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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

HENRY SO, individually and on behalf of all
other similarly situated individuals,

Plaintiff,

v.

HP, INC. d/b/a HP COMPUTING AND
PRINTING INC., a Delaware Corporation

Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR

- 1) Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5)(A), § 1030(a)(2)(C), and § 1030(a)(4)**
- 2) Violation of the California Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502, et seq.**
- 3) Violations of the Unfair Competition Law – Unlawful Prong, Cal. Bus. & Prof. Code § 17200, et seq. (“UCL”)**
- 4) Violations of the Unfair Competition Law – Unfair Prong, Cal. Bus. & Prof. Code § 17200, et seq. (“UCL”)**
- 5) Violations of the Unfair Competition Law – Fraudulent Prong, Cal. Bus. & Prof. Code § 17200, et seq. (“UCL”)**
- 6) California False Advertising Law Cal. Bus. & Prof. Code § 17500**
- 7) Fraud By Omission**
- 8) Violation of the California Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1770(a)(5), et seq.**

JURY TRIAL DEMANDED

1 Plaintiff, Henry So, individually and on behalf of all others similarly situated, brings this Class
 2 Action Complaint against Defendant HP, Inc., d/b/a HP Printing and Computing Inc., (“HP”) and makes
 3 the following allegations based on personal knowledge as to facts pertaining to his own experiences and
 4 on information and belief as to all others, and alleges as follows against Defendant:

5 **NATURE OF THE ACTION**

6 1. HP wrongfully compels users of its printers to buy and use only HP ink and toner
 7 supplies (“HP Original Supplies”) by transmitting firmware updates without authorization to HP printers
 8 over the Internet that lock out its competitors’ refilled, new build, or remanufactured ink and toner
 9 supply cartridges (“third-party cartridges”).¹ HP’s firmware “updates” act as malware—adding, deleting
 10 or altering code, diminishing the capabilities of HP printers, and rendering third-party cartridges
 11 incompatible with HP printers (“malicious firmware updates”). As a result, and by HP’s design, Plaintiff
 12 and Class Members who reasonably and lawfully buy competitors’ much less costly and equally
 13 effective supplies are left with useless printers and supply cartridges.

14 2. HP has marketed and sold its standard HP printers as capable of printing using HP
 15 Original Supplies as well as refilled or third-party cartridges.

16 3. HP consistently markets its HP Original Supplies as superior to competing third-party
 17 cartridges. HP states that using HP Original Supplies “provides the best print quality.”² HP also
 18 represents that HP Original Supplies are the “most reliable” and thus require “less service.”³ HP’s public
 19 statements and advertisements imply that customers have a choice whether to use HP Original Supplies.

20
 21
 22 ¹ Third-party cartridges are produced and sold by a variety of HP’s competitors. Third-party compatible cartridges can be
 23 categorized as: remanufactured, refilled, or new build compatibles.

24 Remanufactured and refilled cartridges are HP Original cartridges that are used and subsequently collected, inspected,
 25 cleaned, fit with new or reconditioned parts, refilled with ink or toner, and quality tested so that its capability to print has
 26 been restored. Some customers choose to refill their HP Original cartridges themselves.

27 New build compatible cartridges are new replacement cartridges that are made by a third-party in imitation of an Original
 28 cartridge with a shell, internal components and ink or toner that is not manufactured or distributed by the Original printer
 29 manufacturer.

² See e.g. Exhibit 1 (HP, INC., Brief, *Original HP Toner Cartridges* dated December 2019) (detailing HP’s messaging
 surrounding the benefits of choosing HP Original Supplies for HP’s internal use and use with HP Partners.).

³ *Id.*

1 4. HP consistently asserts that its printers provide HP’s customers with a “flexible choice”
2 between: (a) using the “standard printing model” – wherein a consumer purchases an HP Printer and
3 may choose whatever supplies that consumer desires when resupplying that printer’s ink, or (b) agreeing
4 to use only HP Original Supplies by signing up for Instant Ink or HP+ programs and thus entering the
5 “End to End System.”

6 5. When purchasing HP printers, Plaintiff and Class Members reasonably believed that
7 choosing the standard printing model would allow for the free exercise of a “flexible choice” – *i.e.*,
8 choosing whether to purchase HP Original Supplies or third-party compatible cartridges.

9 6. Even though HP sells ink and toner at substantial premiums over its competitors, HP is
10 able to maintain and increase its market share in the aftermarket for HP compatible ink supplies (“HP
11 InkJet Cartridges”) only because HP’s base class of printers contain microchips designed to cause
12 printer malfunctions if third-party cartridges are installed once the printers receive a malware
13 transmission via a malicious firmware update.

14 7. HP’s malware transmission is unannounced, automatic (on the part of printer owners),
15 and unsolicited. The firmware update, or the portion of the firmware update that renders third-party ink
16 and toner incompatible with HP printers, serves no legitimate business purpose. Even if other portions
17 of the transmission had some arguable security or quality benefit, the secretive, automatic, and
18 misleading manner in which the firmware updates are carried out unlawfully deprives Plaintiff and Class
19 Members of the fully informed choice of either choosing to accept the firmware update and the
20 represented benefits accompanying it, or to decline the update and receive the benefits of using the ink
21 cartridges of their choice.

22 8. As a result of HP’s malware, HP printer owners who lawfully use significantly less
23 expensive ink purchased from third parties are forced to buy HP Original cartridges, which HP sells at
24 substantial premiums, or are deprived of the use of their printers until third parties can develop work
25 arounds to again offer products in competition with HP. HP harms competition because it deprives its
26 printer users of the choice whether to purchase more expensive HP Original Supplies or the less
27 expensive supplies of lawful competitors.

1 9. In furtherance of the unlawful scheme, HP falsely represents and omits material facts
2 regarding the reason for the sudden inability of its printers to function without HP Original cartridges.
3 HP printers using third-party or refilled cartridges display error messages falsely stating that that the
4 printer has a “supply problem” or “cartridge problem” or that the cartridges were not “communicating
5 properly with the printer” and needed to be reinstalled or replaced. In fact, no such problem existed until
6 HP intentionally caused one by sending malware to its printers to render third-party cartridges
7 incompatible with its products.

8 10. The incompatibility was not an unintended consequence of HP pursuing or implementing
9 its legitimate business interests or conducting lawful quality assurance, security updates, or product
10 improvements. The incompatibility was the point of the firmware updates, or the portion of the firmware
11 updates that caused the incompatibility to prevent its printers from working with competitors’ products.
12 Third-party supplies are not collateral damage; they are the target.

13 11. Due to the transmission and by HP’s design, Plaintiff’s and Class Members’ Class
14 Printers and ink cartridges were rendered incompatible and inoperable. Plaintiff would not have
15 purchased an HP printer had he known HP was engaged in and would engage in such conduct. Had
16 Plaintiff and Class Members known that HP would surreptitiously render third-party cartridges
17 incompatible, Plaintiff and Class Members would not have purchased an HP Printer or would have paid
18 less for their printers. As a direct and proximate result of HP’s misconduct, Plaintiff and Class Members
19 sustained damages, including but not limited to the loss of the value of the InkJet cartridges they
20 purchased that are no longer compatible with their printers, loss of time and effort to diagnose the
21 damage to their printers and to determine what remedial measures to take, the need to purchase
22 expensive HP Original cartridges, uncertainty in the functioning of their printers and supply cartridges,
23 and future remedial costs.

24 12. HP’s malware transmission and false statements injured and will continue to injure its
25 customers. HP’s conduct is unlawful under federal and state laws prohibiting hacking and other
26 computer crimes, as well as state statutory prohibitions against deceptive and unfair trade practices.

1 13. Plaintiff therefore seeks actual, statutory, and exemplary damages, restitution, and an
2 injunction requiring HP to reverse the effects of its malware transmissions insofar as they render once-
3 compatible ink cartridges obsolete and prohibiting HP from sending such transmissions in the future
4 without obtaining the fully informed consent of each printer owner.

5
6 **JURISDICTION AND VENUE**

7 14. This Court has federal subject matter jurisdiction over Plaintiff's federal claims pursuant
8 to 28 U.S.C. § 1331 as well as pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §
9 1332(d), as the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs,
10 there are more than 100 putative class members, and minimal diversity exists because many putative
11 class members are citizens of a different state than Defendant.

12 15. Additionally, the Court has original federal subject matter jurisdiction over this matter
13 pursuant to 28 U.S.C. §1331 because it arises, at least in part, out of a question of federal law, the
14 Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*

15 16. Venue is proper in this District pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. §
16 1391(b)(2) because Defendant conducts its affairs in this District and a substantial part of the events
17 giving rise to Plaintiff's claims occurred in this District.

18 17. This Court has personal jurisdiction over Defendant because its principal place of
19 business is in California. Additionally, Defendant is subject to specific personal jurisdiction in this State
20 because a substantial part of the events and conduct giving rise to Plaintiff's and the Class claims
21 occurred in this State.

22 **PARTIES**

23 18. Plaintiff Henry So is a California citizen. Plaintiff So owns three Class Printers. Plaintiff
24 purchased these printers new in California from Best Buy and Amazon.

25 19. Defendant HP is a California corporation with a principal place of business at Defendant
26 HP, INC. d/b/a HP Computing and Printing Inc. is a Delaware corporation with its principal place of
27

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