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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DONNA J. FORSYTH, et al.,
Plaintiffs,
v.
HP INC., et al.,
Defendants.

Case No. [5:16-cv-04775-EJD](#)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
CERTIFICATION**

Re: Dkt. No. 409

This is a putative collective action against Plaintiffs’ former employers, HP Inc. (“HPI”) and Hewlett Packard Enterprise Company (“HPE”) (collectively “Defendants” or “HP”), alleging in part violations of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 *et seq.* See Fourth Amended Complaint (“FAC”) ¶¶ 133-44, 145-56, Dkt. No. 389. Before the Court is Plaintiffs’ motion for an order preliminarily certifying two collectives under the Fair Labor Standards Act, 29 U.S.C. § 216(b), for production of contact information of potential opt-in plaintiffs, and for approval of notice to the members of the collectives. (“Mot.”), Dkt. No. 409. An opposition (“Opp.”) was filed by Defendants, to which Plaintiffs have replied (“Reply”). See Dkt. Nos. 414, 416. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and therefore **VACATES** the hearing currently scheduled for April 15, 2021. Based on the reasoning below, the Court **GRANTS** Plaintiffs’ motion for preliminary certification.

I. BACKGROUND

The five named Plaintiffs allege Defendants violated the ADEA and California laws by targeting older employees and replacing them with younger employees. Plaintiffs allege that in 2012 HPI (then Hewlett-Packard Company (“HP Co.”)), under the direction of Meg Whitman,

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1 began to implement a company-wide multiyear restructuring initiative designed to make the
2 company younger by replacing thousands of existing, older workers with new, younger
3 employees. FAC ¶ 3. This initiative was referred to as the “Workforce Restructuring Initiative.”
4 *Id.* When rolling out this initiative, Whitman said the goal was to “recalibrate and reshape” the
5 workforce. *Id.* ¶ 4. In Plaintiffs’ view, through this statement, Whitman made it known that she
6 regarded the age of HP’s workforce as a problem that needed solving. *Id.* ¶ 13. Indeed, in
7 October 2013, Whitman publicly stated during a Securities Analysts meeting that the Workforce
8 Restructuring Initiative’s goal was to “recalibrate and reshape” the company’s workforce by
9 “replacing” existing workers with “a whole host of young people.” *Id.* ¶¶ 3-4, 30. In order to
10 execute the Workforce Restructuring Initiative, Whitman caused HP Co. to implement a two-
11 pronged strategy that involved (1) pushing current, older workers out of the company, while (2)
12 hiring large numbers of new, younger employees to replace them. *Id.* ¶ 11.

13 In November 2015, HP Co. split into two companies, HPI and HPE. *Id.* ¶ 5-8, 11. After
14 the split, Whitman served as the Chair of the Board of Directors for HPI until July 26, 2017 and as
15 the CEO for HPE until February 1, 2018 and also served on the board of HPE until February 1,
16 2019. *Id.* During her tenure at HPI and HPE, both companies allegedly continued to implement
17 the age initiative in concert with one another, shedding thousands of additional employees. *Id.* ¶
18 6. Hence, according to Plaintiffs, all three HP entities shared the common goal of wanting to
19 make the entire HP organization younger. *Id.* ¶ 7. Further, all three entities shed thousands of
20 older workers, while aggressively recruiting and hiring younger employees to replace them. *Id.*

21 To execute the first prong of the Workforce Restructuring Initiative, HP Co. initiated the
22 “2012 Workforce Reduction Plan” (“WFR”), which was then adopted by both HPI and HPE and
23 was implemented over a period of years. *Id.* ¶ 11. However, contrary to the name, the WFR was
24 not meant to reduce the HP workforce, but was a means to restructure, recalibrate, and reshape the
25 HP workforce to make it younger. *Id.* ¶¶ 12, 30–34. This, Plaintiffs contend, is confirmed by
26 Whitman’s public statements, in which Whitman made clear that she intended to make both HPI
27 and HPE “younger.” *Id.* ¶ 12. Whitman also admitted that HP was “amping up [its] early career

1 hiring, [and] [its] college hiring.” *Id.* ¶ 30. Meanwhile, according to Plaintiffs, HPI and HPE
 2 were terminating thousands of existing employees pursuant to the WFR. *Id.* ¶ 6. When replacing
 3 employees that were terminated under the WFR, Whitman acknowledged that HP had an
 4 “informal rule” requiring managers to “really think” about hiring a younger “early career”
 5 employee. *Id.* ¶ 30. Indeed, internal HP Co. documents dated July 2015 stated that anyone born
 6 between 1930 and 1946 could be considered a “Traditionalist” who moves “slow and steady” and
 7 seeks “part time work.” *Id.* ¶ 59. “Baby Boomers” (born between 1946 and 1964) were
 8 considered to be “rule breakers,” which implies that they were “undesirable.” *Id.* “Millennials,”
 9 on the other hand were highly desirable and HP Co. specifically adopted strategies for
 10 “integrat[ing] millennials into the workforce” and “educat[ing] managers and others on millennial
 11 characteristics.” *Id.* Plaintiffs allege these policies were carried forth at HPI and HPE. *See infra.*

12 Plaintiffs assert that the Workforce Restructuring Initiative has continued for years. In
 13 September 2015, Whitman stated that HP still needed to “fundamentally recreate the labor
 14 pyramid” because the pyramid looked too much like “a diamond” and it needed to look “like a
 15 quite flat triangle to be competitive.” *Id.* ¶ 31. In November 2015, just as Whitman was preparing
 16 to take on senior leadership roles at HPI and HPE, Whitman confirmed in an interview that the
 17 goal for HPI and HPE was to higher younger employees to replace laid-off employees. *Id.* ¶ 32
 18 (“[T]o make sure that we’ve got a labor pyramid with lots of young people coming in right out of
 19 college and graduate school and early in their careers. That is an important part of the future of the
 20 company. . . .” (emphasis added)).

21 Moreover, as noted, both HPI and HPE used the same WFR process and paperwork that
 22 HP Co. used. *See id.* ¶¶ 11, 23–24, 35. HPI and HPE used uniform, near-verbatim paperwork
 23 when terminating Plaintiffs and other putative collective members, who all received the same
 24 worded reasons for being terminated, regardless of which entity they worked for. *Id.* ¶ 35. Those
 25 notices at both HPI and HPE, state: “Employees were selected for the reduction in force because
 26 the job they were performing will no longer continue, their skill set was not applicable to the
 27 Company’s or organization’s operations going forward, and/or other employees were viewed as

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1 better qualified because of past performance and competency evaluation, which may include
2 skills, abilities, knowledge and experience.” *Id.*

3 The two companies also worked together to coordinate efforts to implement the WFR,
4 which Plaintiffs allege resulted in continued discriminatory employment practices. *Id.* ¶¶ 24, 34–
5 38, 43–47, 55–56, 63–65. Plaintiffs further contend that the HP entities worked together to
6 impose a common ban on rehiring any employees discharged pursuant to the WFR, regardless of
7 what entity the employee was fired from. *See id.* ¶¶ 43–45 (describing the coordinated
8 “blacklisting policy”). HPI and HPE also implemented similar early retirement policies that were
9 meant to pressure older employees to leave “voluntarily” or risk being involuntarily fired under
10 the WFR. *Id.* ¶¶ 37–41. Plaintiffs allege that the coordinated efforts between HPI and HPE were
11 at Whitman’s direction as part of her ongoing initiative to make all the HP entities “younger.” *Id.*
12 ¶¶ 4, 7. Both HPI and HPE followed the two-step Workforce Restructuring Initiative outlined
13 above. *See id.* ¶¶ 34–36. According to Plaintiffs, HPI and HPE even used the same terminology
14 as HP Co. to review employees—existing employees slated for termination under the WFR were
15 called “slates,” and the new hires that management hired to replace them were called “reqs.” *Id.* ¶
16 34.

17 Plaintiffs maintain that the slate and req process followed a “distinct pattern.” *Id.* ¶ 34. At
18 both HPI and HPE (and at HP Co. before the split), upper-level managers directed subordinate
19 managers to slate certain numbers of older long-term or long-tailed (“LT”) employees for
20 termination under the WFR. *Id.* Simultaneously, the upper-level managers authorized subordinate
21 managers to hire a similar number of early career employees to replace them. *Id.* During this
22 process, HP’s human resources department distributed written guidelines in August 2013 that
23 described a “requisition policy.” *Id.* ¶ 49. This policy mandated that at least 75% of people hired
24 to replace terminated LT employees be early career hires. *Id.* ¶¶ 49-51. Managers who resisted
25 directives to slate and replace LT employees were allegedly in danger of being terminated. For
26 instance, Plaintiff DeVere was instructed to identify two employees from his team to slate for
27 termination under the WFR. *Id.* ¶ 66. Plaintiff DeVere identified two employees for termination;

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1 he selected two younger early career hires who he believed were performing poorly. *Id.* Plaintiff
 2 DeVere’s supervisor told him he should be slating LT employees rather than younger employees.
 3 *Id.* Plaintiff DeVere resisted the direction to slate LT employees and ultimately designated the
 4 two younger employees for termination. *Id.* This decision, however, was overruled by human
 5 resources and two older members of Plaintiff DeVere’s team (over the age of 40) were fired under
 6 the WFR. *Id.* ¶ 67. Soon thereafter, Plaintiff DeVere, who was also over the age of 40, was fired
 7 under the WFR. *Id.* Plaintiffs argue that this, in combination with Whitman’s other statements,
 8 show that older employees were terminated because of their age. *Id.* ¶¶ 34, 66–67.

9 Accordingly, Plaintiffs allege two nationwide ADEA collectives, one against each of the
 10 two Defendants. Plaintiffs have defined the proposed collective against HPI as follows:

11 All individuals who had their employment terminated by HP, Inc.
 12 (including when HP, Inc. was named Hewlett-Packard Company)
 13 pursuant to a WFR Plan on or after December 9, 2014 for individuals
 14 terminated in deferral states; and on or after April 8, 2015 for
 15 individuals terminated in non-deferral states, and who were 40 years
 16 or older at the time of such termination.

17 *Id.* ¶ 105. The proposed collective against HPE is defined as follows:

18 All individuals who had their employment terminated by Hewlett
 19 Packard Enterprise Company pursuant to a WFR Plan on or after
 20 November 1, 2015, and who were 40 years or older at the time of such
 21 termination.

22 *Id.* ¶ 106. Plaintiffs’ collectives exclude individuals who signed a Waiver and General Release
 23 Agreement or an Agreement to Arbitrate Claims. *Id.* ¶ 107.

24 **II. LEGAL STANDARD**

25 Plaintiffs seek collective certification of their ADEA case pursuant to the standards set
 26 forth under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b). The ADEA incorporates
 27 the collective action procedures of the FLSA, set forth in 29 U.S.C. § 216(b). *See* 29 U.S.C. §
 28 626(b); *Lewis v. Wells Fargo & Co.*, 669 F. Supp. 2d 1124, 1126 n.1 (N.D. Cal. 2009) (“[B]ecause
 29 ADEA incorporates § 16(b) of the Fair Labor Standards Act into its enforcement scheme, the same
 30 rules govern judicial management of collective actions under both statutes.”).

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