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Attorneys for Plaintiff, Robert Doty, and all others similarly situated

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ROBERT DOTY, individually, and
on behalf of all others similarly
situated,

Plaintiff,

vs.

HP, INC. and DOES 1-10,

Defendant(s).

Case No.

CLASS ACTION COMPLAINT

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

Jury Trial Demanded

1 Plaintiff Robert Doty (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant HP,
5 INC. (hereinafter “Defendant”) to stop Defendant’s practice of modifying and
6 corrupting Purchasers’ printers by forcing unauthorized changes to their
7 firmware and to obtain redress for all Purchasers Nationwide (“Class Members”)
8 who, within the applicable statute of limitations period, had their HP Printers
9 modified to stop recognizing and accepting third-party ink cartridges.

10 2. Defendant is a Delaware corporation with its principal place of
11 business and headquarters in California and is engaged in the manufacture, sale,
12 and distribution of printers and related equipment and services throughout the
13 world with a large share of its business done in California.

14 3. On or around September 13, 2016, thousands of HP Printer owners
15 in the United States and other countries started experiencing problems and
16 crashes with their HP Printers, since said printers stopped recognizing and
17 accepting third-party ink cartridges (i.e. ink cartridges which had not been
18 manufactured by HP, Inc. but were compatible with the HP Printers before
19 September 13, 2016.

20 4. In an effort to dominate the ink cartridge marketplace, HP forced
21 firmware modifications to the HP Printers which were specifically designed and
22 programmed to reject, starting on September 13, 2016, all third party ink
23 cartridges, including any said third party ink cartridge which had already been
24 purchased and installed by Class Members and which were already properly
25 working in their HP Printers.

26 5. The Class Members were not informed by HP of this plan to
27 program a rejection of third party ink cartridges. HP’s goal was to program the
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1 HP Printers, after their sale to Class Members, so that said HP Printers would
2 only be able to communicate with and therefore only accept HP branded ink
3 cartridges, which cost approximately twice as much, in order for HP to greatly
4 increase its profits to the detriment of Class Members.

5 6. Plaintiff and similarly situated Purchasers purchased printers that
6 were represented as having certain features and capacities.

7 7. Plaintiff and similarly situated Purchasers relied on these
8 representations when purchasing their printers.

9 8. When purchasing these printers, Plaintiff and similarly situated
10 Purchasers desired and believed to have obtained printers with the capacity to
11 use third party ink-cartridges.

12 9. Plaintiff and similarly situated purchasers were not told at the time
13 of purchase that their HP Printer would at some time in the future reject the less
14 expensive third party replacement ink cartridges.

15 10. Furthermore, Plaintiff and similarly situated Purchasers were not
16 informed by HP of the modifications in question and did not consent to HP
17 unilaterally pushing such modifications into their HP Printer, rendering the
18 printers fundamentally altered and making the printers no longer what Plaintiff
19 and similarly situated Purchasers had bargained for.

20 11. For these reasons and others, Plaintiff brings this class action
21 complaint on behalf of himself and individuals similarly situated against
22 Defendant for its illegal, deceptive, and unconscionable actions in violating the
23 privacy rights of hundreds of thousands of individuals nationwide in order to
24 obtain an unfair and illegal competitive advantage.

25 **JURISDICTION AND VENUE**

26 12. This class action is brought pursuant to Federal Rule of Civil
27 Procedure 23.

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1 13. This matter is properly venued in the United States District Court
2 for the Central District of California, in that Defendant forced the modification
3 on Plaintiff’s printer at his home in the County of Riverside, California. Plaintiff
4 resides in the Central District of California and Defendant does business, inter
5 alia, in the Central District of California.

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

14 15. In the case at bar, there are at least 100 members in the proposed
15 Class and Sub-classes, the total claims of the proposed Class members are in
16 excess of \$5,000,000.00 in the aggregate, exclusive of interests and costs, and
17 Plaintiffs and the class are citizens throughout various States across the United
18 States.

19 **THE PARTIES**

20 16. Plaintiff Robert Doty is a citizen and resident of the State of
21 California, County of Riverside.

22 17. Defendant HP, INC. is a Delaware corporation with its principal
23 place of business and state of incorporation in California. Defendant conducts a
24 large share of its business within California and in this judicial district.

25 18. 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 19. 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 20. 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 21. On or about December 14, 2015, Plaintiff purchased an HP Officejet
15 Pro 8610e printer online from www.store.hp.com.

16 22. In purchasing the printer, Plaintiff paid more than valuable
17 consideration. Including taxes and fees, plaintiff paid over \$107.99.

18 23. In or around September of 2016, Plaintiff had discovered that HP,
19 Inc. had forced a firmware modification on his computer that prevented him
20 from using third party ink-cartridges.

21 24. Upon learning this, Plaintiff felt ripped off, cheated, and violated by
22 Defendant.

23 25. Plaintiff never authorized Defendant to force this modification on
24 him in any way nor at any time.

25 26. Defendant manufactured, sold and modified Plaintiff's printer.

26 27. Such business tactics rely on falsities, deception and force against a
27 reasonable Purchaser.

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1 28. Defendant expressly represented to Plaintiff, through written
2 statements, that Plaintiff’s printer would have certain features and functioning.

3 29. When purchasing the printer, Plaintiff planned on using third party
4 ink-cartridges because HP ink-cartridges were much more expensive.

5 30. Plaintiff alleges that such representations and forced modifications
6 were part of a common scheme to mislead Purchasers, invade their privacy rights
7 and obtain an unfair competitive advantage against its business rivals in the
8 current marketplace.

9 31. Not only were such representations clearly false because the printer
10 was completely altered through the course of his use, but the forced modification
11 completely robbed Plaintiff of any use of third party ink-cartridges.

12 32. Plaintiff would not have purchased the printer if he knew that the
13 above-referenced statements made by Defendant were false and that Defendant
14 would forcibly control and modify his printer.

15 33. Defendant benefited from falsely advertising the features and
16 functions of the printer and from forcing unwanted and destructive modifications
17 on Plaintiff’s and similarly situated Purchasers’ Printers. Defendant benefited on
18 the loss to Plaintiff and provided nothing of benefit to Plaintiff in exchange.

19 34. Plaintiff is informed, believes, and based thereon alleges that
20 Defendant engaged in the exact same false misrepresentations and practices with
21 respect to all the HP Officejet Pro 8610e model printers like the one that Plaintiff
22 purchased as well as all the OfficeJet, OfficeJet Pro and/or OfficeJet Pro X line
23 printers. Hereafter, these model printers shall be collectively referred to as
24 “Class Products.”

25 **CLASS ACTION ALLEGATIONS**

26 35. Plaintiff brings this action, on behalf of himself and all others
27 similarly situated, and thus, seeks class certification under Federal Rule of Civil
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1 Procedure 23.

2 36. The class Plaintiff seeks to represent (the “Class”) is defined as
3 follows:

4 All United States Citizens who, between the applicable
5 statute of limitations and the present, had an HP Printer
that was modified to reject third party-ink cartridges.

6 37. As used herein, the term “Class Members” shall mean and refer to
7 the members of the Class described above.

8 38. Excluded from the Class are Defendant, its affiliates, employees,
9 agents, and attorneys, and the Court.

10 39. Plaintiff reserves the right to amend the Class, and to add additional
11 subclasses, if discovery and further investigation reveals such action is
12 warranted.

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

16 41. No violations alleged in this complaint are contingent on any
17 individualized interaction of any kind between class members and Defendant.

18 42. Rather, all claims in this matter arise from the identical and
19 affirmative forced modifications.

20 43. There are common questions of law and fact as to the Class
21 Members that predominate over questions affecting only individual members,
22 including but not limited to:

- 23 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
24 business practices in forcibly modifying Plaintiff and other
25 Class Members printers;
- 26 (b) Whether Defendant made misrepresentations with respect to
27 the printers originally sold to Purchasers;

- 1 (c) Whether Defendant profited from both the initial sale and use
- 2 of the printer and the forced modification;
- 3 (d) Whether Defendant violated California Bus. & Prof. Code §
- 4 17200, *et seq.* and California Bus. & Prof. Code § 17500, *et*
- 5 *seq.*,
- 6 (e) Whether Plaintiff and Class Members are entitled to equitable
- 7 and/or injunctive relief;
- 8 (f) Whether Defendant's unlawful, unfair, and/or deceptive
- 9 practices harmed Plaintiff and Class Members; and
- 10 (g) The method of calculation and extent of damages for Plaintiff
- 11 and Class Members.

12 44. Plaintiff is a member of the class he seeks to represent

13 45. The claims of Plaintiff are not only typical of all class members,

14 they are identical.

15 46. All claims of Plaintiff and the class are based on the exact same

16 legal theories.

17 47. Plaintiff has no interest antagonistic to, or in conflict with, the class.

18 48. Plaintiff is qualified to, and will, fairly and adequately protect the

19 interests of each Class Member, because Plaintiff bought a printer from

20 Defendant during the Class Period. Defendant's unlawful, unfair and/or

21 fraudulent actions concerns the same business practices described herein

22 irrespective of where they occurred or were experiences. Plaintiff's claims are

23 typical of all Class Members as demonstrated herein.

24 49. Plaintiff will thoroughly and adequately protect the interests of the

25 class, having retained qualified and competent legal counsel to represent himself

26 and the class.

27 50. Common questions will predominate, and there will be no unusual

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1 manageability issues.

2 **FIRST CAUSE OF ACTION**

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

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

5 51. Plaintiff incorporates by reference each allegation set forth above.

6 52. Pursuant to California Business and Professions Code section
7 17500, *et seq.*, it is unlawful to engage in advertising “which is untrue or
8 misleading, and which is known, or which by the exercise of reasonable care
9 should be known, to be untrue or misleading...or...to so make or disseminate or
10 cause to be so made or disseminated any such statement as part of a plan or
11 scheme with the intent not to sell that personal property or those services,
12 professional or otherwise, so advertised at the price stated therein, or as so
13 advertised.”

14 53. California Business and Professions Code section 17500, *et seq.*’s
15 prohibition against false advertising extends to the use of false or misleading
16 written statements.

17 54. Defendant misled Purchasers by making misrepresentations and
18 untrue statements about its printers, namely, Defendant sold printers advertised
19 to include particular features and functions and then forced modifications
20 without their consent.

21 55. Defendant knew that their representations and omissions were
22 untrue and misleading, and deliberately made the aforementioned representations
23 and omissions in order to deceive reasonable Purchasers like Plaintiff and other
24 Class Members.

25 56. As a direct and proximate result of Defendant’s misleading and false
26 advertising, Plaintiff and the other Class Members have suffered injury in fact
27 and have lost money and property. Plaintiff reasonably relied upon Defendant’s
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1 representations regarding the printers, namely that his printer would function in a
2 particular way. In turn Plaintiff and other Class Members ended up with printers
3 that turned out be entirely different than advertised.

4 57. Plaintiff alleges that these false and misleading written
5 representations made by Defendant constitute a “scheme with the intent not to
6 sell that personal property or those services, professional or otherwise, so
7 advertised at the price stated therein, or as so advertised.”

8 58. Defendant advertised to Plaintiff and other putative class members,
9 through written representations and omissions made by Defendant and its
10 employees, that its operating system would include particular features.

11 59. Defendant knew that the Printers did not in fact include the features
12 it was said to include.

13 60. Thus, Defendant knowingly sold Printers to Plaintiff and other
14 putative class members and then forcibly removed its originally advertised
15 features.

16 61. The misleading and false advertising described herein presents a
17 continuing threat to Plaintiff and the Class Members in that Defendant persists
18 and continues to engage in these practices, and will not cease doing so unless and
19 until forced to do so by this Court. Defendant’s conduct will continue to cause
20 irreparable injury to Purchasers unless enjoined or restrained. Plaintiff is entitled
21 to preliminary and permanent injunctive relief ordering Defendant to cease their
22 false advertising and forced modification of property, as well as disgorgement
23 and restitution to Plaintiff and all Class Members Defendant’s revenues
24 associated with their false advertising and forced modification of property, or
25 such portion of those revenues as the Court may find equitable.

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SECOND CAUSE OF ACTION
Violation of Unfair Business Practices Act
(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

62. Plaintiff incorporates by reference each allegation set forth above.

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

UNFAIR

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

65. In order to satisfy the “unfair” prong of the UCL, a Purchaser must

1 show that the injury: (1) is substantial; (2) is not outweighed by any
2 countervailing benefits to Purchasers or competition; and, (3) is not one that
3 Purchasers themselves could reasonably have avoided.

4 66. Here, Defendant's conduct has caused and continues to cause
5 substantial injury to Plaintiff and members of the Class. Plaintiff and members
6 of the Class have suffered injury in fact due to Defendant's decision to forcibly
7 modify their Printers. Thus, Defendant's conduct has caused substantial injury
8 to Plaintiff and the members of the Class.

9 67. Moreover, Defendant's conduct as alleged herein solely benefits
10 Defendant while providing no benefit of any kind to any Purchaser. Defendant
11 altered and destroyed Plaintiff's printer in order to obtain a competitive
12 advantage in the marketplace.

13 68. Finally, the injury suffered by Plaintiff and members of the Sub-
14 Class is not an injury that these Purchasers could reasonably have avoided.

15 69. Thus, Defendant's conduct has violated the "unfair" prong of
16 California Business & Professions Code § 17200.

17 **FRAUDULENT**

18 70. California Business & Professions Code § 17200 prohibits any
19 "fraudulent ... business act or practice." In order to prevail under the
20 "fraudulent" prong of the UCL, a Purchaser must allege that the fraudulent
21 business practice was likely to deceive members of the public.

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

26 72. Here, not only were Plaintiff and the Class members likely to be
27 deceived, but these Purchasers were actually deceived by Defendant. Such
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1 deception is evidenced by the fact that Plaintiff agreed to purchase Printers under
2 the basic assumption that they included certain features and functionality. Due
3 to the unequal bargaining powers of Defendant and Class Members, , it is likely
4 that Defendant’s fraudulent business practice would deceive other members of
5 the public.

6 73. As explained above, Defendant deceived Plaintiff and other Class
7 Members by representing the Printers as including the HP Smart Install feature,
8 falsely represented the features of the Printers.

9 74. Thus, Defendant’s conduct has violated the “fraudulent” prong of
10 California Business & Professions Code § 17200.

11 **UNLAWFUL**

12 75. California Business and Professions Code Section 17200, et seq.
13 prohibits “any unlawful...business act or practice.”

14 76. As explained above, Defendant deceived and invaded the privacy
15 rights of Plaintiff and other Class Members by representing the Printers as
16 including particular features and then modifying their functionality.

17 77. Defendant used false advertising, marketing, and misrepresentations
18 to induce Plaintiff and Class Members to purchase the Printers, in violation of
19 California Business and Professions Code Section 17500, et seq. Had Defendant
20 not falsely advertised, marketed or misrepresented the Printers, Plaintiff and
21 Class Members would not have purchased the Printers. Defendant’s conduct
22 therefore caused and continues to cause economic harm to Plaintiff and Class
23 Members.

24 78. These representations by Defendant are therefore an “unlawful”
25 business practice or act under Business and Professions Code Section 17200 *et*
26 *seq.*

27 79. Defendant has thus engaged in unlawful, unfair, and fraudulent
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1 business acts entitling Plaintiff and Class Members to judgment and equitable
2 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
3 pursuant to Business and Professions Code section 17203, Plaintiff and Class
4 Members seek an order requiring Defendant to immediately cease such acts of
5 unlawful, unfair, and fraudulent business practices and requiring Defendant to
6 correct its actions.

7 **MISCELLANEOUS**

8 80. Plaintiff and Class Members allege that they have fully complied
9 with all contractual and other legal obligations and fully complied with all
10 conditions precedent to bringing this action or all such obligations or conditions
11 are excused.

12 **REQUEST FOR JURY TRIAL**

13 81. Plaintiff requests a trial by jury as to all claims so triable.

14 **PRAAYER FOR RELIEF**

15 82. Plaintiff, on behalf of himself and the Class, requests the following
16 relief:

- 17 (a) An order certifying the Class and appointing Plaintiff as
- 18 Representative of the Class;
- 19 (b) An order certifying the undersigned counsel as Class Counsel;
- 20 (c) An order requiring HP, INC., at its own cost, to notify all
- 21 Class Members of the unlawful and deceptive conduct herein;
- 22 (d) An order requiring HP, INC. to engage in corrective
- 23 advertising regarding the conduct discussed above;
- 24 (e) Actual damages suffered by Plaintiff and Class Members as
- 25 applicable or full restitution of all funds acquired from
- 26 Plaintiff and Class Members from the sale of misbranded
- 27 Printers during the relevant class period;
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- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys’ fees and costs provided by statute, common law or the Court’s inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: September 28, 2016 Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s/ Todd M. Friedman
 TODD M. FRIEDMAN, ESQ.
 Attorney for Plaintiff Robert Doty