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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN CALIFORNIA
SAN JOSE DIVISION

IN RE HP PRINTER FIRMWARE
UPDATE LITIGATION

Case No. 5:16-cv-05820-EJD-SVK

**SETTLEMENT AGREEMENT AND
RELEASE**

1 This Settlement Agreement and Release dated September 18, 2018 (the “Agreement”), is made
2 and entered into by and among: (i) Plaintiffs Richard San Miguel, DeLores Lawty, Richard Faust,
3 Christopher Ware, and James Andrews, on behalf of themselves and each of the members of the Class
4 (as defined herein), by and through their counsel in the instant action (“Class Counsel”), and (ii)
5 Defendant HP Inc. (“HP,” the “Company,” or “Defendant”), by and through its counsel of record. The
6 Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims
7 (as defined herein) as against Defendant, subject to the approval of the Court and the terms and
8 conditions set forth in this Agreement.

9 **I. RECITALS**

10 WHEREAS, on October 7, 2016, Plaintiffs Richard San Miguel and DeLores Lawty filed a
11 Complaint in this action (Dkt. 1);

12 WHEREAS, on March 15, 2017, the Court granted the Parties’ stipulation to consolidate this
13 action with the related actions, *Ware v. HP Inc.*, No. 5:16-cv-06519, and *Doty v. HP, Inc.*, No. 5:17-cv-
14 00521 (Dkt. 59);

15 WHEREAS, on March 22, 2017, Plaintiffs filed a Consolidated Complaint (Dkt. 60), which HP
16 moved to dismiss on April 21, 2017 (Dkt. 66);

17 WHEREAS, on July 14, 2017, the Parties appeared before this Court for argument on HP’s
18 motion;

19 WHEREAS, the Parties thereafter engaged in significant discovery into the claims and
20 defenses, including through review and analysis of thousands of pages of documents and the
21 depositions of each named Plaintiff and of two HP corporate representatives under Fed. R. Civ. P.
22 30(b)(6);

23 WHEREAS, on November 22, 2017, the Court granted the Parties’ stipulation regarding a
24 schedule for class certification proceedings (Dkt. 87);

25 WHEREAS, on February 7, 2018, Plaintiffs filed a Motion for Class Certification (Dkt. 91);

26 WHEREAS, on February 8, 2018, the Court granted the Parties’ stipulation regarding the filing
27 of the Amended Consolidated Complaint (Dkt. 88), which Plaintiffs thereafter filed (Dkt. 94);
28

1 WHEREAS, on March 29, 2018, the Court entered an order granting in part and denying in part
2 HP's Motion to Dismiss Plaintiffs' Consolidated Amended Complaint and permitting Plaintiffs to file a
3 second amended complaint (Dkt. 97);

4 WHEREAS, on April 3, 2018, the Court entered the Parties' stipulation to abate the then-
5 existing dates for the class certification proceedings (Dkt. 100), and on April 11, 2018, the Court
6 granted a further extension of the case schedule to allow the Parties to continue discussions on
7 streamlining the litigation in light of the Court's Order on HP's Motion to Dismiss (Dkt. 102);

8 WHEREAS, the Parties informed the Court that they were exploring resolution, and on May 31,
9 2018, the Court granted the Parties' request to allow additional time for those efforts by extending
10 Plaintiffs' deadline to file a second amended complaint to July 12, 2018 (Dkt. 105);

11 WHEREAS, on July 12, 2018, the Parties informed the Court that they had reached an
12 agreement in principle to settle this litigation (Dkt. 106);

13 WHEREAS, on July 13, 2018, the Court entered the Parties' stipulation providing for the
14 vacatur of then-existing case deadlines and a due date of September 11, 2018, for Plaintiffs' motion for
15 preliminary approval of class action settlement (Dkt. 107);

16 WHEREAS, Plaintiffs in entering into this Agreement recognize and acknowledge the expense
17 and time it would take to prosecute this action through trial and any subsequent appeals, and the risk
18 that this action could ultimately be unsuccessful in light of HP's defenses;

19 WHEREAS, HP has asserted and would assert numerous defenses to the claims alleged by
20 Plaintiffs and expressly denies each of the claims and allegations asserted against HP and any and all
21 liability arising out of the conduct alleged in the complaint;

22 WHEREAS, HP acknowledges that further litigation of this action could be protracted and
23 expensive, and HP has also taken into account the uncertainty and risks inherent in any litigation,
24 especially in complex cases such as this;

25 WHEREAS, Plaintiffs and HP have therefore each independently determined that it is desirable
26 and beneficial for this action to be fully and finally resolved in the manner and upon the terms and
27 conditions set forth in this Agreement; and
28

SETTLEMENT AGREEMENT AND RELEASE
CASE NO. 5:16-CV-05820-EJD-SVK

1 WHEREAS, by entering into this Agreement, HP does not admit any wrongdoing and this
2 Agreement is not and shall not constitute an admission of liability by HP.

3 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among
4 Plaintiffs (for themselves and the Class Members) and HP, by and through its counsel, that, subject to
5 the approval of the Court, the Litigation and the Released Claims shall be finally and fully
6 compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all
7 Settling Parties and their Related Parties (as defined below), upon and subject to the terms and
8 conditions of the Agreement, as follows.

9 **II. TERMS AND CONDITIONS OF AGREEMENT**

10 **1. Definitions**

11 As used in the Agreement the following terms have the meanings specified below:

12 1.1 “Administrative Expenses” means the cost of the notice program relating to this
13 Settlement and the reasonable costs of processing and administering claims and disbursements of
14 consideration, and other necessary and reasonable administrative expenses relating to this Settlement.

15 1.2 “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement
16 Agreement and Release.

17 1.3 “Authorized Claimant” means any Class Member whose claim for recovery has been
18 allowed pursuant to the terms of the Agreement.

19 1.4 “Claims Administrator” means Epiq Systems, or such other claims administrator as the
20 Court shall approve.

21 1.5 “Claims Deadline” means the date set forth in the Notice by which Class Members must
22 submit the Claim Form, which shall be one hundred and twenty (120) days after entry of the
23 Preliminary Approval Order or such other time as may be set by the Court.

24 1.6 “Claim Form” means a document, substantially in the form of **Exhibit 2** hereto, that a
25 Class Member must complete and submit to receive a payment from the Net Settlement Fund.

26 1.7 “Class” means all Persons who owned a Class Printer during the period from March 1,
27 2015 through December 31, 2017. Excluded from the Class are HP, its officers, directors, and
28 affiliates at all relevant times, members of their immediate families and their legal representatives,

1 heirs, successors or assigns, and any entity in which HP had or has a controlling interest. Also
2 excluded from the Class are those Persons who timely and validly request exclusion, as set forth
3 below.

4 1.8 “Class Printer” means any of the following product models:

- 5 • HP OfficeJet Pro 6230
- 6 • HP OfficeJet 6812
- 7 • HP OfficeJet 6815
- 8 • HP OfficeJet 6820
- 9 • HP OfficeJet Pro 6830
- 10 • HP OfficeJet Pro 6835
- 11 • HP OfficeJet Pro 8610
- 12 • HP OfficeJet Pro 8615
- 13 • HP OfficeJet Pro 8616
- 14 • HP OfficeJet Pro 8620
- 15 • HP OfficeJet Pro 8625
- 16 • HP OfficeJet Pro 8630
- 17 • HP OfficeJet Pro X551dw
- 18 • HP OfficeJet Pro X451dn
- 19 • HP OfficeJet Pro X451dw
- 20 • HP OfficeJet Pro X576dw
- 21 • HP OfficeJet Pro X476dn
- 22 • HP OfficeJet Pro X476dw

17 1.9 “Class Member” means a Person who falls within the definition of the Class as set forth
18 above and does not exercise their right to opt out of the Class before the Opt-Out Deadline.

19 1.10 “Court” means the United States District Court for the Northern District of California.

20 1.11 “Defendant,” “HP,” and the “Company” mean HP Inc., and its present and former
21 parents, subsidiaries, divisions, affiliates, and each of its respective present and former employees,
22 agents, officers, directors, controlling shareholders, attorneys, predecessors, and successors.

23 1.12 “Dynamic Security” means an HP-developed technology which causes Class Printers to
24 run authentication checks that change over time on installed ink cartridges to determine whether the
25 ink cartridges contain a non-HP security chip, and that may prevent Class Printers from operating with
26 any such ink cartridges.

27 1.13 “Effective Date,” or the date upon which this Settlement becomes “effective,” means the
28 date the Court has entered the Final Order and Judgment and the Final Order and Judgment has been

1 upheld through the resolution of all appeals and writs of certiorari, and through the expiration of all
2 time to appeal and file writs of certiorari, except that the Effective Date shall not be delayed by a
3 modification of or appeal from those parts of the Final Order and Judgment that (i) pertains to either
4 the Plan of Allocation or the Fee and Expense Award; and (ii) has no effect on this Agreement
5 becoming binding, effective, and final in its entirety between Releasing Plaintiffs, Class Members, and
6 Defendant.

7 1.14 “Escrow Account” means the segregated and separate escrow account designated and
8 controlled by the Escrow Agent at one or more national banking institutions into which the Settlement
9 Amount shall be deposited for the benefit of Class Members.

10 1.15 “Escrow Agent” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”), or other
11 neutral third party agreed to by the Settling Parties.

12 1.16 “Fee and Expense Award” means the order awarding attorneys’ fees and reimbursement
13 of actual costs and expenses incurred by Class Counsel in the Litigation.

14 1.17 “Final Approval Hearing” means the hearing to be requested by the Settling Parties and
15 conducted by the Court, following notice to the Class and an opportunity for Class Members to
16 exclude themselves from the Class or object to the Settlement, at which time Plaintiffs shall move the
17 Court to finally approve the fairness, reasonableness and adequacy of the Settlement and to enter the
18 final approval order.

19 1.18 “Final Order and Judgment” means an order, substantially in the form of **Exhibit 5**
20 hereto, to be entered by the Court in this Action granting final approval of this Settlement Agreement
21 and dismissing the Litigation with prejudice.

22 1.19 “Litigation” means the action captioned *In re HP Printer Firmware Update Litigation*,
23 Case No. 4:16-cv-05820-EJD-SVK.

24 1.20 “Net Settlement Fund” means the Settlement Fund less any Taxes and Tax Expenses
25 and other Court-approved deductions.

26 1.21 “Notice” means the Notices of Proposed Settlement of Class Action, which, subject to
27 Court approval, shall be substantially in the forms attached hereto as **Exhibit 1**.

1 1.22 “Objection Date” means the date set forth in the Notice by which Class Members must
2 object to the Settlement, which shall be seventy-five (75) days after entry of the Preliminary Approval
3 Order or such other time as may be set by the Court.

4 1.23 “Opt-Out Deadline” means the date set forth in the Notice by which Class Members
5 must request exclusion from the Class, which shall be seventy-five (75) days after entry of the
6 Preliminary Approval Order or such other time as may be set by the Court.

7 1.24 “Parties” or “Settling Parties” means Plaintiffs and HP collectively.

8 1.25 “Person” means an individual, corporation, limited liability corporation, professional
9 corporation, partnership, limited partnership, limited liability partnership, association, joint stock
10 company, joint venture, estate, legal representative, trust, unincorporated association, government or
11 any political subdivision or agency thereof, and any business or legal entity, and including any of their
12 heirs, successors, representatives, or assigns.

13 1.26 “Plaintiffs” means Richard San Miguel, DeLores Lawty, Richard Faust, Christopher
14 Ware, and James Andrews.

15 1.27 “Plan of Allocation” means the plan for allocating the Net Settlement Fund set forth in
16 **Exhibit 3** hereto, or such other plan for allocating the Net Settlement Fund approved by the Court.

17 1.28 “Preliminary Approval Order” means the Order Preliminarily Approving Settlement and
18 Providing for Notice, substantially in the form attached hereto as **Exhibit 4**.

19 1.29 “Related Parties” means, as applicable, each of a person or entity’s respective present
20 and former parents, subsidiaries, divisions, affiliates, and each of their and a person or entity’s
21 respective present and former employees, members, partners, principals, agents, officers, directors,
22 controlling shareholders, attorneys, agents, related or affiliated entities, predecessors, successors,
23 spouses, estates, heirs, executors, trusts, trustees, administrators, agents, representatives, and assigns,
24 in their capacity as such, and any entity in which a person or entity has a controlling interest.

25 1.30 “Released Claims” means, with respect to claims released by Plaintiffs, any and all
26 claims, rights, causes of action, liabilities, actions, suits, damages, or demands of any kind whatsoever,
27 known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that
28 relate to Dynamic Security and/or any representations regarding the ability to use third-party ink

1 cartridges with the Class Printers, and that were or could have been alleged in the Litigation.
2 “Released Claims” means, with respect to claims released by HP, any and all claims, rights, causes of
3 action, liabilities, actions, suits, damages, or demands of any kind whatsoever, known or unknown,
4 matured or unmatured, at law or in equity, existing under federal or state law, that arise out of or relate
5 in any way to the institution, prosecution or settlement of the Litigation and that could have brought by
6 HP against the named plaintiffs in the Litigation. Notwithstanding the foregoing, “Released Claims”
7 does not include claims relating to the enforcement of the Settlement.

8 1.31 “Releasing Plaintiffs” means Plaintiffs and each Class Member.

9 1.32 “Settlement Amount” means One Million Five Hundred Thousand Dollars
10 (\$1,500,000.00), which shall be paid to the Escrow Agent by HP, as detailed in Section 2 below,
11 within seven (7) days after the entry of the Final Order and Judgment.

12 1.33 “Settlement Fund” means the Settlement Amount, together with all interest and
13 accretions thereto and which may be reduced by payments or deductions as provided herein or by
14 Court order.

15 1.34 “Summary Notice” means the summary form of notice for postcard mailing, which,
16 subject to approval of the Court, shall be substantially in the form attached hereto as **Exhibit 1-B**.

17 1.35 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts, and other
18 charges of any kind (together with any and all interest, penalties, additions to tax and additional
19 amounts imposed with respect thereto) imposed by any governmental authority.

20 **2. The Settlement**

21 *a. Settlement Consideration*

22 2.1 Within seven (7) days after the entry of the Final Approval Order, HP shall pay or cause
23 to be paid the Settlement Amount in accordance with instructions to be provided by the Escrow Agent.
24 The Settlement Amount may be paid by wire transfer, by delivering to the Escrow Agent a check or
25 checks payable to the Settlement Fund, by any combination of those methods, or in any other manner
26 agreed upon by Plaintiffs and HP. Within seven (7) days of execution of this Agreement, the Escrow
27 Agent shall furnish to HP’s counsel adequate payment instructions consisting of wire transfer
28

1 instructions, instructions for payment by check, and a completed IRS Form W-9 for the Settlement
2 Fund, including an address and tax ID number.

3 2.2 HP shall pay all Administrative Expenses. The Parties will agree upon a plan for
4 necessary and reasonable Administrative Expenses, which will be made available to the Court upon
5 request. The Claims Administrator shall cause periodic invoices to be sent to HP reflecting
6 Administrative Expenses incurred, and HP shall timely reimburse the Claims Administrator for those
7 expenses. HP retains the right to dispute any expenses that are inconsistent with the Parties'
8 Administrative Expenses plan. In the event this Agreement receives preliminary but not final approval
9 and Administrative Expenses are incurred, payment of those expenses shall remain the sole obligation
10 of HP.

11 2.3. HP has released firmware that disables Dynamic Security for the Class Printers. HP will
12 not at any time take any action to employ Dynamic Security on the Class Printers, including by
13 releasing or otherwise making available firmware that enables Dynamic Security. Additionally, HP
14 will implement and maintain internal customer service procedures to respond to Class Member
15 inquiries regarding whether Dynamic Security has been disabled on their Class Printer and provide
16 assistance as appropriate.

17 *c. The Escrow Agent*

18 2.4. The Escrow Agent shall deposit the Settlement Amount plus any accrued interest in a
19 segregated Escrow Account maintained by the Escrow Agent.

20 2.5. The Escrow Agent may invest the Settlement Amount deposited pursuant to ¶ 2.1 hereof
21 in United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit
22 of the United States Government or an Agency thereof, or fully insured by the United States
23 Government or an Agency thereof, and may reinvest the proceeds of these instruments as they mature
24 in similar instruments at their then-current market rates. All risks related to the investment of the
25 Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne
26 by the Settlement Fund and Defendant shall have no responsibility for, interest in, or liability
27 whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions
28 executed by the Escrow Agent.

1 2.6. The Escrow Agent shall not disburse the Settlement Fund except as provided in the
2 Agreement and by an order of the Court.

3 2.7. Subject to further order(s) and/or directions as may be made by the Court, or as provided
4 in the Agreement, the Escrow Agent is authorized to execute such transactions as are consistent with
5 the terms of the Agreement. Defendant shall have no responsibility for, interest in, or liability
6 whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow
7 Agent in its capacity as such.

8 2.8. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia*
9 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such
10 funds shall be distributed pursuant to the Agreement and/or further order(s) of the Court.

11 2.9. Upon the occurrence of the Effective Date, neither Defendant nor any other person or
12 entity who or which paid any portion of the Settlement Amount shall have any right to the return of the
13 Settlement Fund or any portion thereof for any reason whatsoever (including, without limitation, the
14 number of Claim Forms submitted, the collective amount of recognized claims of Authorized
15 Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants
16 from the Net Settlement Fund), except as set forth in ¶ 7.5 below.

17 *d. Tax Provisions*

18 2.10. The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at
19 all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the
20 Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of
21 this ¶ 2.10, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the
22 earliest permitted date. Such elections shall be made in compliance with the procedures and
23 requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely
24 and properly prepare and deliver the necessary documentation for signature by all necessary parties,
25 and thereafter to cause the appropriate filing to occur.

26 2.11. For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the
27 regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent
28 shall timely and properly file all informational and other tax returns necessary or advisable with respect

1 to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-
2 2(k)). Such returns (as well as the election described in ¶ 2.10 hereof) shall be consistent with ¶ 2.10
3 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the
4 income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

5 2.12. All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect
6 to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be
7 imposed upon Defendant or its counsel with respect to any income earned by the Settlement Fund for
8 any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for
9 federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the
10 operation and implementation of these Tax provisions (including, without limitation, expenses of tax
11 attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or
12 failing to file) the returns described in ¶ 2.10) (“Tax Expenses”), shall be paid out of the Settlement
13 Fund; in all events Defendant and its counsel shall have no liability or responsibility for the Taxes or
14 the Tax Expenses. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of
15 Defendant and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes
16 payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as,
17 and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the
18 Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent
19 shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to
20 Authorized Claimants any funds necessary to pay such amounts, including the establishment of
21 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be
22 withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendant nor its counsel are responsible nor
23 shall they have any liability for any Taxes or Tax Expenses. The Settling Parties agree to cooperate
24 with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably
25 necessary to carry out these Tax provisions.

26 *d. Termination of Settlement*

27 2.13. If the Settlement Amount is not timely paid to the Escrow Agent pursuant to ¶ 2.1,
28 Plaintiffs may terminate the Settlement but only if (a) Class Counsel has notified Defendant’s counsel

1 in writing of Class Counsel's intention to terminate the Settlement, and (b) the Settlement Amount is
2 not transferred to the Escrow Agent within ten (10) days after Class Counsel have provided such
3 written notice. Failure by Class Counsel or the Escrow Agent to timely furnish adequate payment
4 instructions to HP pursuant to ¶ 2.1 shall not be a basis for termination under this section and any delay
5 in providing such instructions shall extend the period in which the Settlement Amount is be paid under
6 ¶ 2.1 by an equivalent number of days.

7 2.14. In the event that the Agreement is not approved, or fails to become effective for any
8 reason, the Settlement Fund, including accrued interest and less Taxes or Tax Expenses paid, incurred,
9 or due and owing in connection with the Settlement as provided for herein, shall be refunded to
10 Defendant pursuant to written instructions from counsel for Defendant.

11 2.15. Defendant acknowledges that it has no right to reversion of any portion of the Settlement
12 Fund unless the Agreement is not approved or fails to become effective for any reason.

13 **3. Preliminary Approval Order and Final Approval Hearing**

14 3.1 Promptly after execution of the Agreement, Plaintiffs shall submit the Agreement
15 together with its Exhibits to the Court and shall apply for entry of the Preliminary Approval Order,
16 requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Agreement; setting of
17 dates for the mailing of the Notice, Claims Deadline, Opt-Out Deadline, Objection Date, and Final
18 Approval Hearing; approval of the Claims Administrator; approval of the Notice; approval of the Claim
19 Form; and approval of the publication of the Summary Notice. The Notice shall include general
20 information regarding the terms of the Settlement set forth in the Agreement and the proposed Plan of
21 Allocation and the date of the Final Approval Hearing.

22 3.2 Any Class Member who wishes to opt out of the Class must submit a timely written
23 request for exclusion on or before the Opt-Out Deadline, in the manner specified in the Court's
24 Preliminary Approval Order and Notice. Any Class Member who does not submit a timely written
25 request for exclusion will be bound by all proceedings, orders and judgments in the Litigation, whether
26 or not he, she, or it timely submits a Claim Form.

27 3.3 Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of
28 the Settlement, or the application of Class Counsel for a Fee and Expense Award and/or for service

1 awards for Plaintiffs, must timely do so in the manner specified in the Court's Preliminary Approval
2 Order.

3 3.4 Plaintiffs will request that after notice to Class Members is given and Class Members
4 have had an opportunity to exclude themselves from the Class or object to the Settlement, the Court
5 hold the Final Approval Hearing and approve the settlement of the Litigation as set forth herein. At the
6 Final Approval Hearing, Class Counsel will also request that the Court approve the proposed Plan of
7 Allocation and the Fee and Expense Award.

8 3.5. For purposes of the Settlement only, the Parties stipulate to the certification of the Class
9 defined herein pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Parties stipulate to
10 certification, for settlement purposes only, of this Class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).
11 Defendant does not agree to class certification for any purpose other than to effectuate this Settlement.
12 Defendant expressly reserves its right to contest certification in the event this Settlement is not
13 approved or fails to become effective for any reason.

14 **4. Releases**

15 4.1 Upon the Effective Date, all Releasing Plaintiffs and anyone claiming through or on
16 behalf of any of them, shall be deemed to have fully, finally, and forever released, relinquished, and
17 discharged all Released Claims against Defendant. Upon the Effective Date, the Releasing Plaintiffs
18 shall be forever barred and enjoined from commencing, instituting, prosecuting or continuing to
19 prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or
20 administrative forum, asserting any Released Claim against Defendant.

21 4.2 Upon the Effective Date, Defendant shall be deemed to have fully, finally, and forever
22 released, relinquished, and discharged all Released Claims against the named plaintiffs in the
23 Litigation, and Class Counsel, whether arising under federal, state, common or foreign law. Upon the
24 Effective Date, Defendant shall be forever barred and enjoined from commencing, instituting,
25 prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity,
26 arbitration tribunal, or administrative forum, asserting Released Claims against any of the named
27 plaintiffs in the Litigation and Class Counsel.
28

1 4.3 In exchange for the releases and other consideration set forth herein, including full
2 payment of the Settlement Amount, Plaintiffs will dismiss Defendant with prejudice from the Litigation
3 as set forth herein.

4 4.4 The Settling Parties agree that the Court shall retain exclusive and continuing
5 jurisdiction over the Settling Parties and the Class Members to interpret and enforce the terms,
6 conditions, and obligations under this Agreement.

7 **5. Administration and Calculation of Claims, Final Awards and Supervision and**
8 **Distribution of the Settlement Fund**

9 5.1 The Claims Administrator, subject to such supervision and direction of the Court as may
10 be necessary or as circumstances may require, shall administer and calculate the claims submitted by
11 Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

12 5.2 The Court shall have and retain exclusive jurisdiction over the Settlement Fund, which
13 shall be applied to pay the Taxes and Tax Expenses described in the Tax Provisions herein and, after
14 the Effective Date, to distribute the Net Settlement Fund to Authorized Claimants as allowed by the
15 Plan of Allocation or the Court.

16 5.3 After the Effective Date, and in accordance with the Plan of Allocation, or such further
17 approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net
18 Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the
19 following.

20 5.4 Within one hundred twenty (120) days after the entry of the Preliminary Approval Order
21 or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall
22 be required to submit to the Claims Administrator a completed Claim Form.

23 5.5 Except as otherwise ordered by the Court, all Class Members who fail to timely submit a
24 valid Claim Form within such period, or such other period as may be ordered by the Court, or otherwise
25 allowed, shall be forever barred from receiving any payments pursuant to the Agreement and the
26 Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of
27 the Agreement, the releases contained herein, and the Final Order and Judgment. Notwithstanding the
28 foregoing, Class Counsel shall have the discretion (but not an obligation) to accept late-submitted

1 claims for processing by the Claims Administrator so long as the distribution of the Net Settlement
2 Fund to Authorized Claimants is not materially delayed thereby. Class Counsel shall also have the
3 right, but not the obligation, to advise the Claims Administrator to waive what Class Counsel deems to
4 be *de minimis* or formal or technical defects in any Claim Form submitted.

5 5.6 Claim Forms that do not meet the submission requirements may be rejected. Prior to
6 rejecting a claim in whole or in part, the Claims Administrator shall communicate with the claimant to
7 give him, her, or it the opportunity to remedy any curable deficiencies in the claim submitted. The
8 Claims Administrator shall notify all claimants whose claims the Claims Administrator proposes to
9 reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in
10 such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the
11 claimant so desires and complies with the requirements of ¶ 5.7 below.

12 5.7 If any claimant whose timely claim has been rejected in whole or in part for curable
13 deficiency wishes to contest such rejection, the claimant must, within twenty (20) days after the date of
14 mailing of the notice required in ¶ 5.6 above, serve upon the Claims Administrator a notice and
15 statement of reasons indicating the claimant's grounds for contesting the rejection along with any
16 supporting documentation, and requesting a review thereof by the Court.

17 5.8 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially
18 in accordance with the Plan of Allocation attached hereto, summarized in the Notice, and approved by
19 the Court.

20 5.9 Defendant and its Related Parties shall have no responsibility for, interest in, or liability
21 whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, the Escrow
22 Agent, or the Claims Administrator, or any of their respective designees or agents, in connection with
23 the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of
24 the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, or calculation
25 of claims to be paid to Authorized Claimants from the Settlement Fund; or (v) the payment or
26 withholding of Taxes or Tax Expenses, or any expenses or losses incurred in connection therewith. No
27 Person shall have any claim of any kind against Defendant or its Related Parties with respect to the
28 matters set forth in ¶¶ 5.1–5.9 hereof; and the Class Members, Plaintiffs, and Class Counsel release

1 Defendant and its Related Parties from any and all liability and claims arising from or with respect to
2 the administration, investment or distribution of the Settlement Fund.

3 5.10 No Person shall have any claim against Plaintiffs, Class Counsel or the Claims
4 Administrator, or any other Person designated by Class Counsel, based on determinations or
5 distributions made substantially in accordance with this Agreement and the settlement contained herein,
6 the Plan of Allocation, or further order(s) of the Court.

7 5.11 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation
8 of the Net Settlement Fund, including, but not limited to, any adjustments to an Authorized Claimant's
9 claim set forth therein, is not a part of this Agreement and is to be considered by the Court separately
10 from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth
11 in this Agreement, and any order or proceeding relating to the Plan of Allocation shall not operate to
12 terminate or cancel the Agreement or affect the finality of the Court's Final Order and Judgment
13 approving the Agreement and the settlement set forth herein.

14 **6. Class Counsel's Attorneys' Fees and Expenses; Service Awards**

15 6.1 Class Counsel shall apply to the Court for the Fee and Expense Award to be paid by HP.
16 HP reserves the right to oppose any application, except that HP shall not dispute that plaintiffs are
17 successful parties for purposes of California Code of Civil Procedure section 1021.5, and that Class
18 Counsel are entitled to reimbursement of out-of-pocket litigation costs actually and reasonably
19 incurred. HP reserves all arguments with respect to the amount of fees and costs to which Class
20 Counsel is entitled under the applicable law. HP shall pay Class Counsel the Fee and Expense Award
21 within ten (10) days after the Effective Date pursuant to instructions to be delivered by Class Counsel
22 within three (3) days after the Effective Date.

23 6.2. Subject to approval of the Court, HP shall pay each Plaintiff a service or incentive award
24 of \$5,000. Such awards shall be in addition to any individual payments to which each Plaintiff may be
25 entitled within the claims process. Such awards shall be paid by HP to Class Counsel, for delivery to
26 each Plaintiff, within ten (10) days after the Effective Date pursuant to instructions to be delivered by
27 Class Counsel within three (3) days after the Effective Date.
28

1 6.3 In the event that the Effective Date does not occur, or the Final Order and Judgment or
2 the order making the Fee and Expense Award is reversed or modified, or this Agreement is canceled or
3 terminated for any other reason, and such reversal, modification, cancellation, or termination becomes
4 final and not subject to review, and in the event that the Fee and Expense Award has been paid, then
5 Class Counsel, including its partners and/or shareholders who have received any portion of the Fee and
6 Expense Award shall, within twenty (20) days after receiving notice from HP's counsel or from a court
7 of competent jurisdiction, refund to HP the Fee and Expense Award.

8 6.4 The procedure for and the allowance or disallowance by the Court of any applications by
9 any plaintiff's counsel for attorneys' fees and expenses, or any Plaintiff for a service or incentive
10 award, are to be considered by the Court separately from the Court's consideration of the fairness,
11 reasonableness and adequacy of the settlement set forth in this Agreement, and any order or proceeding
12 relating to the Fee and Expense Application, or application for service award, or any appeal from any
13 order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the
14 Agreement, or affect or delay the finality of the Final Order and Judgment approving the Agreement
15 and the settlement of the Litigation set forth herein.

16 6.5. Defendant and its Related Parties are not entitled to any award of fees or expenses from
17 the Settlement Fund.

18 6.6 Defendant and its Related Parties shall have no responsibility for the allocation among
19 Class Counsel, or any other plaintiff's counsel or Person who may assert some claim thereto, of any
20 Fee and Expense Award that the Court may make in the Litigation.

21 **7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

22 7.1 This Agreement shall be conditioned on the occurrence of all of the following events:

- 23 (a) the Court has entered the Preliminary Approval Order;
24 (b) the Court has entered the Final Order and Judgment; and
25 (c) the Settlement Amount has been deposited into the Escrow Account.

26 7.2 Upon the Effective Date, any and all remaining interest or right of Defendant in or to the
27 Settlement Fund, if any, shall be absolutely and forever extinguished.
28

1 7.3 HP may terminate this Agreement if, after the Opt-Out Deadline, the Claims
2 Administrator determines that the number of timely and valid opt-out requests exceeds 12,000 (the
3 “Opt-out Threshold”). Requests for exclusion from persons or entities who would not otherwise meet
4 the Class definition do not count toward the Opt-Out Threshold. If HP elects to terminate this
5 Agreement pursuant to this paragraph, it will give notice to Class Counsel within fourteen days after
6 the Claims Administrator determines and reports to the Parties the number of timely and valid opt-out
7 requests.

8 7.4 In the event that the Agreement or the settlement set forth in the Agreement is not
9 approved by the Court or otherwise fails to become effective in accordance with its terms, the Settling
10 Parties shall be restored to their respective positions in the Litigation as of March 30, 2018. In such
11 event, the terms and provisions of the Agreement, except ¶¶ 2.12–2.15, 6.3 and 7.3–7.5, shall be null
12 and void, have no further force and effect, and shall not be used in the Litigation or in any other
13 proceeding for any purpose, and any judgment or order entered by the Court in accordance with the
14 terms of the Agreement shall be treated as vacated, *nunc pro tunc*, and shall not be used in the
15 Litigation or in any other proceeding for any purpose. No order of the Court or modification or
16 reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any
17 service award, or any attorneys’ fees, costs, expenses, and interest awarded by the Court to Class
18 Counsel or any other plaintiff’s counsel shall operate to terminate or cancel this Agreement or
19 constitute grounds for cancellation or termination of the Agreement.

20 7.5 If the Effective Date does not occur, or if the Agreement is terminated pursuant to its
21 terms, HP shall remain obligated to reimburse the Claims Administrator for all Administrative
22 Expenses incurred by the Claims Administrator, and the Claims Administrator shall have no obligation
23 to repay any Administration Expenses for which it has been paid by HP.

24 **8. Miscellaneous Provisions**

25 8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this
26 Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement
27 all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing
28 terms and conditions of the Agreement.

1 8.2 The Settling Parties and their respective counsel agree that they will act in good faith
2 and will not engage in any conduct that could frustrate the purposes of this Agreement.

3 8.3 The Settling Parties and their respective counsel will not make any public statement that
4 is inconsistent with the Parties' objective of securing court approval of the Settlement.

5 8.4 The determination of the terms and conditions contained herein and the drafting of the
6 provisions of this Agreement have been by mutual understanding after negotiation, with consideration
7 by, and participation of, the Settling Parties and their counsel. This Agreement shall not be construed
8 against any Settling Party on the basis that it was the drafter or participated in the drafting. Any statute
9 or rule of construction that ambiguities are to be resolved against the drafting party shall not be
10 employed in the implementation of this Agreement and the Settling Parties agree that the drafting of
11 this Agreement has been a mutual undertaking.

12 8.5 The Settling Parties intend this Agreement to effect a final and complete resolution of all
13 disputes and claims between Releasing Plaintiffs, on the one hand, and Defendant, on the other hand,
14 with respect to the Litigation. The Settlement resolves claims which are contested and shall not be
15 deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling
16 Parties agree that during the course of the Litigation, the parties and their respective counsel at all times
17 complied with the requirements of Federal Rule of Civil Procedure 11 and California Code of Civil
18 Procedure § 128.7. The Settling Parties agree that the Settlement Amount and the other terms of the
19 settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was
20 reached voluntarily after consultation with competent legal counsel.

21 8.6 Neither this Agreement nor the settlement contained herein, nor any act performed or
22 document executed pursuant to or in furtherance of the Agreement or the Settlement (a) is or may be
23 deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,
24 the truth of any of the allegations in the Litigation of any wrongdoing, fault, or liability of Defendant or
25 its Related Parties, or that Plaintiffs or any Class Members have suffered any damages, harm, or loss; or
26 (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission
27 on the part of Defendant or its Related Parties in any civil, criminal, or administrative proceeding in
28 any court, administrative agency, or other tribunal.

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1 8.7 Defendant may file this Agreement and/or the Final Order and Judgment in any other
2 action that may be brought against it in order to support a defense or counterclaim based on principles
3 of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any
4 theory of claim or issue preclusion or similar defense or counterclaim.

5 8.8 All agreements made and orders entered during the course of the Litigation relating to
6 the confidentiality of information shall survive this Agreement.

7 8.9 All of the Exhibits to the Agreement are material and integral parts hereof and are fully
8 incorporated herein by this reference.

9 8.10 The Agreement may be amended or modified only by a written instrument signed by or
10 on behalf of all Settling Parties or their respective successors-in-interest.

11 8.11 The Agreement and the Exhibits attached hereto constitute the entire agreement among
12 the parties hereto and no representations, warranties or inducements have been made to any party
13 concerning the Agreement or its Exhibits other than the representations, warranties, and covenants
14 contained and memorialized in such documents.

15 8.12 Class Counsel, on behalf of the Class, is expressly authorized to take all appropriate
16 action required or permitted to be taken by the Class Members they represent pursuant to the
17 Agreement to effectuate its terms.

18 8.13 Each counsel or other Person executing the Agreement or any of its Exhibits on behalf
19 of any party hereto warrants that such Person has the full authority to do so.

20 8.14 The Agreement may be executed in one or more counterparts. All executed counterparts
21 and each of them shall be deemed to be one and the same instrument. A complete set of executed
22 counterparts shall be filed with the Court. Signatures sent by facsimile or sent in PDF form via e-mail
23 shall be deemed originals.

24 8.15 The Agreement shall be binding upon, and inure to the benefit of, the successors and
25 assigns of the parties hereto.

26 8.16 The Court shall retain jurisdiction with respect to implementation and enforcement of
27 the terms of the Agreement, and all Settling Parties submit to the jurisdiction of the Court for purposes
28

1 of implementing and enforcing the settlement embodied in the Agreement and matters related to this
2 settlement.

3 8.17 Pending approval of the Court of the Agreement and its Exhibits, all proceedings in the
4 Litigation shall be stayed and all Class Members shall be barred and enjoined from prosecuting any of
5 the Released Claims against Defendant.

6 8.18 This Agreement and the Exhibits hereto shall be considered to have been negotiated,
7 executed and delivered, and to be wholly performed, in the State of California, and the rights and
8 obligations of the parties to the Agreement shall be construed and enforced in accordance with, and
9 governed by, the substantive laws of the State of California.

10 IN WITNESS WHEREOF, each of the parties hereto have caused the Agreement to be
11 executed, by their duly authorized attorneys, dated September 18, 2018.

12 **GIRARD GIBBS LLP**

13 /s/ Elizabeth A. Kramer

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