD in any forum other than the agreed upon Arbitration;

C. In the event that the Court is called upon to rule on the arbitration agreement, and it does not enforce the Arbitration Agreement such that matters of final relief are not decided in an arbitration, then award HPE actual damages for the quantifiable portion of damage caused to HPE arising from Choi's wrongful acts (described above) occurring on or before injunctive relief is issued, to the extent that some portion of harm caused by Choi's breach of his ARCIPD;

D. Recovery of HPE's attorneys' fees and costs incurred in obtaining all or a portion of the foregoing relief; and,

E. Such other relief in law or equity as to which Plaintiff HPE may show it is entitled.

COLE SCHOTZ P.C.



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