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12 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

13
14 CHRISTINA ROSE, individually and on behalf
of all others similarly situated,
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16 Plaintiff,
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18 v.
19 HP INC.,
20 Defendant.
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Case No.: 5:20-cv-02450

CLASS ACTION COMPLAINT

1. **Violation of California Civil Code § 1750, et seq.**
2. **Violation of California Business and Professions Code § 17200, et seq.**
3. **Breach of Implied Warranty**
4. **Fraudulent Concealment**
5. **Common Law Fraud**
6. **Quasi-Contract/Restitution**

JURY TRIAL DEMANDED

1 Plaintiff Christina Rose (“Plaintiff”), by and through her counsel, brings this Class Action
2 Complaint against Defendant HP Inc. (“HP” or “Defendant”) and alleges upon personal knowledge
3 as to her own actions, and upon information and belief as to counsel’s investigations and all other
4 matters, as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this consumer protection and false advertising class action lawsuit
7 against HP based on its misleading and unfair business practices with respect to the marketing and
8 sale of certain HP color printers (the “Printers”).¹

9 2. HP, one of America’s leading manufacturers and distributors of printers, offers
10 consumers printers capable of printing in both black and color ink.

11 3. However, at the point of sale for the Printers, HP fails to disclose that the Printers use
12 substantial amounts of color ink when printing images and text in black and white (a process known
13 as “underprinting”). HP also fails to disclose to consumers that the Printers are designed to cease
14 printing if the Product’s color ink is depleted, even if the consumer wants to print in black and white
15 using only black toner or ink.

16 4. Consumers purchase the Printers reasonably believing that the Printers would not use
17 color ink when printing purely black and white text or images. Consumers further reasonably believe
18 that the Printers will be able to print images or text in black and white regardless of whether color ink
19 is available.

20 5. Consumers do not know, and have no reason to know, that the Printers were
21 purposefully designed to use color ink even when printing images or text that are purely black and
22 white. Consumers are similarly unaware that the Printers will not be able to print at all if the Printers’
23 color ink has depleted. Consumers are unaware of these material facts not only because Defendant
24 fails to disclose them at the point of sale, but they defy common sense. Consumers expect a printer to
25 be able to print images and text in black and white when the printer still has sufficient black ink,
26 regardless of the color ink level.

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28 ¹ The Printers challenged in this Complaint are more fully defined and listed in Paragraph 23.

1 6. As a result of this underprinting process, consumers expend more on ink than they
2 reasonably expected to, and are forced to buy color ink in order to continue printing, whether they
3 choose to print in color or black and white. Consumers’ injuries are only exacerbated due to the
4 relatively more expensive price of color ink compared to black ink.

5 7. Had Plaintiff and other consumers known that Defendant designed its Printers to
6 prematurely stop printing when the color ink has been depleted, or that the Printers would consume
7 color ink even when printing images or text in black and white, they would not have purchased the
8 Printers or would have paid significantly less for them. Additionally, consumers would have
9 purchased fewer replacement color ink cartridges but for Defendant’s conduct. Therefore, Plaintiff
10 and consumers have suffered injury in fact as a result of Defendant’s deceptive practices.

11 8. Plaintiff brings this class action lawsuit on behalf of herself and all others similarly
12 situated. Plaintiff seeks to represent a California Subclass, a California Consumer Subclass, and a
13 Nationwide Class (defined *infra* in paragraphs 41-44) (collectively referred to as “Classes”).

14 9. Plaintiff, on behalf of herself and other consumers, is seeking damages, restitution,
15 declaratory and injunctive relief, and all other remedies the court deems appropriate.

16 **JURISDICTION AND VENUE**

17 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because
18 this case is a class action where the aggregate claims of all members of the proposed Classes are in
19 excess of the amount in controversy requirement, exclusive of interests and costs, and some members
20 of the proposed Classes, which total more than 100 class members, are citizens of states different
21 from the state of citizenship for Defendant.

22 11. This Court has personal and general jurisdiction over Defendant because Defendant is
23 incorporated in California and maintains its principal place of business, or “nerve center” at its
24 headquarters in Palo Alto, California. Further, Defendant has sufficient minimum contacts in
25 California, or otherwise intentionally did avail itself of the markets within California, through its sale
26 of the Printers in California and to California consumers.

27 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Defendant
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1 resides in Palo Alto, California, which is located in this District.

2 **PARTIES**

3 **Plaintiff**

4 13. Plaintiff Christina Rose is a citizen of California, residing in Mill Valley, California.
5 In 2017, Ms. Rose purchased an HP OfficeJet Pro 8630 printer from a Costco in Richmond,
6 California. When purchasing the Printer, Ms. Rose saw that the printer came with both color ink and
7 black ink, and therefore believed that the printer could print in both color and black and white.
8 Nothing at the point of sale on the Printer's packaging indicated to Ms. Rose that she would not be
9 able to print in black and white if the color ink was depleted. Furthermore, nothing on the Printer
10 packaging or advertising indicated that color ink would be used when printing in black and white, or
11 that the printer would be unable to print at all when the color ink was depleted. Therefore, Ms. Rose
12 reasonably believed that she could print in black and white, regardless of the level of color ink.

13 14. However, unbeknownst to Ms. Rose, when Ms. Rose printed images and text in black
14 and white (for example, musical score sheets), the Printer would also consume color ink. As a result,
15 the Printer's color ink supply depleted on numerous occasions without Ms. Rose's knowledge.
16 Furthermore, once the color ink in the Printer was depleted, the Printer no longer allowed Ms. Rose
17 to print, even when attempting to print images or text solely in black and white. As a result, since her
18 purchase of the Printer, Ms. Rose has had to purchase multi-pack color ink replacement cartridges on
19 at least three occasions, and a standalone magenta replacement cartridge, in order to continue printing
20 in black ink. Ms. Rose would not have purchased the Printer or would have paid significantly less for
21 it had she known that the Printer would engage in underprinting or that she would not be able to print
22 images or text in black and white unless the color ink was also in supply. Moreover, Ms. Rose would
23 have purchased fewer replacement color ink cartridges but for Defendant's conduct. Therefore, Ms.
24 Rose suffered injury in fact and lost money as a result of Defendant's misleading, unfair, and
25 fraudulent practices, as described herein.

26 15. Despite being deceived, Plaintiff wishes to and is likely to continue purchasing and
27 using Defendant's Printers, but only if Defendant accurately discloses at the point of sale that (1)
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1 color ink is used when printing images and text in black and white; and (2) the Printers require color
2 ink to print, even if the consumer is only printing in black and white. Although Plaintiff regularly
3 visits stores and online retailers that carry the Printers and continues to buy ink for her Printer, because
4 Plaintiff was deceived in the past by HP, absent an injunction, she will be unable to rely with
5 confidence on whether the Printers require color ink to print images and text in black and white or
6 whether the Printers are capable of printing black images or text when the color ink is depleted.
7 Therefore, Plaintiff will abstain from purchasing the Printers even though she would like to do so in
8 the future. In addition, members of the proposed classes run the risk of continuing to purchase the
9 Printers, and additional color cartridges for the Printers, under the faulty assumption that printing in
10 black and white does not consume color ink and that the Printers can still print in black and white
11 even when the color ink is depleted. Until HP is enjoined from its deceptive marketing practices,
12 Plaintiff and other consumers will continue to bear this ongoing injury.

13 **Defendant**

14 16. Defendant HP Inc. is incorporated in California with its principal place of business in
15 Palo Alto, California. Defendant, directly and/or through its agents, marketed, advertised, and sold
16 the Printers nationwide, including in California, throughout the class period. Defendant has
17 maintained substantial sales in this District. Based on information and belief, Defendant's marketing
18 team, and the decisions made by the team regarding the marketing and packaging of the Printers,
19 operate out of California. Specifically, Defendant maintains its center for "research and development
20 for printers, digital presses, and ink and media" in California.² Defendant's focus on printer and ink
21 research and development in California is longstanding, as its "San Diego Printer Operation was
22 created [in 1989] to focus on color inkjet printers."³

23 **FACTUAL ALLEGATIONS**

24 **I. HP's Printers**

25 17. HP is one of America's leading designers, manufacturers and merchants of computer

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27 ² <https://www8.hp.com/us/en/hp-information/cwc/sandiego-business-center.html> (last visited Apr. 9,
2020)

28 ³ <https://www.hpmuseum.net/divisions.php?did=4> (last visited Apr. 9, 2020).

1 printers, including inkjet and laser printers.

2 18. An inkjet printer is a printer that places small droplets of ink, dispensed from an ink
3 cartridge, onto paper to create an image or text.

4 19. A laser printer or LaserJet printer is a printer that uses laser beams and toner (rather
5 than ink) in the process of creating text and images. Laser printers generally work as follows: first, a
6 laser beam “draws” the desired text or image on a photoreceptor drum within the printer. At the same
7 time, the drum builds up a pattern of static electrical charges, which allows the drum to then attract a
8 powdered type of ink, called toner. Once the toner has been drawn to the drum, it is then transferred
9 onto a piece of paper and fused onto the paper with heat and pressure, creating the final image or text
10 for the consumer.

11 20. Unlike the fixed, upfront, and relatively cheap cost of a printer, the ink and toner
12 cartridges used in printers can ultimately be more costly to consumers because they require periodic
13 replacement. Thus, for printer companies such as HP, a majority of their revenues and profits come
14 from consumers purchasing replacement ink or toner once it is depleted.

15 21. HP printers are typically sold with both black and color ink or toner cartridges. While
16 HP printers require one black ink or toner cartridge to function, they require multiple color ink or
17 toner cartridges (*e.g.*, cyan, yellow, and magenta) to run. The color ink cartridges can be purchased
18 as a multi-pack, containing all of the colors, or in single-color cartridges.

19 22. Purchasing color ink or toner cartridges is significantly more expensive than
20 purchasing black ink or toner. As HP admits on its website, the number of printable pages per
21 cartridge is lower on per-dollar basis for HP’s color cartridges versus their black cartridges.⁴

22 **II. HP’s Misleading And Unfair Practices**

23 23. The Printers challenged in this Complaint are all HP printers which engage in
24 underprinting and/or do not allow consumers to continue printing in black and white when the
25 Printers’ color cartridges are depleted. These Printers include, but are not limited to, at least the
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27 ⁴ <https://store.hp.com/us/en/mdp/ink--toner---paper/hp-950---951-ink-cartridges#!&tab=vao> (last
28 visited Apr. 9, 2020).

1 following: HP OfficeJet 6100, 6600, 6700, 8702, 7110 Wide Format, 7510 Wide Format, 7610 Wide
2 Format, 7612 Wide Format, OfficeJet Pro 7720 Wide Format, 7730 Wide Format, 7740 Wide Format,
3 8100, 8210, 8216, 8218, 8600, 8600 Plus, 8610, 8615, 8620, 8625, 8630, 8640, 8660, 8710, 8715,
4 8717, 8718, 8719, 8720, 8725, 8728, 8730, 8732M, 8740, 8745, OfficeJet Pro 9010, 9012, 9013,
5 9014, 9015, 9016, 9018, 9019/Premier, 9020, 9022, 9023, 9025, 9026, 9028, and OfficeJet 9012 AiO
6 printers.⁵

7 24. HP markets and sells the Printers as being capable of printing in both color and black
8 ink.

9 25. HP has intentionally designed and engineered the Printers to use a significant amount
10 of color ink even when consumers are printing purely black and white images or text. HP calls this
11 “underprinting.”

12 26. As a result of underprinting, color ink is depleted even when printing images or text
13 in black and white, forcing consumers to use more color ink, and therefore spend more money, than
14 they reasonably expect to. HP further intentionally designed and engineered the Product to cease
15 printing in black ink if the Product’s color ink is depleted, even if the consumer wants to print a black
16 image or text.

17 27. At the point of sale, HP fails to disclose to consumers these foregoing deceptive and
18 fraudulent acts. To make matters worse, while color ink is used when printing images or text in black
19 and white, consumers have no reasonable way of knowing that such depletion is occurring because
20 no color other than black is detectable on the page. Based on the foregoing facts, reasonable
21 consumers do not know and would have no reason to know that color ink is used during the printing
22 of black and white text and images.

23 28. Moreover, if a consumer removes the color ink cartridge and attempts to print images
24 or text in black and white, the Printers will not print.

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26 ⁵ HP will have knowledge of any additional printers that also fail to disclose the fact that they
27 underprint and/or do not allow consumers to continue printing in black and white when the Printers’
28 color cartridges are depleted. Those products shall be included within the definition of “Printers” as
well.

1 29. Due to HP’s intentional “underprinting” process, the Printers will ultimately stop
2 printing when color ink has depleted, even if the consumer wants to continue printing using just black
3 ink.

4 30. As a result of this, the Printers’ color cartridges have a shorter lifespan than reasonably
5 expected by consumers, and consumers are forced to expend more money repurchasing color ink.

6 31. Despite engaging in the foregoing practices, at the point of sale, HP fails to disclose
7 to consumers that the Printers will eventually cease printing unless color ink is available, even if the
8 consumer wants to print in black and white. Thus, reasonable consumers do not know and would have
9 no reason to know that they will not be able to print in black if the color ink has depleted.

10 32. Had Plaintiff and other consumers known that the printers would engage in
11 underprinting, or that they would not be able to print black and white images and text unless color
12 ink is also available, they would not have purchased the Printers or would have paid significantly less
13 for them. Not only are consumers’ valuable color cartridges being depleted at an accelerated rate, but
14 consumers are purchasing more replacement color cartridges than they would have but for
15 Defendant’s conduct. Therefore, Plaintiff and consumers have suffered injury in fact as a result of
16 HP’s deceptive practices.

17 33. Each class member has been exposed to the same or substantially similar deceptive
18 practices, as at all relevant times HP uniformly fails to disclose at the point of sale that color ink is
19 used when printing in black and white, and that the Printers will not be able to print unless color ink
20 is available.

21 34. As a result of its misleading business practice, and the harm caused to Plaintiff and
22 other consumers, HP should be required to pay for all damages caused to consumers, including
23 Plaintiff. Furthermore, HP should be enjoined from engaging in these deceptive practices.

24 **III. HP’s Knowledge and Intent**

25 35. As the entity responsible for designing the Printers, HP knew or reasonably should
26 have known that the Printers are unable to print when the color cartridges are depleted and that the
27 Printers were designed to underprint. Nonetheless, HP failed to disclose these facts to consumers at
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1 the point of sale.

2 36. Furthermore, HP knew or reasonably should have known that consumers are deceived
3 and harmed by Defendant’s failure to conspicuously disclose its unfair practices. Since as early as
4 2006, HP has been involved in extensive class action litigation concerning its marketing and sale of
5 its printers and/or ink products, including, *inter alia*, allegations that its ink cartridges prematurely
6 required replacement, allegations that it ran an ink cartridge monopoly, and even similar allegations
7 regarding underprinting.

8 37. Indeed in 2006, consumers Carl K. Rich and David Duran brought a class action suit
9 against HP, alleging substantially similar deceptive conduct as alleged herein. *See Rich et al. v.*
10 *Hewlett-Packard Company*, No. C-06-03361-JF, (N.D. Cal.). HP ultimately resolved the *Rich* action
11 after it was consolidated with several other related actions against HP. *See In re HP Inkjet Printer*
12 *Litig.*, No. 5:05-cv-03580-JF (N.D. Cal.) As a part of the settlement, HP promised to do the following
13 in response to the *Rich* action:⁶

- 14 (2) HP will incorporate on its website and/or user manuals disclosures
15 regarding “underprinting”—the inkjet technology at issue in the
16 *Rich* action, whereby certain HP color inkjet printers may, in
17 certain circumstances depending on the printer settings and
18 customer inputs, use a combination of inks from the tri-color (or
19 other, non-black color) and black inkjet cartridges to produce black
20 text and images. These disclosures will include a description of
what underprinting is, why it is used, and some of the options for
disabling or minimizing the use of underprinting. HP also will
include disclosures regarding page yields including a summary of
HP’s ISO testing for page yields and an explanation that actual
yield varies depending on the content of printed pages and other
factors.

21 38. To the extent that HP may have added purported statement(s) regarding underprinting
22 on its website and/or user manuals in response to the settlement, any such statement(s) are not
23 conspicuous to reasonable consumers when they are purchasing the Printers, due to their placement
24 and/or presentation on such platforms. For example, nowhere on HP’s store webpage for HP OfficeJet
25 Pro 9015, one of the Printers at issue here, does HP disclose that the Printer uses color ink when

27 ⁶ *See id.* at ECF No. 252 at 2.

1 printing in black and white.⁷ Moreover, the Amazon page for same Product also does not contain
2 information about underprinting.⁸

3 39. Exacerbating this lack of disclosure is the fact that consumers do not have access to
4 the Printers' user manuals until *after* expending money to purchase the Printers and then receiving
5 the Printers in the mail or picking them up from the store. In that same vein, to the extent HP
6 purportedly included any such statement on customer support pages, a reasonable consumer would
7 not visit such webpages prior to purchasing the Product, and in any event, would only do so after they
8 have encountered some issue. Accordingly, HP's post-purchase provision of any purported statement
9 about underprinting is therefore ineffective.

10 40. Furthermore, a portion of the Printers' sales occurs in-store rather than online. Such
11 was the case for Plaintiff's purchase. Nowhere at the point of sale, including on the Printers'
12 packaging and on Defendant's in-store advertisements and/or shelf tags, does HP directly disclose
13 that the Printers utilize underprinting.

14 **CLASS ACTION ALLEGATIONS**

15 41. Plaintiff brings this case as a class action that may be properly maintained under
16 Federal Rule of Civil Procedure 23 on behalf of herself and all persons in the United States who,
17 within the relevant statute of limitations periods, purchased for personal, family, or household
18 purposes any of the Printers ("Nationwide Class").

19 42. Plaintiff also seeks to represent a subclass defined as all California citizens who, within
20 the relevant statute of limitations periods, purchased any of the Printers ("California Subclass").

21 43. Plaintiff also seeks to represent a subclass defined as all California citizens who, within
22 the relevant statute of limitations periods, purchased for personal, family, or household purposes any
23 of the Printers ("California Consumer Subclass").

24 44. Excluded from the Classes are Defendant, the officers and directors of the Defendant
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26 ⁷ https://store.hp.com/us/en/pdp/hp-officejet-pro-9015-all-in-one-printer?jumpid=cp_r11400_us/en/pdp/hp-officejet-pro-9015-all-in-one-printer (last visited Apr. 9, 2020).

27 ⁸ https://www.amazon.com/HP-OfficeJet-9015-Wireless-Productivity/dp/B07N1DF9VV/ref=sr_1_3?keywords=HP+OfficeJet+Pro+9015&qid=1572647281&sr=8-3 (last visited Apr. 9, 2020).

1 at all relevant times, members of its immediate families and its legal representatives, heirs, successors
2 or assigns and any entity in which Defendant has or had a controlling interest. Any judge and/or
3 magistrate judge to whom this action is assigned, and any members of such judges' staffs and
4 immediate families are also excluded from the Classes. Also excluded from the Classes are persons
5 or entities that purchased the Printers for sole purposes of resale.

6 45. Plaintiff hereby reserves the right to amend or modify the class definitions with greater
7 specificity or division after having had an opportunity to conduct discovery.

8 46. Plaintiff is member of the Nationwide Class, the California Subclass, and the
9 California Consumer Subclass.

10 47. Numerosity: According to information and belief, Defendant has sold at least tens of
11 thousands of Printers. The Printers are sold online on HP's website, Amazon.com, and other online
12 retailers, as well as in stores such as BestBuy and Office Depot. Further, members of the Classes are
13 so numerous that their individual joinder herein is impractical. While the precise number of class
14 members and their identities are unknown to Plaintiff at this time, the number may be determined
15 through discovery.

16 48. Common Questions Predominate: Common questions of law and fact exist as to all
17 members of the Classes and predominate over questions affecting only individual class members.
18 Common legal and factual questions include, but are not limited to, whether Defendant failed to
19 disclose that color ink is used when printing in black and white and therefore violated various
20 consumer protection statutes and common laws.

21 49. Typicality: Plaintiff's claims are typical of the claims of the Classes she seeks to
22 represent in that Plaintiff and members of the Classes were uniformly not informed by HP of the
23 material fact that color ink is used when printing images or text in black and white, and that the
24 printers are unable to continue printing when the color cartridges are empty, purchased the Printers
25 without such material information, and suffered losses as a result of such purchases.

26 50. Adequacy: Plaintiff is an adequate representative of the Classes because her interests
27 do not conflict with the interests of the members of the Classes she seeks to represent, she has retained
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1 competent counsel experienced in prosecuting class actions, and she intends to prosecute this action
2 vigorously. The interests of the members of the Classes will be fairly and adequately protected by
3 the Plaintiff and her counsel.

4 51. Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the claims of the members of the Classes. The size of each claim is too small to pursue
6 individually, and each individual Class member will lack the resources to undergo the burden and
7 expense of individual prosecution of the complex and extensive litigation necessary to establish
8 Defendant’s liability. Individualized litigation increases the delay and expense to all parties and
9 multiplies the burden on the judicial system presented by the complex legal and factual issues of this
10 case. Individualized litigation also presents a potential for inconsistent or contradictory judgments.
11 The class action mechanism is designed to remedy harms like this one that are too small in value,
12 although not insignificant, to file individual lawsuits for.

13 52. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure
14 23(b)(2) because HP has acted or refused to act on grounds that are generally applicable to the class
15 members, thereby making final injunctive relief appropriate with respect to all Classes.

16
17 **FIRST CLAIM FOR RELIEF**
18 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
19 **California Civil Code §§ 1750, et seq.**
20 ***(for the Nationwide Class; in the alternative, for the California Subclass)***

21 53. Plaintiff repeats the allegations contained in paragraphs 1-52 above as if fully set forth
22 herein.

23 54. Plaintiff brings this claim individually and on behalf of the Nationwide Class, or in the
24 alternative, for the California Subclass, against Defendant.

25 55. The Printers are “goods” pursuant to California Civil Code § 1761(a), and the
26 purchases of the Printers by Plaintiff and members of the Nationwide and California Subclass
27 constitute “transactions” pursuant to Cal. Civ. Code § 1761(e). Further, Plaintiff and members of the
28 proposed Nationwide Class and California Subclass are consumers within the meaning of Cal. Civ.
Code § 1761(d).

1 56. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
2 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have”
3 By omitting that the Printers are designed to engage in underprinting and are further unable to print once
4 the color ink is depleted, HP failed to disclose material facts regarding the Printers’ characteristics and
5 use. A reasonable consumer would believe that the Printers would be able to print in black and white as
6 long as black ink is available in the printer and that the Printers would not use color ink when printing
7 black images and text. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

8 57. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a
9 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”
10 By omitting that the Printers are designed to engage in underprinting and are further unable to print once
11 the color ink is depleted, HP failed to disclose material facts regarding the Printers’ standard, quality, and
12 grade. A reasonable consumer would believe that the Printers would be able to print in black and white as
13 long as black ink is available in the printer and that the Printers would not use color ink when printing
14 black images and text. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

15 58. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
16 to sell them as advertised.” By omitting that the Printers are designed to engage in underprinting and are
17 further unable to print once the color ink is depleted, HP advertised the Printers as being capable of
18 operating as a normal, functioning printer. However, because the Printers are designed to engage in
19 underprinting and are further unable to print once the color ink is depleted, they do not operate as a normal,
20 functioning printer. Therefore, HP has violated section 1770(a)(9) of the CLRA.

21 59. Cal. Civ. Code § 1770(a)(15) prohibits “[r]epresenting that a part, replacement, or
22 repair service is needed when it is not.” Due to HP’s design of the Printers, consumers are told to
23 replace their color ink cartridges for the Printers once they are depleted in order to continue printing
24 in black and white. However, such replacement is not inherently needed and is instead a result of
25 HP’s design of the Product. Therefore, HP has violated section 1770(a)(15) of the CLRA.

26 60. Because the Printers’ underprinting and inability to function once the color ink is
27 depleted pertain to the Printers’ central functionality, HP was obligated to disclose these material
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1 facts to Plaintiff. Because HP failed to disclose these material facts, consumers were misled.

2 61. At all relevant times, HP knew or reasonably should have known that there was no
3 disclosure at the point of sale that the Printers use color ink even when printing in black and white,
4 or that the Printers cease to print even in black if color ink is unavailable.

5 62. At all relevant times, HP knew or reasonably should have known that Plaintiff and
6 other members of the Nationwide Class and California Subclass relied on the foregoing
7 representations and omissions and continue to be deceived and harmed by HP's foregoing unfair
8 practices. This is especially the case in light of Defendant's prior litigation on this issue.

9 63. Plaintiff and members of the Nationwide Class and California Subclass reasonably and
10 justifiably relied on HP's misleading representations and fraudulent omissions regarding the Printers.
11 Plaintiff and other consumers did not know, and had no reason to know, at the point of sale that color
12 ink would be used when printing in black and white, or that the Printers would no longer print if the
13 color ink was depleted.

14 64. Plaintiff and members of the Nationwide Class and California Consumer Subclass
15 suffered injuries caused by HP because they would not have purchased the Printers, or would have
16 paid significantly less for the Printers, had they known that HP's conduct was misleading and
17 fraudulent.

18 65. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the Nationwide Class and
19 California Consumer Subclass seek damages, restitution, declaratory and injunctive relief, and all
20 other remedies the Court deems appropriate for HP's violations of the CLRA.

21 66. Pursuant to Cal. Civ. Code § 1782, on May 1, 2019, counsel for Plaintiff mailed a
22 notice and demand letter by certified mail, with return receipt requested, to Defendant.⁹ Defendant
23 received the notice and demand letter on May 3, 2019.¹⁰ Because Defendant has failed to fully rectify
24 or remedy the damages caused within 30 days after receipt of the notice and demand letter, Plaintiff
25 timely filed the Class Action Complaint for a claim for damages under the CLRA.

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⁹ See Exhibit A.

28 ¹⁰ *Id.*

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SECOND CLAIM FOR RELIEF
Violation of California’s Unfair Competition Law (“UCL”),
California Business & Professions Code §§ 17200, et seq.
(for the Nationwide Class; in the alternative, for the California Subclass)

67. Plaintiff repeats the allegations contained in paragraphs 1-52 above as if fully set forth herein.

68. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class, or in the alternative, the California Subclass against Defendant.

69. UCL § 17200 provides, in pertinent part, that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising” California Business and Professional Code (“Cal. Bus. & Prof. Code”) § 17200.

70. Under the UCL, a business act or practice is “unlawful” if it violates any established state or federal law.

71. HP’s misrepresentations and omissions regarding the Printers’ inability to print once the color cartridges are depleted, and the Printers’ use of color ink when printing in black and white, were and continue to be “unlawful” because they violate the CLRA and other applicable laws as described herein.

72. As a result of HP’s unlawful business acts and practices, HP has and continues to unlawfully obtain money from Plaintiff and members of both the Nationwide Class and California Subclass.

73. Under the UCL, a business act or practice is “unfair” if the defendant’s conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity of the harm to the alleged victims.

74. HP’s conduct was and continues to be of no benefit to purchasers of the Printers, as it is misleading, unfair, unlawful, and is injurious to consumers who purchased the Printers and were deceived by HP’s fraudulent omissions and misrepresentations. Deceiving consumers about the

1 functionality of the Printers and ceasing their ability to print in black and white, even if black ink is
2 available, is of no benefit to the consumers. Therefore, Defendant’s conduct was and continues to be
3 “unfair.”

4 75. As a result of HP’s unfair business acts and practices, HP has and continues to unfairly
5 obtain money from Plaintiff, and members of both the Nationwide Class and California Subclass.

6 76. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is
7 likely to deceive members of the consuming public.

8 77. HP’s conduct here was and continues to be fraudulent because it has and will continue
9 to likely deceive consumers by failing to disclose the fact that the Printers’ color ink is used when
10 printing images or text in black and white, and that the printers are unable to continue printing when
11 the color cartridges are empty, even if the consumer is attempting to print a purely black and white
12 image or text. Because HP misled and will likely continue to mislead Plaintiff and members of both
13 the Nationwide Class and California Subclass, HP’s conduct was “fraudulent.”

14 78. As a result of HP’s fraudulent business acts and practices, HP has and continues to
15 fraudulently obtain money from Plaintiff and members of both the Nationwide Class and California
16 Subclass.

17 79. Plaintiff requests that this Court cause HP to restore this unlawfully, unfairly, and
18 fraudulently obtained money to Plaintiff, and members of both the Nationwide Class and California
19 Subclass, to disgorge the profits HP made on these transactions, and to enjoin HP from violating the
20 UCL or violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff, and
21 members of both the Nationwide Class and California Subclass may be irreparably harmed and/or
22 denied an effective and complete remedy if such an order is not granted.

23 80. Monetary damages are an inadequate remedy at law because injunctive relief is
24 necessary to deter Defendant from continuing its false and deceptive conduct regarding the Printers.

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THIRD CLAIM FOR RELIEF

Fraudulent Concealment

(for the Nationwide Class; in the alternative, for the California Subclass)

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3 81. Plaintiff repeats the allegations contained in paragraphs 1-52 above as if fully set forth
4 herein.

5 82. Plaintiff brings this claim individually and on behalf of the members of the proposed
6 Nationwide Class. In the alternative, Plaintiff brings this claim individually and on behalf of the
7 proposed California Subclass.

8 83. As the entity responsible for designing the Printers, HP knew or reasonably should
9 have known that the Printers are unable to print when the color cartridges are depleted and that the
10 Printers were designed to underprint.

11 84. Despite HP's duty to disclose these material facts to Plaintiff and class members, HP
12 concealed these material facts from Plaintiff at the point of sale.

13 85. HP had a duty to disclose these material facts given that Printers' underprinting and
14 inability to function once the color ink is depleted pertain to the Printers' central functionality:
15 printing images and text. Given that HP designed and marketed the Printers, and that these omissions
16 pertain to facts that, if revealed to consumers, would affect their purchasing decisions in that they
17 would not have purchased or would have paid less for the Printers, HP's concealment of these material
18 facts was intentional and with the intent to defraud Plaintiff and class members.

19 86. Plaintiff and members of the Nationwide Class and California Consumer Subclass
20 suffered injuries caused by HP given that, had they known that the printers would engage in
21 underprinting, or that the printers would not print black and white images or text unless color ink is
22 also available, they would not have purchased the Printers or would have paid significantly less for
23 them.

FOURTH CLAIM FOR RELIEF

Breach of Implied Warranty

(for the Nationwide Class; in the alternative, for the California Subclass)

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26 87. Plaintiff repeats the allegations contained in paragraphs 1-52 above as if fully set forth
27 herein.

1 88. Plaintiff brings this claim individually and on behalf of the members of the proposed
2 Nationwide Class. In the alternative, Plaintiff brings this claim individually and on behalf of the
3 proposed California Subclass.

4 89. California Commercial Code § 2314(1) provides that “a warranty that the goods shall
5 be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods
6 of that kind.” Cal. Comm. Code § 2314(1).

7 90. Furthermore, California Commercial Code § 2314(2) provides that “[g]oods to be
8 merchantable must be at least such as . . . [a]re fit for the ordinary purposes for which such goods are
9 used[.]” Cal. Comm. Code § 2314(2)(c).

10 91. HP is a merchant with respect to the sale of printers and ink/toner cartridges, such as
11 the Printers in this action. Therefore, a warranty of merchantability is implied in every contract for
12 sale of the Printers to consumers.

13 92. In its sale of the Printers, HP has provided an implied warranty that the Printers would
14 continue to print black and white images and text as long as the printer contains black ink, as this is
15 the ordinary purpose of a printer. However, because HP designed the printer to cease printing black
16 and white images and text even if the printer contains black ink, the Printers do not operate as ordinary
17 printers.

18 93. Moreover, HP has provided an implied warranty that the Printers will use only black
19 ink when printing black and white text and images. However, because HP designed the printer to use
20 color ink even when printing black text and images, the Printers do not use only black ink when
21 printing black and white text and images.

22 94. Therefore, HP has breached its implied warranty of merchantability regarding the
23 Printers.

24 95. If Plaintiff and members of the Classes had known that the Printers were designed to
25 cease functioning despite the availability of black ink, they would not have purchased the Printers or
26 would have paid less for them. Therefore, as a direct and/or indirect result of Defendant’s breach,
27 Plaintiff and members of the Classes have suffered injury and deserve to recover all damages afforded
28

1 under the law.

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3 **FIFTH CLAIM FOR RELIEF**
4 **Common Law Fraud**

5 *(for the Nationwide Class; in the alternative, for the California Subclass)*

6 96. Plaintiff repeats the allegations contained in paragraphs 1-52 above as if fully set forth
7 herein.

8 97. Plaintiff bring this claim individually and on behalf of the members of the Classes
9 against Defendant.

10 98. HP has willfully, falsely, and knowingly omitted the fact that the Printers' color ink is
11 used when printing images and text in black and white and that the printers cease printing when the
12 color cartridges are empty, even if the consumer is attempting to print purely black and white images
13 or text. Therefore, HP has made knowing, fraudulent omissions as to the Printers.

14 99. HP's omissions were material (*i.e.*, the type of misrepresentations to which a
15 reasonable person would attach importance and would be induced to act thereon in making purchase
16 decisions), because they relate to the central functionalities of the Printers: the ability to print and the
17 use of ink during the printing process.

18 100. HP knew or recklessly disregarded the fact that the Printers would, unbeknownst to
19 consumers, deplete color ink when printing black and white images and text and further cease printing
20 when the color cartridges are empty.

21 101. HP intended that Plaintiff and other consumers rely on these omissions, as they are
22 pertaining to facts that, if revealed to consumers, would affect their purchasing decisions in that they
23 would not have purchased or would have paid less for the Printers.

24 102. Plaintiff and members of the Classes have reasonably and justifiably relied on
25 Defendant's omissions when purchasing the Printers and had the correct facts been known, would not
26 have purchased the Printers or would not have purchased them at the prices at which they were
27 offered.

28 103. Therefore, as a direct and proximate result of HP's fraud, Plaintiff and members of the
Classes have suffered economic losses and other general and specific damages, including but not

1 limited to the amounts paid for the Printers and any interest that would have accrued on those monies,
2 all in an amount to be proven at trial.

3 **SIXTH CLAIM FOR RELIEF**

4 **Quasi-Contract/Restitution**

5 *(for the Nationwide Class; in the alternative, for the California Subclass)*

6 104. Plaintiff repeats the allegations contained in paragraphs 1-52 above as if fully set forth
7 herein.

8 105. Plaintiff bring this claim individually and on behalf of the members of the Classes
9 against Defendant.

10 106. As alleged herein, HP intentionally, recklessly, and/or negligently omitted material
11 information about the Printers to Plaintiff and members of the Classes to induce them to purchase the
12 Printers. Plaintiff and members of the Classes have reasonably relied on the misleading omissions.
13 Plaintiff and members of the Classes therefore have been induced by HP's misleading and false
14 omissions about the Printers, and paid for them when they would and/or should not have, or paid
15 more money to HP for the Printers and replacement cartridges than they otherwise would and/or
16 should have paid.

17 107. Plaintiff and members of the Classes have conferred a benefit upon HP, as HP has
18 retained monies paid to them by Plaintiff and members of the Classes.

19 108. The monies received were obtained under circumstances that were at the expense of
20 Plaintiff and members of the Classes – *i.e.*, Plaintiff and members of the Classes did not receive the
21 full value of the benefit conferred upon HP because HP intentionally designed the Printers to consume
22 color ink even if consumers are printing purely black and white images and text, and also by
23 intentionally designing the Printers to cease printing if the Product's color ink is depleted, even if the
24 consumer wants to print images or text in black and white.

25 109. Therefore, it is inequitable and unjust for HP to retain the profit, benefit, or
26 compensation conferred upon them without paying Plaintiff and the members of the Classes back for
27 the difference of the full value of the benefit compared to the value actually received.

28 110. As a direct and proximate result of HP's unjust enrichment, Plaintiff and members of

1 the Classes are entitled to restitution, disgorgement, and/or the imposition of a constructive trust upon
2 all profits, benefits, and other compensation obtained by HP from its deceptive, misleading, and
3 unlawful conduct as alleged herein.

4 111. Monetary damages are an inadequate remedy at law because injunctive relief is
5 necessary to deter HP from continuing its false and deceptive conduct regarding the Printers.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
8 judgment against Defendant as follows:

9 a) For an order certifying the Classes under Rule 23 of the Federal Rules of Civil
10 Procedure, naming Plaintiff as representative of all Classes, and naming Plaintiff's attorneys as
11 Class Counsel to represent all Classes;

12 b) For an order declaring that HP's conduct violates the statutes and laws referenced
13 herein;

14 c) For an order finding in favor of Plaintiff, and all Classes, on all counts asserted
15 herein;

16 d) For an order awarding all damages in amounts to be determined by the Court and/or
17 jury;

18 e) For prejudgment interest on all amounts awarded;

19 f) For interest on the amount of any and all economic losses, at the prevailing legal
20 rate;

21 g) For an order of restitution and all other forms of equitable monetary relief;

22 h) For injunctive relief as pleaded or as the Court may deem proper;

23 i) For an order awarding Plaintiff and all Classes their reasonable attorneys' fees,
24 expenses and costs of suit, including as provided by statute such as under Fed. R. Civ. P. 23(h) and
25 California Code of Civil Procedure Section 1021.5; and

26 j) For any other such relief as the Court deems just and proper.

27 **DEMAND FOR TRIAL BY JURY**

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Plaintiff demand a trial by jury on all issues so triable.

Dated: April 10, 2020

FARUQI & FARUQI, LLP

By: /s/ Benjamin Heikali
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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Christina Rose, declare as follows:

1. I am the Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because Defendant HP Inc. maintains its principal place of business, or nerve center, at its headquarters in Palo Alto, California.

I declare under penalty of perjury that the foregoing is true and correct, executed on 4/9/2020 | 5:59 PM PDT at Mill Valley, California.

DocuSigned by:
Christina Rose
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Christina Rose