UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:20-cv-01235

DANIEL COCHRAN, on behalf of himself individually and all other similarly situated,

Plaintiffs,

v.

HEWLETT-PACKARD COMPANY; HP ENTERPRISE SERVICES, LLC; HEWLETT-PACKARD ENTERPRISE CO.; HP, Inc.; and DXC TECHNOLOGY SERVICES, LLC,

Defendants.

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Daniel Cochran ("Mr. Cochran" or "Plaintiff"), by and though counsel, Hogue & Belong and in support of his causes of action against Defendants, states and alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff Cochran files this Complaint against Defendants Hewlett-Packard Company ("HP Co."), Hewlett-Packard Enterprise Co. ("HPE"), HP Enterprise Services, LLC ("HPS"), HP, Inc. ("HPI"), and DXC Technology Services, LLC ("DXC") (collectively "HP" or "Defendants") individually and on behalf of all those similarly situated employees ("Plaintiffs" or the "Class") as a result of Defendants' discrimination against them on the basis of age.

Defendants adversely altered the terms and conditions of Plaintiffs' employment, denied Plaintiffs the opportunities that other employees outside their protected class received, and terminated their employment, in violation of state and federal law.

2. Plaintiff brings claims against Defendants pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 ("ADEA"), Colorado Fair Employment Practices Act (C.R.S. 24-34-402) for age discrimination, Colorado's common law prohibition of Wrongful Termination, and the Colorado Consumer Protection Act (C.R.S. § 6-1-101, et seq.) for deceptive or unfair business practices.

PARTIES

3. Plaintiff Cochran is and, at all times relevant to the Complaint, was a resident of Colorado. At all relevant times, Cochran was a member of the protected class of individuals recognized under the ADEA. Plaintiff Cochran was 62 years old at the time he was terminated by HP.

4. At all material times, HP conducted business within the United States. One of HP's headquarters and principal place of business is located in Fort Collins, Colorado. Fort Collins is a location where HP directs, controls, and coordinates its business operations.

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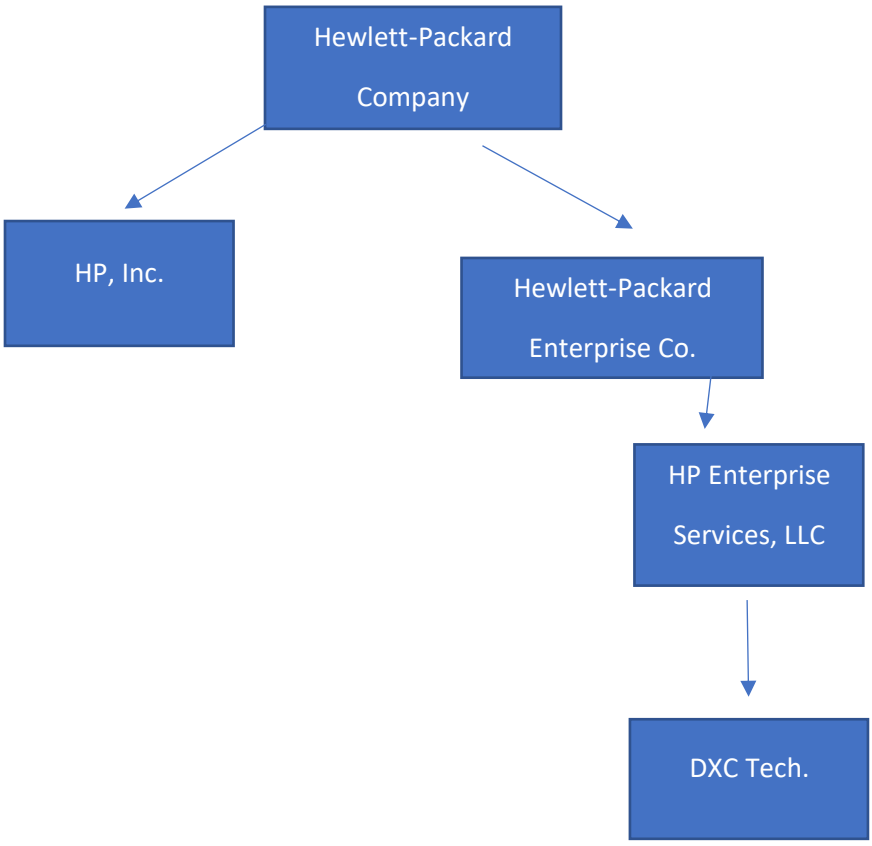
5. HP has gone through significant corporate restructuring. Below is an organizational chart of that restructuring:



6. The above-referenced entities are one interrelated enterprise. Despite the fact that they are different entities, those differences are in name only. All the aforementioned entities share a unity of interest and all are co-conspirators for the acts described below.

7. The above-referenced Defendants' entities also are the joint employers of each other. Those entities share common control, management, resources, employment policies and a Workforce Reduction Plan that they act as one single integrated enterprise and the alter egos of one another.

8. In 2015, Hewlett-Packard Company "theoretically" split in two companies –

HPE and HPI. This split, however, was in name only. After the split, every shareholder who owned a share of Hewlett-Packard Company was assigned one share of HPE and one share of HPI. These shareholders retain ultimate control of all significant decisions and equal financial control.

9. HPI and HPE's corporate headquarters[1] and nerve centers are located in Palo Alto, California where they manage, direct, coordinate and control their business operations.

10. Moreover, the chief executive officers of both HPE and HPI both worked for Hewlett-Packard Company at the time of the split and they closely communicated with one another about employees and business operations.

11. All the aforementioned entities are interrelated and integrated such that each and every entity had the right to control each others' employees. Further, the policies and practices that governed the rights of the employees were all the same. In other words, all of the entities act in unison and operate, in reality, as a single entity.

12. Additionally, HPE and HPI's hiring and firing decisions were made in tandem. The Workforce Reduction Plan (defined below) and the Preferential Rehire Period policy utilized by HP Co. were subsequently adopted and used by both HPE (and by extension HPS and DXC) and HPI.

13. Further, HPE and HPI knew about each other's discriminatory practices described below, and ratified those practices. Both entities promoted, perpetuated, and they helped facilitate one another's age discrimination. Specifically, they both knew that they favored younger employees over and to the detriment of older employees.

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[1] In approximately March 2019, HPE moved its corporate headquarters from Palo Alto, California to San Jose, California.

JURISDICTION AND VENUE

14. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(3), and (4), 2201 and 2202, 42 U.S.C. 2000d-2 and 2000e5(f), and 29 U.S.C. § 621, et seq.

15. This is a suit authorized and instituted pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq.

16. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b) because a substantial part of the employment practices and other conduct alleged to be unlawful occurred in this District.

ADMINISTRATIVE PREREQUISITES

17. On April 10, 2020, Mr. Cochran filed a dual charge against HP with both the U.S. Equal Employment Opportunity Commission ("EEOC") and the Colorado Department of Regulatory Agencies, Civil Rights Division ("CDCR") concerning HP's policy and practice that targeted himself and other employees aged 40 years and older through a pattern and practice of unlawful terminations. The EEOC issued Mr. Cochran a letter confirming his right-to-sue under federal and state laws on April 22, 2020 (the "Right to Sue").[2] Attached as Exhibit "A" is a true and correct copy of the Right to Sue.

FACTUAL ALLEGATIONS

Daniel Cochran Was a Talented and Experienced Employee That Had Loyally Served HP for over 26 years, Until Being Discriminated Against Because of His Age.

18. Mr. Cochran was born on May 21, 1957, and is currently 63 years old.

19. Mr. Cochran was first hired by HP as an independent contractor in November

[2] Since Plaintiff obtained his Right-to-Sue from the EEOC, he does not need a Right-to-Sue from the CDCR.

1992. On or about January 16, 1996, HP hired Mr. Cochran into a full-time employee position.

20. In or around August 2001, HP terminated Mr. Cochran's employment as part of a companywide layoff. However, less than a year later, in or around June 2002, HP rehired Mr. Cochran as an independent contractor. Between June 2002 and October 2011, Mr. Cochran consistently performed work at a high level for HP as an independent contractor.

21. In or around October 2011, HP rehired Mr. Cochran from an independent contractor into a full-time employee to the position of Technology Consultant IV. In this position, Mr. Cochran was hired at an Expert Job Level to perform onsite work for HP's clients related to software customization and implementation.

22. On or about December 16, 2015, because Mr. Cochran was excelling at his job, HP promoted Mr. Cochran to Technical Marketing Engineer in its Software Defined & Cloud Group. As part of his promotion, HP promised Mr. Cochran that he would be promoted to a Master Job Level.

23. On or about November 1, 2017, HP assigned Mr. Cochran to a new manager, Vinay Jonnakuti. At that time, Mr. Cochran was 60 years old, the oldest employee on his team. On information and belief, Mr. Jonnakuti was approximately 40 years old at the time of her assignment as Mr. Cochran's manager.

24. Shortly after Mr. Jonnakuti became Mr. Cochran's direct supervisor, Mr. Jonnakuti began to discriminate against Mr. Cochran because of his age. For instance, Mr. Jonnakuti indicated to Mr. Cochran that he would not be supporting Mr. Cochran's promotion to a Master Job Level. Ultimately, without Mr. Jonnakuti's support, Mr. Cochran's promotion to a Master Job Level never came to fruition, despite HP's earlier promise.

25. On another occasion, Mr. Jonnakuti removed Mr. Cochran from a project he had been working on after he had secured the laboratory for the project, and then Jonnakuti assigned the project to a much younger employee. Mr. Jonnakuti removed Mr. Cochran from this project without any justifiable business reason other than to discriminate against him because of his age.

26. Moreover, HP repeatedly discriminated against Mr. Cochran by denying him career advancement opportunities that were granted to younger employees. For instance, on two occasions, Mr. Cochran attempted to participate in HP's TechFluence, career advancement program. Both times, Mr. Cochran was denied the opportunity to participate in this program. HP denied him an opportunity to participate in TechFluence because of his age. On information and belief, younger employees were allowed to participate in this program. During one of the informational meetings for TechFluence program, Mr. Cochran was the oldest person attending the meeting.

27. HP's discriminatory treatment to its older employees became a companywide unwritten policy. Comments directed to age protected workers such as, "when are you planning on retiring," "You must be getting ready to retire," and others were commonplace throughout HP. The unwritten policy was so consistently applied that it was understood at HP that if there was another wave of workforce reductions HP would target the age protected employees first.

28. In fact, between the July 1, 2012 and February 21, 2017, there were 29 age discrimination complaints against HP just in California.

29. Throughout his employment with HP, Mr. Cochran performed his duties in a satisfactory and competent manner. But for the fact that he was 40 years of age or older ("Age Protected Class"), Mr. Cochran would still be gainfully employed with HP. In other words, because he was in the Age Protected Class he was targeted and ultimately terminated,

and so too were HP's other employees in the Age Protected Class.

HP's Employees Were Older, More Experienced, and Therefore More Expensive than the Employees at HP's Competitors.

30. In 2012, the median age of HP's workforce was 39 years old, the oldest in the tech industry. With one-half of its workforce over the age of 39, HP's labor costs were higher than other tech companies. HP employees with 10-19 years of experience are paid an average 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 experience are paid an average of just over $64,000 while employees with 1-4 years of experience are paid an average of just over $65,000.

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

31. HP terminates its employees in a so-called structured lay-off that HP calls Workforce Reduction Plan.

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

33. HP Co. utilized its Workforce Reduction Plan since 2012, and some version of that plan continues to this day. The different versions of the Workforce Reduction Plan are not materially different. HP utilized the same Workforce Reduction Plan for both HPE and HP, Inc. to eliminate employees in the Age Protected Class.

34. HPE and HP, Inc. worked together to coordinate efforts to implement the Workforce Reduction Plan.

35. On October 9, 2013, in anticipation of continuing deployment of its Workforce Reduction Plan, HP's then-CEO Meg Whitman described HP's staffing objectives at the company's "Hewlett-Packard Securities Analyst Meeting". **Whitman explained that HP was aggressively seeking to *replace* older employees with younger employees**. On this topic, some of Whitman's comments include, but are not limited to:

- ". . . a question that is actually completely relevant for all large-cap IT 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."

- ". . . we need to return to a labor pyramid that really looks like a triangle where you have a lot of early career people who bring a lot of knowledge who you're training to move up through your organization, and then people fall out either from a performance perspective or whatever."

- "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 should have in any company and particularly in ES. If you don't have a 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."

- "So, this has a couple of things. One is we get the new style of IT strength and skills. It also helps us from a cost perspective . . . if your labor pyramid isn't the right shape, you're carrying a lot of extra cost. The truth 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."

  "Now, that's not something that changes like that. Changing the shape of your labor pyramid takes a couple of years, but we are on it, and we're 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."

- "That should be it. I mean, that will allow us to right size our enterprise services business to get the right onshore/offshore mix, to make sure that we have a labor pyramid with **lots of young people** coming in right out of college and graduate school and early in their careers. That's an important part of the future of the company . . . This will take another couple of years and then we should be done."[3]

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

> "And the way I think about the restructuring charge . . ., it's basically catching up. It's actually dealing with the sins of the past in which we have not been maniacally focused on getting the attrition out and then just agreeing to replace anyway and not thinking through it carefully and thinking through what types of folks we hire as replacements . . . 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."

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

> The focus within the different organizations has evolved a lot over the past four or five years because of the turnaround that we have been 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. *So that has just resulted in some organizations **modifying their workforce** to try to get to the right labor pyramid to achieve their business goals*.

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3 Judge Freeman characterized Ms. Whitman's comments as "startling." *See Enoh v. Hewlett Packard Enter. Co.* (N.D.Cal. July 11, 2018, No. 17-cv-04212-BLF) 2018 U.S.Dist.LEXIS 115688, at *32.

38. The employee selected to be terminated pursuant to the Workforce Reduction Plan is initially recommended by the managerial employees. That manager or managers then notifies HP's human resource department of their selection. The selection is then evaluated by the human resources generalist to assure the selection is the "right fit" for termination, meaning if the selection conforms with Meg Whitman's directive to terminate older employees while retaining the younger employees. Notably, the selection is not based on merit or performance. Rather, if the selected employee is old enough, then the human resource department approves the selection and notifies the Workforce Management Team to prepare the proper paperwork to be delivered to the selected employee by his or her manager(s). Conversely, if the selection is too young, then the manager or managers are asked to select another employee.

39. Further, internal HP documentation heavily favors employees from the younger "millennial" generation to other older generations. To HP, employees from the millennial generation were highly desirable; as such, HP placed an emphasis on retaining and attracting as many "millennial" generation employees while terminating or retiring employees from the older generations.

40. On or about February 1, 2016, HP continued deploying its Workforce Reduction Plan, which was still a scheme specifically targeted to terminate its older and replace them with younger, lower paid employees. HP's Workforce Reduction Plan involuntarily terminates employees on a rolling basis. Although HP's Workforce Reduction Plan purports to lay off employees on a neutral basis, it actually is a companywide mechanism by which HP carries out its above-described policy of disproportionately and discriminatorily targeting employees in the Age Protected Class for termination.

41. HP maintains meticulous records about each employee, including his or her date of birth and age. Pursuant to HP's policy, those high-level HP employees responsible

for carrying out the implementation of the Workforce Reduction Plan used this age data in order to act with the specific intent to terminate those employees of the Age Protected Class, not for any work-related reason.

42. As an example, as of 2015, out of all of the employees HP terminated pursuant to the Workforce Reduction Plan in a single State, 85% of those terminated were in in the Age Protected Class.

43. Further, pursuant to the Older Workers Benefit Protection Act ("OWBPA") in a group layoff (which the Workforce Reduction Plan was), HP was required to advise those affected employees of who in their "Decisional Unit" was also laid off and who was kept, identified by title and age. 29 C.F.R. § 1625.22 defines "Decisional Unit" as "that portion of the employer's organizational structure from which the employer chose the persons who would be offered consideration for the signing of a waiver and those who would not be offered consideration for the signing of a waiver. The term 'decisional unit' has been developed to reflect the process by which an employer chose certain employees for a program and ruled out others from that program."

44. The attachments identifying the "decisional unit" that HP provides to those employees it selects for the Workforce Reduction Plan are grossly inadequate, deceptively small, and intended to mislead the Age Protected Class in violation of the OWBPA. For instance, the Workforce Reduction Plan is a structured layoff for thousands of employees being terminated by HP throughout Colorado and the nation. As part of the Workforce Reduction Plan, these thousands of employees selected for termination nationwide are offered a small severance in exchange for signing a liability waiver. But, contrary to the requirements of the OWBPA, the HP employees selected for the Workforce Reduction Plan are provided a deceptively small list of the employees and ages of those who are terminated. Rather than providing a larger department or division wide list comprising the true

"decisional unit," HP provided each terminated employee only a tiny fraction of this list, often times containing less than 10 employees/ages. HP did this in order to conceal its discriminatory practices in Colorado and throughout the nation. In Mr. Cochran's case, only 6 employees and ages were identified as the "decisional unit." This sparse, deceptive, and incomplete disclosure clearly violates the OWBPA. Thus, every employee in the Age Protected Class who entered into a severance agreement and signed a release may nevertheless participate in this class action because the release is unenforceable pursuant to the OWBPA.

45. Notwithstanding the foregoing, even a preliminary investigation into those sparse and incomplete disclosures of the ages of employees selected for termination and the signing of a severance/waiver agreement reveal that older employees were substantially overrepresented for selection for termination under the Workforce Reduction Plan. In other words, available data shows that older workers were substantially more likely than younger workers to be terminated under the Workforce Reduction Plan.

HP Executed the Workforce Reduction Plan That Targeted Older Employees.

46. In October 2019, HP was still consistently eliminating the jobs of older, age-protected employees, like Mr. Cochran, and actively replacing them with younger employees.

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

48. Although purportedly neutral on their face, HP's terminations under its Workforce Reduction Plan are actually targeted to discriminate and eliminate older, age-protected workers

in grossly disproportionate numbers. The Workforce Reduction Plan does not take into account performance reviews or evaluations, so the employee selected for the Workforce Reduction Plan is *not* based on merit, but based merely on age.

49. HP's Workforce Reduction Plan is implemented on a rolling basis. That is, it does not terminate HP's employees all at once. But, it serves as a mechanism for HP to terminate members of a protected class of employees whenever it wants. HP is *still* engaged in the systematic elimination of its age protected class of employees. That is, the discriminatory acts commenced with the implementation of the Workforce Reduction Plan in 2012 and those discriminatory acts continue to this day, perpetrated by the decisionmakers of HP's Workforce Reduction Plan.

HP's "Fake" Measures that Purportedly Helped Terminated Employees in the Age Protected Class to Retain Employment in a Different Capacity were Illusory and Restricted Competition.

50. Theoretically, HP employees terminated under the Workforce Reduction Plan were and are "encouraged" to apply for other jobs for a limited amount of time. Specifically, HP has a two-week "Redeployment Period" and a 60-day "Preferential Rehire Period."

51. During the two-week Redeployment Period, if an employee was able to successfully find a job at HP, s/he would be allowed to continue work without interruption. If a HP employee was unable to find another job within his/her two-week Redeployment Period, however, that employee enters into the "Preferential Rehire Period." The Preferential Rehire Period was 60 days. If an HP employee was hired during the Preferential Rehire Period, then s/he would be rehired without having to undertake the approval process normally required for a rehire.

52. On or about October 22, 2019, Mr. Cochran was notified by his manager that his employment was being terminated pursuant to the Workforce Reduction Plan, and that

his termination date would be November 1, 2019. Mr. Cochran was presented with a severance agreement and informed he had until December 31, 2019 to sign the agreement and waive/release all of his claims in exchange for $6,903.42. Alternatively, Mr. Cochran could choose to not sign the severance agreement, receive no compensation, and still be terminated.

53. At the time of his selection for the Workforce Reduction Plan, Mr. Cochran was the oldest person in his work group. On information and belief, the second oldest employee in his team was also selected and ultimately terminated pursuant to the Workforce Reduction Plan. On information and belief, younger employees that worked in Mr. Cochran's team were reassigned to other departments within HP.

54. Under the Workforce Reduction Plan, from October 22, 2019 to November 1, 2019, Mr. Cochran had a "Redeployment Period" where he could attempt to transition into a different position without interruption. But, if he was not redeployed to another position, his redeployment would end on November 1, 2019, and then Mr. Cochran would enter the 60-day "Preferential Rehire Period," where he would be allowed to apply for jobs not yet visible to external candidates, and, *if* hired, not have to undertake the normal approval process required by HP to become an employee.

55. Mr. Cochran was informed that he would have the two-week deployment period and then the 60-day Preferential Rehire Period to find another job at HP. If he was able to successfully find another position during that time, then he would be allowed to continue to work without interruption. If he was not able to find another position at HP within the redeployment period, then he would be terminated and the 60-day "Preferential Rehire Period" would commence.

56. Plaintiff applied for 40 jobs at HP, including 33 during the Redeployment and Preferential Rehire Period:

a. On October 22, 2019, Mr. Cochran applied for the Product Management – Customer Experience Lead position. He was interviewed on October 24, 2019, but received a follow up email that the job was being filled by another candidate.

b. On October 23, 2019, Mr. Cochran applied for the Third Party Software Senior Product Manager position. He was told that HP was looking for someone with 4 or more years of Product Management experience, and informed he would not be offered the job.

c. On October 23, 2019, Mr. Cochran applied for the Senior Product Marketing Manager for Cloud Data position at HP. Following his application for this position, he sent two follow up emails on November 25, 2019 and December 10, 2019. He never received a definitive response.

d. On October 24, 2019, Mr. Cochran applied for the Microsoft Azure Stack TME position. On November 25, 2019, Mr. Cochran was informed that the job was filled.

e. On October 28, 2019, Mr. Cochran applied for the Senior Product Management, Consumption Analytics position. Mr. Cochran sent follow up emails on November 25 and 27, 2019, and December 10, 2019. He heard nothing back.

f. On October 29, 2019, Mr. Cochran Applied for the Corporate Product Service Manager position. On November 25, 2019, Mr. Cochran was informed that the position had been filled by another candidate.

g. On October 29, 2019, Mr. Cochran applied for the Solutions Marketing position. He sent two follow up emails on December 17, 2019, and January 9, 2020, and was informed that the position was closed[4] on January 9, 2020.

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[4] "Closed" means Mr. Cochran was not a valid candidate, the job was filled, or the job was cancelled.

h. On October 31, 2019, Mr. Cochran applied for the Storage Product Manager position. Hearing nothing, Mr. Cochran sent a follow up email on November 25, 2019, and was informed that the position was on hold until February 2020. He has heard nothing definitive since that time.

i. On November 8, 2019, Mr. Cochran applied for a Senior Product Manager position. He has not been contacted.

j. On November 10, 2019, Mr. Cochran applied for another Senior Product Manager position. On February 1, 2020, he was informed the position was filled.

k. On November 13, 2019, Mr. Cochran applied for the ISV Partner Marking Manager position. On December 9, 2019, he was informed that the position was closed.

l. On November 13, 2019, Mr. Cochran applied for the Business Strategy Manager position. Since that time, he has not heard from HP.

m. On November 14, 2019, Mr. Cochran applied for the WW 3rd party Maintainer Category Manager position. He was later informed that the position had been closed on January 2, 2020.

n. On November 14, 2019, Mr. Cochran applied for the GreenLake Process & Capabilities Manager. He was later informed that the position closed on February 25, 2020.

o. On November 14, 2019, Mr. Cochran applied for a position as HPE PointNext WW Channel Mid-Market/SMB manager. He was later informed that the position was closed.

p. On November 19, 2019, Mr. Cochran applied for a position as an Information System Architect PointNext. He was later informed that the position had been closed.

q. On November 20, 2019, Mr. Cochran applied as a HPE GreenLake Channel Hunter. He later was informed that he was rejected as a candidate.

r. On November 20, 2019, Mr. Cochran applied for the PointNext Information System Architect position. He has received no definitive response.

s. On November 21, 2019, Mr. Cochran applied for the Cloud Partner Business Developer position. He was later informed that the position closed on February 3, 2020.

t. On November 22, 2019, Mr. Cochran applied for the Senior Global Channel Pre-Solution Specialist position. He was later informed that the position closed on March 1, 2020.

u. On November 22, 2019 Mr. Cochran applied for the Adaptive Management Services Business Solutions Manager position. He was later informed that the position closed January 31, 2020.

v. On November 26, 2019, Mr. Cochran applied for the Product Manager III position. Not hearing anything back, Mr. Cochran sent a follow up email on December 10, 2019, and was informed that he lacked qualifications because a network engineer would be needed.

w. On November 27, 2019, Mr. Cochran applied as for the Category Management Representative position. He was later informed that the position closed on December 16, 2019.

x. On December 2, 2019, Mr. Cochran applied as a Sr. Technical Marketing Engineer in the Big Data department. Mr. Cochran followed up a couple times and on December 17, 2019, was informed that HP was hiring another candidate.

y. On December 3, 2019, Mr. Cochran applied for the Storage Technology Architect. He was later informed that the position closed on December 10, 2019.

z. On December 3, Mr. Cochran applied for the Channel Technical Program Manager position. He was later informed that the position closed on December 16, 2019.

aa. On December 4, 2019, Mr. Cochran applied for the PointNext GreenLake Solution Architect. After numerous telephone calls and emails, he was informed on February 4, 2020 that the position was filled with another candidate.

bb. On December 11, 2019, Mr. Cochran applied for the 3rd Party Software Product Manager.

cc. On December 17, 2019, Mr. Cochran applied for a position as a WW Lead for HPE Hybrid Cloud Support New Service Development. He is interviewed for the position on December 20, 2019. The manager of the department verbally informed Mr. Cochran that he wants to hire him at the interview, but he was obligated by HP to interview other candidates. The manager states that he is willing to work with Mr. Cochran through the HPE exception process.[5] After several emails, however, Mr. Cochran was informed that the position has been filled on February 18, 2020.

dd. On December 17, 2019, Mr. Cochran applied for the Partner Business Manager for CenturyLink. He was later informed that the position closed on February 24, 2020.

ee. On December 17, 2019, Mr. Cochran applied for the Composable Go-to-market Program Manager position. He was later informed that the position closed January 16, 2020.

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[5] Under the Workforce Reduction Plan, once the 60 day Preferential Rehire Period expires, the selected employee is no longer eligible for rehire. The "exception process" is where an employee selected for Workforce Reduction Plan is permitted to be rehired after the expiration of the Preferential Rehire Period.

ff. On December 17, 2019, Mr. Cochran applied for the Sr. Product Manager for AI/Analytics and SDS Platform Services. He was never offered the job.

gg. On December 17, 2019, Mr. Cochran applied for the WW Distribution Partner Business Manager position. He was never offered the job.

hh. On December 17, 2019, with a HP recruiter helping Mr. Cochran to find a job position, Mr. Cochran learned that there are HPE job openings that he might be well suited. Specifically, the HPE job positions of Sr. Global Channel Pre-Sales Solution Specialist and the WW Distribution Partner Business Manager. The HP job recruiter attempted to help Mr. Cochran through the "HPE rehire exception process" – a process for approval to look for HP jobs after the expiration of the Preferential Rehire Period. But, Mr. Cochran's application for the HPE Rehire Exception was ultimately denied.

ii. January 3, 2020, Mr. Cochran reached out to a HP job recruiter who advised him that there might be a position available for which he might be well suited. But, on January 16, 2020, the HP recruiter advises Mr. Cochran that HP is filling the job position with another candidate.

jj. On January 7, 2020, Mr. Cochran received a telephone call from a HP recruiter informing Mr. Cochran that HP has a HPE Blue Data Sr. Product Manager position available. The recruiter further informs Mr. Cochran that she would see if she could take Mr. Cochran through the "executive council exception process" because he would be ineligible for rehire after the Preferential Rehire Period. Mr. Cochran called the hiring manager, but he informs Mr. Cochran that he will not pursue the exception process.

57. Since January 2020, Mr. Cochran has applied for 7 additional jobs with HP's affiliates, including Micro Focus and Perspecta – other HP affiliates. Mr. Cochran has

specifically applied for four additional jobs with HPI. But, Mr. Cochran has been rejected from all of these positions.

58. Other HP employees in the Age Protected Class have applied for numerous job positions during the Redeployment and Preferential Rehire Period as well. Due to its discriminatory practices, however, HP does not hire these individuals.

59. While the Redeployment and Preferential Rehire Period is supposedly to be neutral in its application, it is not applied neutrally. Rather, it systematically targets and adversely impacts disproportionate numbers of age protected employees.

60. In fact, during the Preferential Rehire Period, HP's older employees are almost never rehired. If older employees are even offered a job, the job is rarely, if at all, comparable to the one that employee held before he or she was terminated. And, worse yet, after the Preferential Rehire Period is over, per HP policy that age protected employee can never be rehired by HP again. This policy continues to cause injury to Mr. Cochran as he is actively continuing to seek gainful employment and reemployment with HP.

61. Moreover, since August 2013, HP's Human Resources Department has incorporated written guidelines that require HP to hire mostly younger employees. Specifically, those guidelines state: "New corporate requisition policy requires 75% of all External hire requisitions be 'Graduate' or 'Early Career' employees." Thus, HP employees in the Age Protected Class who were terminated under the Workforce Reduction Plan and who sought rehiring under the Preferential Rehiring Period, were fighting an uphill battle against HP's inherent bias to hire a disproportionate percentage of younger "early career" and "recent graduates".[6]

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[6] 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.

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

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

64. So, in addition to the Workforce Reduction Agreement itself, when the Age Protected Class selected for the Workforce Reduction Plan are looking for jobs they are purposefully deterred from applying because of the job descriptions insinuating that only younger employees would be considered.

65. Further, HP intends that a number of employees will accede to the early retirement program because those same employees will fear that otherwise they will be selected for the Workforce Reduction Plan.

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

66. Older employees were well aware of the fact that many of their age-protected peers had been selected for termination under the Workforce Reduction Plan. By way of illustration, in the engineering support group, older employees would advise each other not to disclose their age or how long they had worked at HP in order to avoid being selected for termination under the Workforce Reduction Program.

67. HP has an "Adverse Impact Team" that evaluates various HP employment practices to determine whether or not those practices impact a significant number or percentage of a particular protected class of employees – *e.g., gender, race, etc.* Although HP has an "Adverse Impact Team," for unknown reasons, it did not and does not investigate the facts related to whether or not the Workforce Reduction Plan adversely affects a class of *age* protected employees disproportionately.

68. According to its "HP 2016 Sustainability Report," HP provides workforce data regarding its diversity in the United States, but tellingly provides no facts about its *age*-protected workforce data.

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

70. According to a January – February 2017 article published by AARP, HP has received more allegations of age discrimination than *any* other technology company in recent years. *See* Exhibit B.

CLASS ALLEGATIONS

71. Plaintiff sues on his own behalf and on behalf of a Class of personas similarly situated pursuant to Fed. R. Civ. P. Rule 23.

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72. Plaintiff is a representative of the following class for the purposes of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621-634 ("ADEA"):

The Nationwide Class

> All current, former, or prospective employees who worked for HP in the United States between May 1, 2016 and present who were at least 40 years old at the time HP selected them for termination under HP's Workforce Reduction Plan. (the "Nationwide Class").

73. This action has been brought and may properly be maintained as a class action, under Fed. R. Civ. P. Rule 23 because a well-defined community of interest in the litigation exists and because the proposed class is easily ascertainable, and for the other reasons explained in this Class Action Complaint.

74. Numerosity: The persons who comprise Age Discrimination Class are so numerous that joinder of all such persons would be unfeasible and impracticable. The membership of Class is unknown to Plaintiff at this time.

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

- Whether HP unlawfully terminated members of the Nationwide Class in violation of the ADEA;
- Whether HP's policies or practices relating to the Workforce Reduction Plan were based on discriminatory intent towards employees over 40 who were otherwise qualified for those positions;
- Whether HP's Workforce Reduction Plan had a disproportionate adverse impact on its employees aged 40 or older;
- Whether HP's policy of selecting employees to terminate under its Workforce Reduction Plan had a disproportionate adverse effect on those employees aged 40 or older;

- Whether HP's termination selection policy (i.e., the Workforce Reduction Plan) was a substantial factor in causing the Class member terminations (i.e., harm);

- Whether HP failed to adequately investigate, respond to, and/or appropriately resolve instances of age discrimination in the workplace;

- Whether HP failed to implement policies and practices to prevent discrimination against older employees.

- Whether HP's Workforce Reduction Plan was an unfair, unlawful, deceptive, and or fraudulent business practice;

- Whether an alternative or modification to the Workforce Reduction Plan existed that would have had less of an adverse impact on employees aged 40 years and older;

- Whether HP's policy and practice of disproportionately refusing to rehire age protected employees who had been terminated pursuant to the Workforce Reduction Plan violated the ADEA or was an unfair, unlawful, deceptive, and or fraudulent business practice; and

- Whether HP's policy and practice of failing to provide the proper "decisional unit" of employees and ages for employees selected for a severance/waiver agreement pursuant to the Workforce Reduction Plan violated the OWBPA or was an unfair, unlawful, deceptive, and or fraudulent business practice.

76. HP's defenses, to the extent that any such defense is applied, are applicable generally to the Nationwide Class and are not distinguishable to any degree relevant or necessary to defeat predominance in this case.

77. Typicality: Plaintiff's claims are typical of the claims for the members of the Class 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 Nationwide Class because HP used its policies and practices (e.g., its Workforce Reduction Plan, and

accompanying Preferential Rehire Period,) to subject Plaintiff and each member of the Nationwide Class to identical unfair, unlawful, deceptive, and/or fraudulent business practices, acts, and/or omissions.

78. Adequacy: Plaintiff, on behalf of all others similarly situated, will fairly and adequately protect the interests of all members of the Nationwide 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 Nationwide Class 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 any of the Nationwide Class members, nor are his interests antagonistic any member thereof. Plaintiff has retained counsel who are competent and experienced in representing employees in complex class action litigation

79. 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 Nationwide Class, inasmuch as joinder of individual members of either Class is not practical and, if the same were practical, said members of the Nationwide Class could not individually afford the litigation, such that individual litigation would be inappropriately burdensome, not only to said citizens, but also to the courts of the United States.

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

81. To process individual cases would increase both the expenses and the delay not only to members of the Class, but also to HP and the Court. In contrast, a class action of this

matter will avoid case management difficulties and provide multiple benefits to the litigating parties, including efficiency, economy of scale, unitary adjudication with consistent results and equal protection of the rights of each member of the Nationwide Class, all by way of the comprehensive and efficient supervision of the litigation by a single court.

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

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

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

85. There is also a community of interest in ensuring that the combined assets and available insurance of HP are sufficient to adequately compensate the members of the Nationwide Class for the injuries sustained.

86. Notice of the pendency and any result or resolution of the litigation can be provided to members of the Nationwide Class by the usual forms of publication, sending out to members a notice at their current addresses, establishing a website where members can

choose to opt-out, or such other methods of notice as deemed appropriate by the Court.

87. Without class certification, the prosecution of separate actions by individual members of the Nationwide Class would create a risk of: (1) inconsistent or varying adjudications with respect to individual members of Class that would establish incompatible standards of conduct for HP; or (2) adjudications with respect to the individual members of the Nationwide Class that would, as a practical matter, be disparities of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interest.

88. Plaintiff is also a representative of the following class for the purposes of the Colorado Fair Employment Practices Act (C.R.S. 24-34-402):

The Colorado Class

> All current, former, or prospective employees who worked for HP in the State of Colorado between May 1, 2016 and present who were at least 40 years old at the time HP selected them for termination under HP's Workforce Reduction Plan. ("Colorado Class").

89. This action has been brought and may properly be maintained as a class action, under Fed. R. Civ. P. Rule 23 because a well-defined community of interest in the litigation exists and because the proposed class is easily ascertainable, and for the other reasons explained in this Class Action Complaint.

90. Numerosity: The persons who comprise the Colorado Class are so numerous that joinder of all such persons would be unfeasible and impracticable. The Colorado Class consists of hundreds of former employees who were notified of their termination when they were age 40 and older.

91. Commonality: Common questions of fact or law arising from HP's conduct exist, as described in this Complaint, as to all members of the Colorado Class which

predominate over any questions solely affecting individual members of the proposed class, including but not limited to:

- Whether HP's conduct violated the Colorado Fair Employment Practices Act;
- Whether HP's conduct was deceptive and/or unfair in violation of the Colorado Consumer Protection Act;
- Whether HP's policies or practices relating to the Workforce Reduction Plan were based on discriminatory intent toward its Colorado employees aged 40 and over who were otherwise qualified for those positions;
- Whether HP's Workforce Reduction Plan had a disproportionate adverse impact on its Colorado employees aged 40 or older;
- Whether HP's policy of selecting employees to terminate under its Workforce Reduction Plan had a disproportionate adverse effect on those Colorado employees aged 40 or older;
- Whether HP's termination selection policy (i.e., the Workforce Reduction Plan) was a substantial factor in causing the Colorado Class member terminations (i.e., harm);
- Whether HP failed to adequately investigate, respond to, and/or appropriately resolve instances of age discrimination in the workplace in Colorado;
- Whether HP failed to implement policies and practices to prevent discrimination against older employees in Colorado.
- Whether HP's Workforce Reduction Plan was an unfair, unlawful, deceptive, and or fraudulent business practice in Colorado;
- Whether an alternative or modification to the Workforce Reduction Plan existed that would have had less of an adverse impact on employees in Colorado aged 40 years and older; and
- Whether HP's policy and practice of failing to provide the full list of employees and ages for employees selected for a severance/waiver agreement pursuant to the Workforce Reduction Plan violated the OWBPA or was an unfair, unlawful, deceptive, and or fraudulent business practice under Colorado law.

92. HP's defenses, to the extent that any such defense is applied, are applicable generally to the Colorado Class and are not distinguishable to any degree relevant or necessary to defeat predominance in this case.

93. Typicality: Plaintiff's claims are typical of the claims for the members of the Colorado Class 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 Colorado Class because HP used its policies and practices (i.e., its Workforce Reduction Plan, and accompanying Preferential Rehire Period,) to subject Plaintiff and each member of the Colorado Class to identical unfair, unlawful, deceptive, and/or fraudulent business practices, acts, and/or omissions.

94. Adequacy: Plaintiff, on behalf of all others similarly situated, will fairly and adequately protect the interests of all members of the Colorado 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 Colorado Class 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 Colorado Class members, and his interests are not antagonistic to either of the Colorado Class. Plaintiff has retained counsel who are competent and experienced in representing employees in complex class action litigation

95. 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 Colorado Class, inasmuch as joinder of individual members of either Class is not practical and, if the same were practical, said members of the Colorado Class could not individually afford the litigation, such that individual litigation would be

inappropriately burdensome, not only to said citizens, but also to the courts of the State of Colorado.

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

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

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

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

100. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and in obtaining

adequate compensation for the damages and injuries which HP's actions have inflicted upon Plaintiff and the Colorado Class.

101. There is also a community of interest in ensuring that the combined assets and available insurance of HP are sufficient to adequately compensate the members of the Colorado Class for the injuries sustained.

102. Notice of the pendency and any result or resolution of the litigation can be provided to members of the Colorado Class by the usual forms of publication, sending out to members a notice at their current addresses, establishing a website where members can choose to opt-out, or such other methods of notice as deemed appropriate by the Court.

103. Without class certification, the prosecution of separate actions by individual members of the Colorado Class would create a risk of: (1) inconsistent or varying adjudications with respect to individual members of Colorado Class that would establish incompatible standards of conduct for HP; or (2) adjudications with respect to the individual members of the Colorado Class that would, as a practical matter, be disparities of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interest.

FIRST CLAIM FOR RELIEF - AGE DISCRIMINATION UNDER ADEA

(On behalf of Plaintiff and the Nationwide Class)

104. Plaintiff incorporates by reference all Paragraphs of this Complaint as if fully set forth herein.

105. At all times relevant to this case, Plaintiff and the Nationwide Class has been at least 40 years of age and therefore protected by the ADEA, 29 U.S.C. §§ 621 – 634.

106. At all times relevant to this case, Defendants were "employers" within the meaning of the ADEA, 29 U.S.C. § 630(b).

107. Although Plaintiff and the Nationwide Class have at all relevant times successfully performed their jobs, and were terminated because of his age and replaced by younger employees.

108. Based on the above-described acts, practices, and omissions, Defendants engaged in unlawful discrimination under the ADEA based on Plaintiff's age.

109. Furthermore, Defendants' illegal actions against Plaintiff and the Nationwide Class were aimed at them because of their age, resulting in adverse impacts to the terms and conditions of their employment.

110. Defendants' above-described conduct was intentional and was motivated by the ages of Plaintiff and the Nationwide Class members.

111. Defendants knowingly and willfully engaged in the above-described conduct and discriminatory termination of Plaintiff and the Nationwide Class on the basis of their age.

112. As a direct and proximate result of Defendants' above-described actions, Plaintiff and the Nationwide Class have suffered damages, including lost wages and benefits, emotional pain and suffering, embarrassment, and inconvenience; and they are entitled to such general and special damages, economic damages, punitive damages, liquidated damages, and attorneys' fees and costs as permitted by law.

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SECOND CLAIM FOR RELIEF - AGE DISCRIMINATION UNDER COLORADO FAIR EMPLOYMENT PRACTICE ACT

(On behalf of Plaintiff and the Colorado Class)

113. Plaintiff incorporates by reference all Paragraphs of this Complaint as if fully set forth herein.

114. At all times relevant to this case, Plaintiff and the Colorado Class have been at least 40 years of age and therefore protected by the Colorado Fair Employment Practices Act (C.R.S. 24-34-402).

115. Although Plaintiff and the Colorado Class at all relevant times successfully performed their jobs, they were terminated because of their age and were replaced by younger employees.

116. Based on the above-described acts, practices, and omissions, Defendants engaged in unlawful discrimination under the Colorado Fair Employment Practices Act based on the ages of Plaintiff and the Colorado Class.

117. Furthermore, Defendants' illegal actions against Plaintiff and the Colorado Class were aimed at Plaintiff and the Colorado Class because of their age, resulting in adverse impacts to the terms and conditions of their employment.

118. Defendants' above-described conduct was intentional and was motivated by Plaintiff's age and the age of the members of the Colorado Class.

119. Defendants knowingly and willfully engaged in the above-described conduct and discriminatory termination of Plaintiff and the Colorado Class on the basis of their age.

120. As a direct and proximate result of Defendants' above-described actions, Plaintiff and the Colorado Class have suffered damages, including lost wages and benefits, emotional pain and suffering, embarrassment, and inconvenience; and they are entitled to

such general and special damages, economic damages, punitive damages, liquidated damages, and attorneys' fees and costs as permitted by law.

THIRD CLAIM FOR RELIEF – WRONGFUL TERMIANTION IN VIOLATION OF PUBLIC POLICY

(On behalf of Plaintiff and the Colorado Class)

121. Plaintiff incorporates by reference all Paragraphs of this Complaint as if fully set forth herein.

122. HP discriminated against Plaintiff and the Colorado Class members by terminating their employment of the basis of their age.

123. HP's discrimination constitutes an unlawful employment practice in violation of Colorado public policy.

124. Furthermore, Defendants' illegal actions against Plaintiff and the Colorado Class were aimed at Plaintiff and the Colorado Class because of their age, resulting in adverse impacts to the terms and conditions of their employment.

125. Defendants' above-described conduct was intentional and was motivated by the ages of Plaintiff and the Colorado Class.

126. Defendants knowingly and willfully engaged in the above-described conduct and discriminatory termination of Plaintiff and the Colorado Class on the basis of their age.

127. As a direct and proximate result of Defendants' above-described actions, Plaintiff and the Colorado Class have suffered damages, including lost wages and benefits, emotional pain and suffering, embarrassment, and inconvenience; and they are entitled to such general and special damages, economic damages, punitive damages, liquidated damages, and attorneys' fees and costs as permitted by law.

FOURTH CLAIM FOR RELIEF –VIOLATION OF COLORADO CONSUMER PROTECTION ACT [Colorado Revised Statutes ("C.R.S.") § 6-1-101, et seq.]
(On behalf of Plaintiff and the Colorado Class)

128. Plaintiff incorporates by reference all Paragraphs of this Complaint as if fully set forth herein.

129. A plaintiff brining a civil lawsuit for deceptive trade practice under the Colorado Consumer Protection Act must establish the following: (1) The defendant engaged in a deceptive or unfair trade practice; (2) The deceptive or unfair trade practice occurred in the course of the defendant's business, vocation, or occupation; (3) The deceptive or unfair trade practice significantly impacts the public as actual or potential consumers of the defendant's goods, services, or property; (4) The plaintiff suffered an injury in fact to a legally protected interest; and (5) The deceptive or unfair trade practice caused actual damages or losses to the plaintiff. *See* *Christenson v. CitiMortgage, Inc.*, *Civil Action* No. 12-cv-02600-CMA-KLM, 2015 U.S. Dist. LEXIS 49505, at *7 (D. Colo. Feb. 20, 2015); *see*, Colorado Revised Statutes ("C.R.S.") § 6-1-101, et seq.

130. A person engages in a deceptive trade practice under the Colorado Consumer Protection Act when the person: "uses deceptive representations or designations of geographic origin in connection with goods or services; […] fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction; or […] either knowingly or recklessly engages in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice. C.R.S. 6-1-105 (d), (u), and (kkk).

131. The Colorado Consumer Protection Act further provides that: "The provisions of this article shall be available in a civil action for any claim against any person who has engaged in or caused another to engage in any deceptive trade practice listed in this article.

An action under this section shall be available to any person who [….] in the course of the person's business or occupation, is injured as a result of such deceptive trade practice."

132. As described above, HP engaged in a deceptive or unfair trade or practice in the course of its business in that it knowingly or recklessly terminated and refused to rehire disproportionate numbers of age protected workers, including Plaintiff and the Colorado Class, pursuant to its aforementioned unlawful policies and practices, and it knowingly or recklessly distributed misleading information concerning the ages of those employees who HP selected for termination under its Workforce Reduction Act. Additionally, during the relevant time period HP has employed approximately more than 50,000 employees, including approximately 9,000 employees in Colorado. HP is one of the largest single private employers in Colorado. Plus, as indicated above, HP terminated and refused to rehire thousands of age protected workers under its Workforce Reduction Plan, including Plaintiff and the Colorado Class, and failed to disclose all of the required age data to these thousands of workers as described above. Accordingly, HP's deceptive or unfair trade or practices alleged herein impacted the public and the Plaintiff and the Colorado Class suffered an injury in fact to the aforementioned legally protected interests.

133. As a direct and proximate result of Defendants' above-described actions, Plaintiff and the Colorado Class have suffered damages, including lost wages and benefits, emotional pain and suffering, embarrassment, and inconvenience; and they are entitled to such general and special damages, economic damages, punitive damages, liquidated damages, and attorneys' fees and costs as permitted by law. Further, the deceptive or unfair trade practices alleged herein caused actual damages or losses to the Plaintiff and the Colorado Class in that they were denied their lawful right to equal protection under the laws, deprived of their livelihoods and wages, prevented from fairly regaining their livelihoods and forced to endure the humiliation of learning of the deception and trickery

that they fell victim to as a result of HP's refusal to even conceal the complete age data as required under the OWBPA.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself individually and on behalf of the Class prays for relief and judgment against Defendants and any later named defendant, jointly and severally as follows:

1. Certification of the case as a class action and appointment of Plaintiff as Class Representative for the United States Class and his counsel of record as Class Counsel;

2. Certification of the case as a class action and appointment of Plaintiff as Class Representative for the Colorado Class and his counsel of record as Class Counsel;

3. All damages to which Plaintiff and each member of the United States and Colorado Classes are entitled due to Defendants' conduct, including, but not limited to, back pay, front pay, general and special damages for lost compensation and job benefits that they would have received but for the discrimination practices of Defendants;

4. For restitution, including, without limitation, restitutionary disgorgement;

5. For affirmative or prospective relief;

6. For exemplary and punitive damages;

7. For attorneys' fees, expenses, and costs of suit;

8. For pre-judgment and post-judgement interest;

9. An order enjoining Defendants from continuing the unfair, deceptive, fraudulent, and unlawful business practices alleged herein;

10. Awarding such other and further relief, including but not limited to declaratory or injunctive relief; and

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11. For all such other and further relief the Court may deem just and proper.

DATED: May 21, 2020

HOGUE & BELONG

___s/ *Jeffrey L. Hogue* _____
Jeffrey L. Hogue
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Marisol Jimenez Gaytan
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Attorneys for Plaintiff Cochran on behalf of himself and all others similarly situated
c/o Hogue & Belong, APC
170 Laurel Street San Diego, CA 92101
(619) 238-4720

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

DATED: May 21, 2020

HOGUE & BELONG

_s/ *Jeffrey L. Hogue* _____
Jeffrey L. Hogue
jhogue@hoguebelonglaw.com
Tyler J. Belong
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Marisol Jimenez Gaytan
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Attorneys for Plaintiff Cochran on behalf of himself and all others similarly situated
c/o Hogue & Belong, APC
170 Laurel Street San Diego, CA 92101
(619) 238-4720

Exhibit “A”

EEOC Form 161-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE *(ISSUED ON REQUEST)*

To: **Daniel Cochran**
577 Barnwood Drive
Windsor, CO 80550

From: **Denver Field Office**
303 East 17th Avenue
Suite 410
Denver, CO 80203

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
488-2020-00537	**Lowell A. Pate, Intake Supervisor**	**(303) 866-1329**

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☐ More than 180 days have passed since the filing of this charge.

☒ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☐ The EEOC is terminating its processing of this charge.

☐ The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

☒ The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.

☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

for

Amy Burkholder,
Director

April 22, 2020
(Date Mailed)

Enclosures(s)

cc: **HEWLETT PACKARD ENTERPRISE**
HOGUE & BELONG

Enclosure with EEOC
Form 161-B (11/16)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Exhibit “B”

Fighting Back Against Age Discrimination

There have been at least 92 age-discrimination complaints filed against 14 big-name technology companies in California since 2012, according to the state's Department of Fair Employment and Housing.

The complainants say they've been pushed out of jobs in favor of candidates in their 20s and 30s, who are perceived as being more innovative or creative.

Hewlett Packard has received the most allegations of age discrimination in recent years—25 since January 2014. One result is a class action filed by four former employees—boomers laid off at ages 52, 54, 62 and 63—who assert that HP "has shed thousands of its older employees" and alleges that a corporate policy introduced in 2013 called for 75 percent of job openings to be filled with new graduates or early-career techies. HP has said hiring was unrelated to age.

Other tech giants accused of age discrimination include Facebook, Yahoo, Google and Twitter. Many of these companies boast about how many millennials they employ, says Laurie McCann, senior attorney with AARP Foundation Litigation.