

1 **Todd M. Friedman (216752)**
2 **Adrian R. Bacon (280332)**
3 **Law Offices of Todd M. Friedman, P.C.**
4 **21550 Oxnard St., Suite 780**
5 **Woodland Hills, CA 91367**
6 **Phone: 877-206-4741**
7 **Fax: 866-633-0228**
8 **tfriedman@toddfllaw.com**
9 **abacon@toddfllaw.com**
10 **Attorneys for Plaintiff**

11 *Attorneys for Plaintiff, Anthony Fehrenbach, and all others similarly situated*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 **ANTHONY FEHRENBACH,**
15 **individually, and on behalf of other**
16 **members of the general public**
17 **similarly situated,**

18 **Plaintiff,**

19 **vs.**

20 **HEWLETT PACKARD COMPANY,**
21 **Defendant.**

22 **Case No. '16CV2297 MMAMDD**

23 **CLASS ACTION COMPLAINT**

- 24 (1) Violation of Unfair Competition
25 Law (Cal. Business & Professions
26 Code §§ 17500 *et seq.*) and
27 (2) Violation of Unfair Competition
28 Law (Cal. Business & Professions
Code §§ 17200 *et seq.*)

Jury Trial Demanded

1 Plaintiff Anthony Fehrenbach (“Plaintiff”), individually and on behalf of
2 all other members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant
5 HEWLETT PACKARD COMPANY (hereinafter “Defendant”) to stop
6 Defendant’s practice of falsely advertising printers that are claimed to have “HP
7 Smart Install,” a feature designed to allow for the easy software installation of
8 the printers, when in fact this feature has been disabled from these printers, and
9 to obtain redress for all California Purchasers (“Class Members”) who
10 purchased, within the applicable statute of limitations period, one of these
11 printers manufactured by Defendant (hereinafter collectively referred to as the
12 “Class Products”).

13 2. Defendant is a Delaware corporation and is engaged in the
14 manufacture, sale, and distribution of computers and related equipment and
15 services with its headquarters and principal place of business in California.

16 3. Defendant represents that certain printers that have HP Smart Install
17 will utilize this feature to allow the printers to obtain installation software
18 automatically via the internet when they in fact do not contain this feature.

19 4. Plaintiff and others similarly situated purchased these printers.

20 5. Defendant misrepresented and falsely advertised to Plaintiff and
21 others similarly situated that the HP Smart Install feature would be installed in
22 these printers, but in fact they were disabled from the printers sold to Plaintiff
23 and others similarly situated, providing them with printers without the feature
24 that they were advertised to have.

25 6. Defendant’s misrepresentations to Plaintiff and others similarly
26 situated caused them to purchase these printers, which Plaintiff and others
27 similarly situated would not have purchased absent these misrepresentations by
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1 Defendant and its employees. In so doing, Defendant has violated California
2 consumer protection statutes.

3 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

4 7. Purchasers purchase printers advertised to have the HP Smart Install
5 feature included with the printers.

6 8. On the outside of the boxes of these printers, there is a statement
7 assuring customers that these printers will be easy to install because of the
8 inclusion of the HP Smart Install feature.

9 9. Purchasers rely on the representations and advertisements of
10 retailers in order to know which printers to purchase. The difficulty of having to
11 install a printer can often times deter one from buying the printer.

12 10. Defendant is a manufacturer that is engaged in the manufacture,
13 marketing, supplying and distributing of printers advertised to have HP Smart
14 Install included with the printer but in fact do not.

15 11. Purchasers pay for the HP Smart Install feature as part of the
16 payment for the printers. When Purchasers purchase the printer they are
17 purchasing the printer for the features that are advertised to come with them.

18 12. Defendant profits from both the sale of the printers and the HP
19 Smart Install feature. Without the HP Smart Install feature, many of the
20 Purchasers would not have purchased these printers because of the difficulty of
21 installing standard printers and the deterrence to the purchase of printers that the
22 difficulty in installation causes.

23 13. In actual fact, the HP Smart Install feature is disabled and
24 unavailable for use on the printers that the Defendant advertises them to have.

25 14. A pamphlet is included inside of the printer boxes that the HP Smart
26 Install feature is disabled and unusable. Purchasers are unable to ascertain the
27 true features of the printers until after they have purchased the printers and
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1 opened the boxes.

2 15. Despite the fact that these printers do not include HP Smart Install,
3 Defendant and Defendant's employees nonetheless represent to Purchasers on
4 the box that the printers include the HP Smart Install feature and benefit from
5 such representations.

6 16. Defendant conceals the fact that printers do not include the HP
7 Smart Install feature.

8 17. Defendant does not present Purchasers with a written copy of the
9 correct terms of the purchase prior to purchase.

10 18. Defendant makes written representations to Purchasers which
11 contradict the actual features included with the printers.

12 19. The aforementioned written and oral representations are objectively
13 false, and constitute a false advertisement under Cal. Bus. & Prof. Code §§
14 17500 et. seq., and an unlawful, unfair, or deceptive business practices under
15 Cal. Bus. & Prof. Code §§ 17200 et. seq.

16 20. Defendant's violations of the law include, but not limited to, the
17 false advertising, marketing, representations, and sale of the invalid Class
18 Products to Purchasers in California.

19 21. On behalf of the class, Plaintiff seeks an injunction requiring
20 Defendant to cease advertising and selling the Class Products and an award of
21 damages and restitution to the Class Members, together with costs and
22 reasonable attorneys' fees.

23 **JURISDICTION AND VENUE**

24 22. This class action is brought pursuant to Federal Rule of Civil
25 Procedure 23. All claims in this matter arise exclusively under California law.

26 23. This matter is properly venued in the United States District Court
27 for the SOUTHERN District of California, in that Plaintiff purchased the printer
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1 at a Staples store located at 11160 Rancho Carmel Dr., San Diego, CA 92128.
2 Plaintiff resides in the SOUTHERN District of California and Defendant does
3 business, inter alia, in the SOUTHERN District of California.

4 24. There is original federal subject matter jurisdiction over this matter
5 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4
6 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides
7 for the original jurisdiction of federal courts in any class action in which at least
8 100 members are in the proposed plaintiff class, any member of the plaintiff
9 class is a citizen of a State different from the State of citizenship of any
10 defendant, and the matter in controversy exceeds the sum of \$5,000,000.00,
11 exclusive of interests and costs.

12 25. In the case at bar, there are at least 10,000 members in the proposed
13 Class and Sub-classes, the total claims of the proposed Class members are in
14 excess of \$5,000,000.00 in the aggregate, exclusive of interests and costs.

15 **THE PARTIES**

16 26. Plaintiff Anthony Fehrenbach is a citizen and resident of the State of
17 California and purchased a HP Laserjet printer in the County of San Diego.

18 27. Defendant HEWLETT PACKARD COMPANY is a corporation
19 with its principal place of business located in Delaware and headquarters in
20 California. Defendant is a Delaware Corporation. Defendant conducts a large
21 share of its business within California.

22 28. Plaintiff alleges, on information and belief, that Defendant's
23 marketing campaigns, as pertains to this matter, were created by Defendant at its
24 principle place of business in California, and were disseminated from California.

25 29. Plaintiff is informed and believes, and thereon alleges, that each and
26 all of the acts and omissions alleged herein were performed by, or is attributable
27 to, Defendant and/or its employees, agents, and/or third parties acting on its
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1 behalf, each acting as the agent for the other, with legal authority to act on the
2 other's behalf. The acts of any and all of Defendant's employees, agents, and/or
3 third parties acting on its behalf, were in accordance with, and represent, the
4 official policy of Defendant.

5 30. Plaintiff is informed and believes, and thereon alleges, that said
6 Defendant is in some manner intentionally, negligently, or otherwise responsible
7 for the acts, omissions, occurrences, and transactions of each and all its
8 employees, agents, and/or third parties acting on its behalf, in proximately
9 causing the damages herein alleged.

10 31. At all relevant times, Defendant ratified each and every act or
11 omission complained of herein. At all relevant times, Defendant, aided and
12 abetted the acts and omissions as alleged herein.

13 **PLAINTIFF'S FACTS**

14 32. On or around February 26, 2015 Plaintiff went to a Staples store
15 located at 11160 Rancho Carmel Dr., San Diego, California, 92128, and
16 purchased a LaserJet printer ("the printer").

17 33. For the printer, Plaintiff paid more than valuable consideration.

18 34. Including taxes and fees Plaintiff paid over \$347.38.

19 35. Defendant manufactured the printer with all relevant packaging and
20 materials.

21 36. On the box of the printer Defendant advertised easy printer software
22 installation through the preinstalled HP Smart installed feature. In relevant part,
23 the box said:

24 "Start printing right away with effortless setup – no CD
25 installation required – using HP Smart Install."

26 37. Plaintiff was drawn to the printer because of the written
27 advertisements on the side of the box, which gave him the impression the printer
28 was a printer which would meet his needs and expectations. In fact, Plaintiff had

1 a long discussion with the sales representative assisting him about the Smart
2 Install feature and how it suited his needs for easy installation.

3 38. Relying on the assurance that the HP Smart Install feature would be
4 included with the purchase of the printer, Plaintiff decided to purchase the
5 printer. Plaintiff purchased the printer because of the assurance of easy
6 installation that was advertised through the HP Smart Install feature included
7 with the printer.

8 39. During the time Plaintiff spent shopping for a printer, he did not see
9 any other laser printers that he thought would be as easy to install as the printer,
10 because he did not notice that any of them advertised a feature comparable to the
11 Smart Install feature. Plaintiff forewent purchasing these other brands and
12 models of printers, in lieu of the printer, for this reason.

13 40. Upon returning to his residence in attempt to connect the printer to
14 his computer, Plaintiff could not get the printer installed and connected to his
15 computer.

16 41. Plaintiff struggled, frustratingly, for quite some time until Plaintiff
17 discovered that the HP Smart Install feature had been disabled.

18 42. There was an Insert Sheet stuffed way down on the bottom of the
19 inside of the sealed box stating this. In relevant part the Insert Sheet stated:

20 “The Smart Install feature is now disabled by default.”

21 43. The Insert Sheet indicated that Defendant knew that the HP Smart
22 Install feature would not be available despite advertising as such.

23 44. Upon learning this, Plaintiff believed that the printer was not
24 supported by his Windows 7 desktop computer and his Windows 8 Laptop and
25 gave up trying to install it on these devices.

26 45. Such sales tactics rely on falsities and have a tendency to mislead
27 and deceive a reasonable consumer.

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1 46. Defendant expressly represented to Plaintiff, through written
2 statements, that the HP Smart Install would be available for easy and quick
3 installation.

4 47. Plaintiff alleges that such representations were part of a common
5 scheme to mislead Purchasers and incentivize them to purchase printers in spite
6 of the inhibition brought about by the difficulty of installing them.

7 48. In purchasing the Class Products at the time of purchase of his
8 printer, Plaintiff relied upon Defendant's representations that the printer would
9 be "effortless" to install as a result of the inclusion of the HP Smart Install
10 feature.

11 49. Not only were such representations clearly false because the printers
12 did not in fact include the HP Smart Install feature, but the Plaintiff's difficulty
13 and inability to install the printer to his computer evidences that the printer was
14 also not "effortless" to install.

15 50. Plaintiff would not have purchased the printer if he knew that the
16 above-referenced statements made by Defendant were false.

17 51. Had Defendant properly marketed, advertised, and represented the
18 Class Products as failing to include the HP Smart Install feature, Plaintiff would
19 not have purchased the printer.

20 52. Plaintiff gave his money to Defendant because of the HP Smart
21 Install feature. Defendant benefited from falsely advertising the features included
22 with the printer. Plaintiff received nothing for giving his money to Defendant for
23 the HP Smart Install feature as it was not included with printer. Defendant
24 benefited on the loss to Plaintiff and provided nothing of benefit to Plaintiff in
25 exchange.

26 53. Had Defendant properly marketed, advertised, and represented the
27 Class Products as failing to include the HP Smart Install feature, no reasonable
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1 consumer who purchased a printer would have believed that it came with the HP
2 Smart Install feature leading to easy and quick installation.

3 54. Plaintiff is informed, believes, and based thereon alleges that Defendant
4 engaged in the exact same false misrepresentations and practices with respect to
5 all the HP LaserJet Pro 200 color model printers like the one that Plaintiff
6 purchased as well as all the HP LaserJet Pro MFP M125; HP LaserJet Pro MFP
7 M126; HP LaserJet Pro MFP M127; HP LaserJet Pro MFP M128; HP Color
8 LaserJet Pro MFP M176; HP Color LaserJet Pro MFP M177; HP LaserJet Pro
9 300 color Printer; HP LaserJet Pro M435 Multifunction Printer; Printer M451
10 HP Color LaserJet Pro; MFP M476; HP LaserJet Pro MFP M521; HP LaserJet
11 Pro 500 color MFP M570; HP LaserJet Pro CP1025 Color printer; HP LaserJet
12 Pro P1106; Printer HP LaserJet Pro P1108 Printer; HP LaserJet Pro M1213nf
13 Multifunction Printer; HP LaserJet Pro M1214nfh Multifunction Printer; HP
14 LaserJet Pro M1216nfh Multifunction Printer; HP LaserJet Pro M1217nfw
15 Multifunction Printer; HP HotSpot LaserJet Pro M1218nfs MFPHP; LaserJet Pro
16 400 MFP; HP LaserJet Pro P1102; HP LaserJet Pro 100; HP LaserJet Pro 200
17 color; HP LaserJet Pro 400; HP LaserJet 400 color; HP LaserJet Professional,
18 M1132s; MFP/M1136/M1212/M1212; and HP LaserJet Pro model printers.
19 Hereafter, these model printers shall be collectively referred to as “Class
20 Products.”

21 **CLASS ACTION ALLEGATIONS**

22 55. Plaintiff brings this action, on behalf of himself and all others
23 similarly situated, and thus, seeks class certification under Federal Rule of Civil
24 Procedure 23.

25 56. The class Plaintiff seeks to represent (the “Class”) is defined as
26 follows:

27 All purchasers, who, between the applicable statute of
28 limitations and the present, purchased one or more

1 Class Products in the United States, and whose printer
2 was advertised to include the HP Smart Install feature
when in fact this feature had been disabled.

3 57. As used herein, the term “Class Members” shall mean and refer to
4 the members of the Class described above.

5 58. Excluded from the Class are Defendant, its affiliates, employees,
6 agents, and attorneys, and the Court.

7 59. In addition, the following subclass is also excluded:

8 All consumers, who, between in or about April 2014,
9 and the present, purchased one or more HP Laserjet
10 P1102 printers at a physical, retail location in the state of
11 California, and whose printer was advertised to include
the HP Smart Install feature, but was in fact subject to
HP’s disablement of the Smart Install Feature.

12 60. Plaintiff reserves the right to amend the Class, and to add additional
13 subclasses, if discovery and further investigation reveals such action is
14 warranted.

15 61. Upon information and belief, the proposed class is composed of
16 thousands of persons. The members of the class are so numerous that joinder of
17 all members would be unfeasible and impractical.

18 62. No violations alleged in this complaint are contingent on any
19 individualized interaction of any kind between class members and Defendant.

20 63. Rather, all claims in this matter arise from the identical, false,
21 affirmative written statements that HP Smart Install would be included for Class
22 Members’ when contemporaneously purchased printers, when in fact, such
23 representations were false.

24 64. There are common questions of law and fact as to the Class
25 Members that predominate over questions affecting only individual members,
26 including but not limited to:

27 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
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- 1 business practices in selling Class Products to Plaintiff and
- 2 other Class Members;
- 3 (b) Whether Defendant made misrepresentations with respect to
- 4 the Class Products sold to Purchasers;
- 5 (c) Whether Defendant profited from both the sale of the printers
- 6 and HP Smart Install feature;
- 7 (d) Whether Defendant violated California Bus. & Prof. Code §
- 8 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*,
- 9 and California Civ. Code § 1750, *et seq.*;
- 10 (e) Whether Defendant violated California Bus. & Prof. Code §
- 11 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*,
- 12 and California Civ. Code § 1750, *et seq.*;
- 13 (f) Whether Plaintiff and Class Members are entitled to equitable
- 14 and/or injunctive relief;
- 15 (g) Whether Defendant's unlawful, unfair, and/or deceptive
- 16 practices harmed Plaintiff and Class Members; and
- 17 (h) The method of calculation and extent of damages for Plaintiff
- 18 and Class Members.

19 65. Plaintiff is a member of the class he seeks to represent

20 66. The claims of Plaintiff are not only typical of all class members,
21 they are identical.

22 67. All claims of Plaintiff and the class are based on the exact same
23 legal theories.

24 68. Plaintiff has no interest antagonistic to, or in conflict with, the class.

25 69. Plaintiff is qualified to, and will, fairly and adequately protect the
26 interests of each Class Member, because Plaintiff bought Class Products from
27 Defendant during the Class Period. Defendant's unlawful, unfair and/or

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1 fraudulent actions concerns the same business practices described herein
2 irrespective of where they occurred or were experiences. Plaintiff's claims are
3 typical of all Class Members as demonstrated herein.

4 70. Plaintiff will thoroughly and adequately protect the interests of the
5 class, having retained qualified and competent legal counsel to represent himself
6 and the class.

7 71. Common questions will predominate, and there will be no unusual
8 manageability issues.

9 **FIRST CAUSE OF ACTION**

10 **Violation of the California False Advertising Act**

11 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

12 72. Plaintiff incorporates by reference each allegation set forth above.

13 73. Pursuant to California Business and Professions Code section
14 17500, *et seq.*, it is unlawful to engage in advertising “which is untrue or
15 misleading, and which is known, or which by the exercise of reasonable care
16 should be known, to be untrue or misleading...or...to so make or disseminate or
17 cause to be so made or disseminated any such statement as part of a plan or
18 scheme with the intent not to sell that personal property or those services,
19 professional or otherwise, so advertised at the price stated therein, or as so
20 advertised.”

21 74. California Business and Professions Code section 17500, *et seq.*'s
22 prohibition against false advertising extends to the use of false or misleading
23 written statements.

24 75. Defendant misled Purchasers by making misrepresentations and
25 untrue statements about the Class Products, namely, Defendant sold the printers
26 advertised to have the HP Smart Install feature included fully knowing this
27 feature was disabled and non-functional, and made false representations to
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1 Plaintiff and other putative class members in order to solicit these transactions.

2 76. Specifically, Defendant wrote on the boxes of these printers that the
3 HP Smart Install feature was included with the printers and would lead to
4 effortless installation.

5 77. Defendant knew that their representations and omissions were
6 untrue and misleading, and deliberately made the aforementioned representations
7 and omissions in order to deceive reasonable Purchasers like Plaintiff and other
8 Class Members.

9 78. As a direct and proximate result of Defendant's misleading and false
10 advertising, Plaintiff and the other Class Members have suffered injury in fact
11 and have lost money or property. Plaintiff reasonably relied upon Defendant's
12 representations regarding the Class Products, namely that the printers included
13 the HP Smart Install feature and would be easy to install/connect to their
14 computers/computers. In reasonable reliance on Defendant's false
15 advertisements, Plaintiff and other Class Members purchased the Class Products.
16 In turn Plaintiff and other Class Members ended up with printers that turned out
17 to actually be different than advertised, and therefore Plaintiff and other Class
18 Members have suffered injury in fact.

19 79. Plaintiff alleges that these false and misleading written
20 representations made by Defendant constitute a "scheme with the intent not to
21 sell that personal property or those services, professional or otherwise, so
22 advertised at the price stated therein, or as so advertised."

23 80. Defendant advertised to Plaintiff and other putative class members,
24 through written representations and omissions made by Defendant and its
25 employees, that the Class Products would include the HP Smart Install feature.

26 81. Defendant knew that the Class Products did not in fact include the
27 HP Smart Install feature.

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1 82. Thus, Defendant knowingly sold Class Products to Plaintiff and
2 other putative class members that did not include the HP Smart Install feature.

3 83. The misleading and false advertising described herein presents a
4 continuing threat to Plaintiff and the Class Members in that Defendant persists
5 and continues to engage in these practices, and will not cease doing so unless and
6 until forced to do so by this Court. Defendant's conduct will continue to cause
7 irreparable injury to Purchasers unless enjoined or restrained. Plaintiff is entitled
8 to preliminary and permanent injunctive relief ordering Defendant to cease their
9 false advertising, as well as disgorgement and restitution to Plaintiff and all
10 Class Members Defendant's revenues associated with their false advertising, or
11 such portion of those revenues as the Court may find equitable.

12 **SECOND CAUSE OF ACTION**

13 **Violation of Unfair Business Practices Act**

14 **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

15 84. Plaintiff incorporates by reference each allegation set forth above.

16 85. Actions for relief under the unfair competition law may be based on
17 any business act or practice that is within the broad definition of the UCL. Such
18 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
19 acts and practices. A plaintiff is required to provide evidence of a causal
20 connection between a defendant's business practices and the alleged harm--that
21 is, evidence that the defendant's conduct caused or was likely to cause substantial
22 injury. It is insufficient for a plaintiff to show merely that the defendant's
23 conduct created a risk of harm. Furthermore, the "act or practice" aspect of the
24 statutory definition of unfair competition covers any single act of misconduct, as
25 well as ongoing misconduct.

26 **UNFAIR**

27 86. California Business & Professions Code § 17200 prohibits any
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1 “unfair ... business act or practice.” Defendant’s acts, omissions,
2 misrepresentations, and practices as alleged herein also constitute “unfair”
3 business acts and practices within the meaning of the UCL in that its conduct is
4 substantially injurious to Purchasers, offends public policy, and is immoral,
5 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
6 any alleged benefits attributable to such conduct. There were reasonably
7 available alternatives to further Defendant’s legitimate business interests, other
8 than the conduct described herein. Plaintiff reserves the right to allege further
9 conduct which constitutes other unfair business acts or practices. Such conduct
10 is ongoing and continues to this date.

11 87. In order to satisfy the “unfair” prong of the UCL, a consumer must
12 show that the injury: (1) is substantial; (2) is not outweighed by any
13 countervailing benefits to Purchasers or competition; and, (3) is not one that
14 Purchasers themselves could reasonably have avoided.

15 88. Here, Defendant’s conduct has caused and continues to cause
16 substantial injury to Plaintiff and members of the Class. Plaintiff and members
17 of the Class have suffered injury in fact due to Defendant’s decision to sell them
18 falsely described printers (Class Products), which were not included in
19 conjunction with said Class Products. Thus, Defendant’s conduct has caused
20 substantial injury to Plaintiff and the members of the Sub-Class.

21 89. Moreover, Defendant’s conduct as alleged herein solely benefits
22 Defendant while providing no benefit of any kind to any consumer. Such
23 deception utilized by Defendant convinced Plaintiff and members of the Class
24 that the Class Products included easy installation through the HP Smart Install
25 feature, in order to induce them to spend money on said Class Products. In fact,
26 knowing that Class Products, by their objective terms did not provide the HP
27 Smart Install feature for Plaintiff and other putative class members’ printers,
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1 unfairly profited from their sale, in that Defendant knew that the expected benefit
2 that Plaintiff would receive from this feature is nonexistent, when this is
3 typically never the case in situations involving additional features said to be
4 included with a product. Thus, the injury suffered by Plaintiff and the members
5 of the Sub-Class is not outweighed by any countervailing benefits to Purchasers.

6 90. Finally, the injury suffered by Plaintiff and members of the Sub-
7 Class is not an injury that these Purchasers could reasonably have avoided. After
8 Defendant, falsely represented that Class Products would include the HP Smart
9 Install feature for Plaintiff and class members' mobile phones, these Purchasers
10 suffered injury in fact due to Defendant's sale of Class Products to them.
11 Defendant failed to take reasonable steps to inform Plaintiff and class members
12 that the Class Products did not include the HP Smart Install feature, including
13 failing to provide an opportunity to Plaintiff and class members to read and
14 review the accurate features included with the Class Products prior to purchase.
15 As such, Defendant took advantage of Defendant's position of perceived power
16 in order to deceive Plaintiff and the Class members to purchase printers without
17 the HP Smart Install feature. Therefore, the injury suffered by Plaintiff and
18 members of the Class is not an injury which these Purchasers could reasonably
19 have avoided.

20 91. . Thus, Defendant's conduct has violated the "unfair" prong of
21 California Business & Professions Code § 17200.

22 **FRAUDULENT**

23 92. California Business & Professions Code § 17200 prohibits any
24 "fraudulent ... business act or practice." In order to prevail under the
25 "fraudulent" prong of the UCL, a consumer must allege that the fraudulent
26 business practice was likely to deceive members of the public.

27 93. The test for "fraud" as contemplated by California Business and
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1 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
2 common law fraud, a § 17200 violation can be established even if no one was
3 actually deceived, relied upon the fraudulent practice, or sustained any damage.

4 94. Here, not only were Plaintiff and the Class members likely to be
5 deceived, but these Purchasers were actually deceived by Defendant. Such
6 deception is evidenced by the fact that Plaintiff agreed to purchase Class
7 Products under the basic assumption that they included the HP Smart Install
8 feature, even though the printers contained no such feature. Plaintiff's reliance
9 upon Defendant's deceptive statements is reasonable due to the unequal
10 bargaining powers of Defendant and Plaintiff. For the same reason, it is likely
11 that Defendant's fraudulent business practice would deceive other members of
12 the public.

13 95. As explained above, Defendant deceived Plaintiff and other Class
14 Members by representing the Class Products as including the HP Smart Install
15 feature, falsely represented the features of the Class Products as well as the
16 difficulty that would result when trying to install/connect the printer to the
17 Plaintiff and Class Members' computers/computers.

18 96. Thus, Defendant's conduct has violated the "fraudulent" prong of
19 California Business & Professions Code § 17200.

20 **UNLAWFUL**

21 97. California Business and Professions Code Section 17200, et seq.
22 prohibits "any unlawful...business act or practice."

23 98. As explained above, Defendant deceived Plaintiff and other Class
24 Members by representing the Class Products as including the HP Smart Install
25 feature, falsely representing the features included with the Class Products as well
26 as the difficulty involved with installing/connecting the printers to Plaintiff and
27 Class Members' computers/computers.

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1 99. Defendant used false advertising, marketing, and misrepresentations
 2 to induce Plaintiff and Class Members to purchase the Class Products, in
 3 violation of California Business and Professions Code Section 17500, et seq.
 4 Had Defendant not falsely advertised, marketed or misrepresented the Class
 5 Products, Plaintiff and Class Members would not have purchased the Class
 6 Products. Defendant’s conduct therefore caused and continues to cause economic
 7 harm to Plaintiff and Class Members.

8 100. These representations by Defendant are therefore an “unlawful”
 9 business practice or act under Business and Professions Code Section 17200 *et*
 10 *seq.*

11 101. Defendant has thus engaged in unlawful, unfair, and fraudulent
 12 business acts entitling Plaintiff and Class Members to judgment and equitable
 13 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
 14 pursuant to Business and Professions Code section 17203, Plaintiff and Class
 15 Members seek an order requiring Defendant to immediately cease such acts of
 16 unlawful, unfair, and fraudulent business practices and requiring Defendant to
 17 correct its actions.

18 **MISCELLANEOUS**

19 102. Plaintiff and Class Members allege that they have fully complied
 20 with all contractual and other legal obligations and fully complied with all
 21 conditions precedent to bringing this action or all such obligations or conditions
 22 are excused.

23 **REQUEST FOR JURY TRIAL**

24 103. Plaintiff requests a trial by jury as to all claims so triable.

25 **PRAYER FOR RELIEF**

26 104. Plaintiff, on behalf of himself and the Class, requests the following
 27 relief:
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- (a) An order certifying the Class and appointing Plaintiff as Representative of the Class;
- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) An order requiring HEWLETT PACKARD COMPANY, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (d) An order requiring HEWLETT PACKARD COMPANY to engage in corrective advertising regarding the conduct discussed above;
- (e) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members from the sale of misbranded Class Products during the relevant class period;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) Restitution for the monies spent by Plaintiff and Class members on the Class Products;
- (i) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (j) Pre- and post-judgment interest; and
- (k) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

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Dated: September 12, 2016 Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s Todd. M. Friedman
TODD M. FRIEDMAN, ESQ.
Attorney for Plaintiff Anthon Fehrenbach

CIVIL COVER SHEET

16CV2297 MMA MDD

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ANTHONY FEHRENBACH, individually, and on behalf of other members of the general public similarly situated

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Todd M. Friedman
21550 Oxnard St., Suite 780, Woodland Hills, CA 91367

DEFENDANTS

HEWLETT PACKARD COMPANY

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Cal. Business & Professions Code §§ 17500 et seq. and §§ 17200 et seq.

Brief description of cause: Violation of Unfair Competition Laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Beverly Reid O'Connell DOCKET NUMBER 5:15-cv-01221-BRO-GJS

DATE 09/12/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.