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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**GARY FREUND and WAYNE
MCMATH**, *individually and on behalf of
all others similarly situated*,

Plaintiffs,

v.

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

Defendants.

Case No.: 22-cv-03794-BLF

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Fraudulent Omission;
2. Violation of Cal. Civ. Code §§ 1750, *et seq.*;
3. Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
4. Violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*;
5. Violations of Minnesota’s Deceptive Trade Practices Act, Minn. Stat. § 325D.44, *et seq.*;
6. Violations of Minnesota’s False Advertising Law, Minn. Stat. § 325F.67, *et seq.*;

JURY TRIAL DEMANDED

1 Plaintiffs Gary Freund and Wayne McMath, individually and on behalf of all others
2 similarly situated (“Plaintiffs”), by and through undersigned counsel, bring this class action
3 lawsuit against Defendant HP, Inc. d/b/a HP Computing and Printing Inc. (“HP” or “Defendant”).
4 Plaintiffs allege the following upon information and belief based on the investigation of counsel,
5 except as to those allegations that specifically pertain to Plaintiffs, which are alleged upon
6 personal knowledge.

7 **INTRODUCTION**

8 1. Printer ink—which can exceed \$80 an ounce—is more expensive than many
9 cherished luxury items including silver, caviar and champagne. *See* Lamont Wood, *Printer Ink:*
10 *Tired of Feeding the Cash Cow? InkJet refills typically cost significantly more than the printer*
11 *itself*, COMPUTERWORLD, (Mar. 28, 2012), available at [https://www.computerworld.com](https://www.computerworld.com/article/2503134/printer-ink--tired-of-feeding-the-cash-cow-.html)
12 [/article/2503134/printer-ink--tired-of-feeding-the-cash-cow-.html](https://www.computerworld.com/article/2503134/printer-ink--tired-of-feeding-the-cash-cow-.html) (last visited Dec. 6, 2021).

13 2. The not-so-hidden secret in the retail printer industry is that manufacturers like
14 HP are very willing to lose money on the sale of printers in order to force consumers to purchase
15 incredibly over-priced ink cartridges in perpetuity. For instance, a consumer can purchase an
16 HP Envy 4520 All-in-One printer that costs HP roughly \$120 to build for around \$70 at various
17 retailers. *See* Tercius Bufete, *Why is Printer Ink So Expensive?*, CONSUMER REPORTS
18 (September 15, 2018), available at [https://www.consumerreports.org/printers/why-is-printer-](https://www.consumerreports.org/printers/why-is-printer-ink-so-expensive-a2101590645/)
19 [ink-so-expensive-a2101590645/](https://www.consumerreports.org/printers/why-is-printer-ink-so-expensive-a2101590645/) (last visited Dec. 6, 2021); *see also* [https://www.yoyoink.com](https://www.yoyoink.com/articles/why-is-printer-ink-expensive/)
20 [/articles/why-is-printer-ink-expensive/](https://www.yoyoink.com/articles/why-is-printer-ink-expensive/) (last visited Dec. 6, 2021). Akin to the razor and blade
21 business model, consumers are incited to purchase inkjet printers with extremely low purchase
22 prices provided that those “loss leader” purchases will lead to billions of dollars in ink sales.

23 3. The loss leader approach is particularly acute with all-in-one printers. According
24 to HP, an All-in-One printer—also known as a Multi-Functional Printer—is a device which
25 combines the capabilities of several separate devices into one machine, specifically, printing,
26 scanning, copying and (depending on the model) faxing. *See* [https://www.hp.com/us-en/shop](https://www.hp.com/us-en/shop/tech-takes/best-all-in-one-printers)
27 [/tech-takes/best-all-in-one-printers](https://www.hp.com/us-en/shop/tech-takes/best-all-in-one-printers) (last visited Dec. 3, 2021).

28 4. On its website, HP boldly proclaims that “these [All-in-One] printers are

1 convenient because you don't have to buy a separate device for each task." *Id.* HP's
2 representations regarding the capability and functionality of its All-in-One Printers is *not* limited
3 to those on its website; rather, throughout its marketing and advertising, including on the product
4 packaging for its All-in-One Printers, HP claims that the All-in-One Printers are multifunction,
5 "all-in-one" devices that can print, copy, scan and in some cases, fax documents.

6 5. What HP fails to disclose is that, if even one of the ink cartridges is too low,
7 empty, or damaged, the scanning function on the "all-in-one" printer will be disabled and will
8 not work as advertised. None of HP's advertising or marketing materials disclose the basic fact
9 that its All-in-One Printers do *not* scan documents when the devices have low or empty ink
10 cartridges.

11 6. It is well-documented that ink is not required in order to scan or to fax a document,
12 and it is certainly possible to manufacture an All-in-One printer that scans or faxes when the
13 device is out of ink. Indeed, HP designs its All-in-One printer products so they will not work
14 without ink. Yet, HP does not disclose this fact to consumers.

15 7. As a result of HP's omissions, consumers are forced to incur unexpected and
16 unnecessary burden and expense in the form of ink purchases or be unable to scan or to fax
17 documents despite the fact that ink is not used to accomplish those tasks. Even were it technically
18 possible to scan a document without *all* ink cartridges present, HP does not disclose any
19 "workaround" to consumers in any of the product packaging nor in any of HP's advertising and
20 marketing materials regarding its multi-function devices. Accordingly, purchasers of HP All-
21 in-One Printers have been harmed as a result of its omissions.

22 8. HP's intent is clear, namely, to have their multi-function devices revert to an
23 inoperable "error state" so that a large subset of those multi-function device purchasers will
24 purchase additional overpriced and unnecessary ink cartridges in order to be able to scan and to
25 fax documents. The end goal is to increase the sales of one HP's largest profit makers, ink
26 cartridges, by any and all means.

27 9. Plaintiffs bring this class action lawsuit because HP has intentionally manipulated
28 the functionality of its "All-in-One" Printers in order to impermissibly increase the number of

1 ink cartridges purchased by the unsuspecting public. In addition to monetary damages, Plaintiffs
2 seek, individually and on behalf of all those similarly situated, injunctive relief requiring HP to
3 immediately cease its misleading advertising and marketing campaign and to engage in a
4 corrective campaign to inform consumers of the misleading advertising.

5 **THE PARTIES**

6 10. Plaintiff Gary Freund is and has been at all relevant times a resident of San
7 Francisco, California.

8 11. Plaintiff Wayne McMath is and has been at all relevant times a resident of
9 Minneapolis, Minnesota.

10 12. Defendant HP is a global Fortune 500 company and one of the world's largest
11 manufacturers and sellers of computers.

12 13. HP is incorporated in the State of Delaware and its principal place of business is
13 located at 1501 Page Mill Road in Palo Alto, California 94304.

14 14. Defendant HP utilizes the website <https://www.hp.com/us-en/home.html> and its
15 related webpages (collectively, the "HP Site"), as well as third party resellers, to market and to
16 sell personal computers, printers and related products directly to consumers throughout the
17 United States.

18 **JURISDICTION AND VENUE**

19 15. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)
20 because there are more than 100 Class members, the aggregate amount in controversy exceeds
21 \$5,000,000.00, exclusive of interest, fees and costs and at least one Class member is a citizen of
22 a state different from at least one Defendant.

23 16. This Court has personal jurisdiction over HP because it is headquartered in the
24 State of California, regularly conducts business in this District and has extensive contacts with
25 this forum.

26 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because HP is
27 headquartered in this District and transacts substantial business here.
28

1 **COMMON FACTUAL ALLEGATIONS**

2 **A. HP’s All-in-One Printers**

3 18. HP designs, develops, manufactures and sells personal computers, tablet
4 computers, monitors, printers, workstations and accessories.

5 19. HP has long been an industry leader in the manufacture and sale of personal inkjet
6 printing devices. See [https://www.statista.com/statistics/541347/worldwide-printer-market-](https://www.statista.com/statistics/541347/worldwide-printer-market-vendor-shares/)
7 [vendor-shares/](https://www.statista.com/statistics/541347/worldwide-printer-market-vendor-shares/) (last visited Dec. 3, 2021).

8 20. The HP ink-jet All-in-One Printer models at issue in this class action lawsuit: (i)
9 HP Deskjet 2755e; (ii) HP DeskJet 3755; (iii) HP DeskJet 4155e; (iv) HP ENVY 6055e; (v) HP
10 ENVY 6075; (vi) HP ENVY 6455e; (vii) HP ENVY Pro 6475; (viii) HP OfficeJet 250 Mobile;
11 (ix) HP OfficeJet Pro 7740 Wide Format and (x) HP OfficeJet Pro 8025, (xi) HP DeskJet 2622,
12 (xii) HP DeskJet 2655 (collectively defined herein as the “All-in-One Printers” or the
13 “Devices”). Each of these All-in-One Printers have the same software, which prohibits the
14 printer from operating as a scan or fax machine when it is low on ink or when the ink cartridge
15 is missing.









16 21. HP’s All-in-One Printers are devices marketed and sold as having three core
17 functions: printing, copying and scanning (certain All-in-One Printers have an added fax
18 capability function that uses the same functionality as the scanner). [https://www.hp.com/us-](https://www.hp.com/us-en/shop/vwa/printers/prnttyp=InkJet;segm=Home,Small-Office;prnttyp=Multifunction-All-in-One?orderBy=2)
19 [en/shop/vwa/printers/prnttyp=InkJet;segm=Home,Small-Office;prnttyp=Multifunction-All-in-](https://www.hp.com/us-en/shop/vwa/printers/prnttyp=InkJet;segm=Home,Small-Office;prnttyp=Multifunction-All-in-One?orderBy=2)
20 [One?orderBy=2](https://www.hp.com/us-en/shop/vwa/printers/prnttyp=InkJet;segm=Home,Small-Office;prnttyp=Multifunction-All-in-One?orderBy=2) (last visited Dec. 3, 2021). Throughout its marketing and advertising (as
21 detailed below), HP promotes and promises that its All-in-One Printers provide scanning and
22 faxing as main features and functions. HP markets its All-in-One printers as “incredibly
23 convenient” and “exceptional values” “[b]ecause they are designed to fit within a typical home
24 office, use standard printer paper, and handle their own maintenance tasks.” *Id.* HP further
25 proclaims, without disclosing the fact that consumers cannot use the All-in-One Printers with
26 low ink, that “these [All-in-One] printers are convenient because you don’t have to buy a separate
27 device for each task.”

28 22. At online retail websites, such as www.hp.com and www.amazon.com, HP

1 makes available for purchase numerous printers including many All-in-One printer options. For
 2 each of the inkjet All-in-One Printers available for sale online, HP allows consumers to click for
 3 more information including technical specifications.

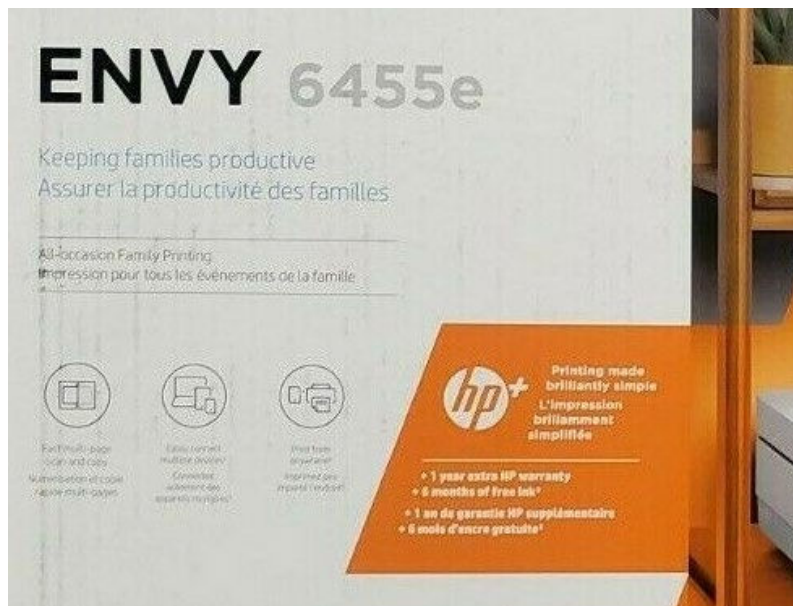
4 23. For instance, HP advertises the HP ENVY 6455e All-in-One Printer (which it
 5 contends can print, copy, scan and send mobile fax) on the online retail Site amazon.com:
 6 <https://www.amazon.com/HP-ENVY-6455e-Wireless-Printer/dp/B08XYRDKDV> (last visited

7
8 **At a Glance**

<p>9 Main features</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;">  Print </div> <div style="text-align: center;">  Copy </div> <div style="text-align: center;">  Scan </div> <div style="text-align: center;">  Send mobile fax for 24 months </div> </div> <div style="display: flex; justify-content: space-around; align-items: flex-start; margin-top: 10px;"> <div style="text-align: center;">  Print from smartphone and tablet </div> <div style="text-align: center;">  Auto document feeder </div> <div style="text-align: center;">  Made from recycled plastic— up to 20% </div> <div style="text-align: center;">  HP+ eligible </div> </div>				<p>10 Additional features</p> <ul style="list-style-type: none"> 11 <input checked="" type="checkbox"/> Dual-band Wi-Fi™ 12 <input checked="" type="checkbox"/> Bluetooth 5.0® 13 <input checked="" type="checkbox"/> Flatbed scanner 14 <input checked="" type="checkbox"/> Auto 2-sided printing 15 <input checked="" type="checkbox"/> USB port for PC connection 16 <input checked="" type="checkbox"/> Borderless printing 17 <input type="checkbox"/> Separate photo tray <p>18 <input checked="" type="checkbox"/> Included <input type="checkbox"/> Not included</p>	
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19 December 8, 2021).

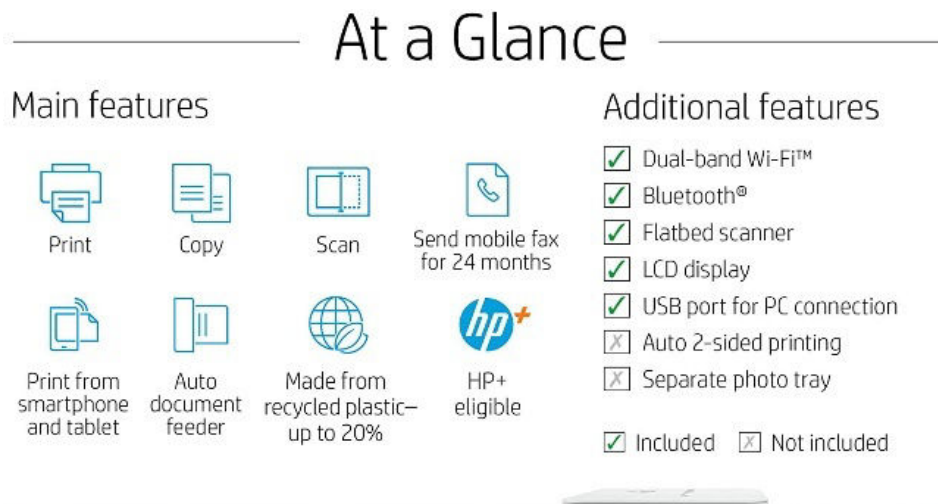
20 24. In addition to statements and representations on the HP Site, HP states the
 21 functionalities of the All-in-One Printers on the product packaging for each device. For example,
 22 on the product packaging of the ENVY 6455e All-in-One Printer, HP represents on the box
 23 that the device functions as a scanner:



1 HP makes the same representations for each of its All-in-One Printers available for sale and makes
 2 similar representations that its products have core features that include scanning and faxing.

3 25. For instance, HP’s DeskJet 4155e All-in-One Wireless Color Printer is identified
 4 on the Amazon site as the “#1 Best Seller” in the InkJet Computer Printers category.
 5 https://www.amazon.com/HP-DeskJet-4155e-Wireless-Printer/dp/B08XYRDSL7/ref=sr_1_6?cri
 6 [d=26ONZAIIVY7X9&keywords=hp+all+in+one+printer&qid=1638547204&refinements=p_n_](https://www.amazon.com/HP-DeskJet-4155e-Wireless-Printer/dp/B08XYRDSL7/ref=sr_1_6?cri)
 7 [feature_five_browse-bin%3A10719423011%2Cp_89%3AHP&rnid=2528832011&s=office-elect](https://www.amazon.com/HP-DeskJet-4155e-Wireless-Printer/dp/B08XYRDSL7/ref=sr_1_6?cri)
 8 [ronics&sprefix=hp+all%2Caps%2C234&sr=1-6](https://www.amazon.com/HP-DeskJet-4155e-Wireless-Printer/dp/B08XYRDSL7/ref=sr_1_6?cri) (last visited December 3, 2021).

9 26. The listing for that printer on Amazon identifies the “KEY FEATURES – Print,
 10 copy and scan in color, auto document feeder, mobile fax, mobile and wireless printing.” Further,
 11 the images for the DeskJet 4155e All-in-One printer on Amazon do *not* disclose the printer does
 12 not work when the ink is low:



21 27. At no point does HP disclose to consumers that in order to scan or to fax
 22 documents, the ink cartridges (necessary for printing and copying) must not be depleted or
 23 damaged.

24 **B. The All-in-One Printers Are Manufactured, Packaged, Marketed and Sold**
 25 **With Scanning and Faxing Capabilities Which are Tied to the Availability of**
 26 **Ink in the Devices**

27 28. HP’s All-in-One Printers do not work as advertised. Ink is *not* a necessary
 28 component to scan or to fax a document. However, the HP All-in-One Printers are manufactured,
 packaged, marketed and sold to consumers in a manner which requires the devices to contain ink

1 in order to scan or to fax documents. Simply put, HP's All-in-One Printer do not function as
2 scanners or as fax machines if the devices have low, empty or damaged ink cartridges.

3 29. If consumers wish to use either of two of the main functions of the device, HP
4 forces consumers to purchase ink cartridges whether or not they intend to use ink or want to print
5 or to copy documents. As a result, consumers must incur unexpected and unnecessary burden and
6 expense by purchasing ink cartridges or be deprived of several of the core functions of their
7 supposedly All-in-One printing devices. HP fails to disclose to consumers that its All-in-One
8 Printers have the same flaw.

9 30. HP has known for years that its representations and advertisements regarding the
10 All-in-One Printers being multifunction devices were false and misleading, and that it fails to
11 disclose material information to consumers. Indeed, the Printers have been designed to function
12 this way. In an October 2018 post on HP's community website, a customer asked why their All-
13 in-One Printer would not scan with a damaged ink cartridge:

14 My black ink cartridge cacked tonight (screen on printer and warning on
15 computer saying it failed or was damaged) and I need to scan an important
16 document. However, it's just saying I need to replace the cartridge and won't let
me go past that screen. Is there a way to scan without having to purchase a new
cartridge?

17 [https://h30434.www3.hp.com/t5/Scanning-Faxing-Copying/Scanning-without-a-working-ink-
19 cartridge/td-p/6777739](https://h30434.www3.hp.com/t5/Scanning-Faxing-Copying/Scanning-without-a-working-ink-
18 cartridge/td-p/6777739) (last visited Feb. 6, 2023). A HP's employee responded that: "HP Printer
20 is designed in such a way that with the empty cartridge or without the cartridge printer will not
21 function." Put differently, Defendant designed the All-in-One Printers so that the entire Printer
22 (including the scan and fax function) stops working if the Printer has an empty and missing
23 cartridge. Accordingly, at all times relevant, HP was not only aware that is All-in-One Printers
24 will not work as a scanner or fax machine without ink, it was designed that way: it was a feature
not a bug.

25 31. Based on information and belief, the problem rests with HP's software. Each of
26 the All-in-One Printers contains the same base software that causes the Printer to enter a "error
27 state" when it is low or out of ink, or when the ink cartridge is missing or damaged. This error
28

1 state prevents the All-in-One Printers from function until the error is cleared (i.e. a new ink
2 cartridge is placed into the printer). Accordingly, as HP acknowledges, its printers are “designed
3 in such a way that with the empty cartridge or without the cartridge printer will not function.”
4 Accordingly, the fact that HP’s All-in-One Printers will not work as a scanner or fax machine
5 without ink or an ink cartridge is inherent to the Printers, and this problem exists at the time of
6 purchase.

7 32. Not all multifunction printers are designed, packaged, marketed and sold to
8 consumers so that low or no ink causes a loss in scan or fax functionality. Indeed, it is well-
9 documented that ink is not required in order to scan or to fax a document, and it is certainly possible
10 to manufacture an All-in-One printer that scans or faxes when the device is out of ink.
11 Accordingly, Defendant made a conscious choice in designing and programing is All-in-One
12 Printers.

13 33. HP’s false, misleading and deceptive representations and omissions were and are
14 likely to mislead a reasonable consumer acting reasonably under the circumstances.

15 **C. HP’s Design of its All-In-One Ink Jet Printers Is Intended to Increase Ink**
16 **Sales**

17 34. There is no legitimate purpose for selling the All-In-One Printers with scanning or
18 faxing functionality that is directly tied to the existence or level of ink contained in the devices.
19 Ink is *not* needed for scanning or faxing functionality nor does ink improve scanning or faxing
20 performance. Tying the scan or fax capabilities of the All-In-One Printers to ink contained in the
21 devices offers no benefit, and only serves to disadvantage and harm consumers financially.
22 However, tying the scan or fax capabilities of the All-In-One Printers to ink contained in the devices
23 does, however, serve to benefit HP.

24 35. HP derives substantial profits from the sale of HP printer ink cartridges. Ink
25 cartridges for the All-in-One Printers retail for approximately \$30. The costs of ink for the All-in-
26 One Printers is not trivial or fleeting as “[t]he industry figured out years ago that once people buy
27 a printer they are committed to it, so you can sell the printer at or below cost knowing they will
28 buy the cartridges.” Charles LeCompte as quoted in *Printer ink: Tired of feeding the cash cow?*,

1 Lamont Wood, COMPUTERWORLD (Mar 28, 2012 6:00 am PST),
2 [https://www.computerworld.com/article/2503134/printer-ink--tired-of-feeding-the-cash-cow-](https://www.computerworld.com/article/2503134/printer-ink--tired-of-feeding-the-cash-cow-.html)
3 [.html](https://www.computerworld.com/article/2503134/printer-ink--tired-of-feeding-the-cash-cow-.html) (last visited Dec. 3, 2021); *see also* Jack Houston and Irene Anna Kim, Why printer ink is
4 so expensive, INSIDER (Updated Mar 2, 2021, 12:09 PM) [https://www.businessinsider.com/why-](https://www.businessinsider.com/why-printer-ink-so-expensive-2019-8)
5 [printer-ink-so-expensive-2019-8](https://www.businessinsider.com/why-printer-ink-so-expensive-2019-8) (“companies do everything they can to keep you buying official
6 ink cartridges”) (last visited on Dec. 6, 2021).

7 36. According to a 2018 Consumer Reports article, inkjet printers are being sold at a
8 low cost, with the expectation that companies would make their profit through sales of the ink
9 cartridges needed for the functioning of the machines. Tercius Bufete, *Why Is Printer Ink So*
10 *Expensive?*, CONSUMER REPORTS (September 15, 2018) [https://www.consumerreports.org](https://www.consumerreports.org/printers/why-is-printer-ink-so-expensive-a2101590645/)
11 [/printers/why-is-printer-ink-so-expensive-a2101590645/](https://www.consumerreports.org/printers/why-is-printer-ink-so-expensive-a2101590645/) (last Dec. 3, 2021). “Most printers are
12 sold at a loss. A manufacturer makes money NOT by selling consumers an inkjet or laser printer,
13 but by selling the supplies needed to print.” *Why Are Printer Ink and Toner Cartridges So*
14 *Expensive?*, TONERBUZZ [https://www.tonerbuzz.com/blog/why-](https://www.tonerbuzz.com/blog/why-is-printer-ink-so-expensive/)
15 [is-printer-ink-so-expensive/](https://www.tonerbuzz.com/blog/why-is-printer-ink-so-expensive/)
(last visited on Dec. 3, 2021).

16 37. Wing Lam, an associate director of cost benchmarking at IHS Markit stated that
17 “[t]his is a classic razor-and-blade business model where the manufacturer sells the goods at a low
18 price to help increase the sales of accessories, where the money is made.” Tercius Bufete, *Why Is*
19 *Printer Ink So Expensive?*, CONSUMER REPORTS (September 15, 2018)
20 <https://www.consumerreports.org/printers/why-is-printer-ink-so-expensive-a2101590645/> (last
21 visited Dec. 3, 2021).

22 38. There is no reason or technical basis for manufacturing the All-in-One Printers
23 with an ink level detection function that causes the scanner to stop functioning when ink is low or
24 empty. HP designed the All-in-One Printers in such a way to require consumers to maintain ink in
25 their devices regardless of whether they intend to print. The result is an increase in ink sales from
26 which HP derives significant profits. This forces consumers to incur the unexpected and
27 unnecessary burden and expense of additional and superfluous ink purchases or be unable to scan
28 or fax documents using the so-called all-in-one device.

39. Defendant could easily change its software, or offer a soft

EXPERIENCE OF REPRESENTATIVE PLAINTIFFS

Plaintiff Gary Freund

40. In or about July 30, 2021, Plaintiff Freund purchased an HP Envy 6455e All-in-One Wireless Color Printer from an www.amazon.com.

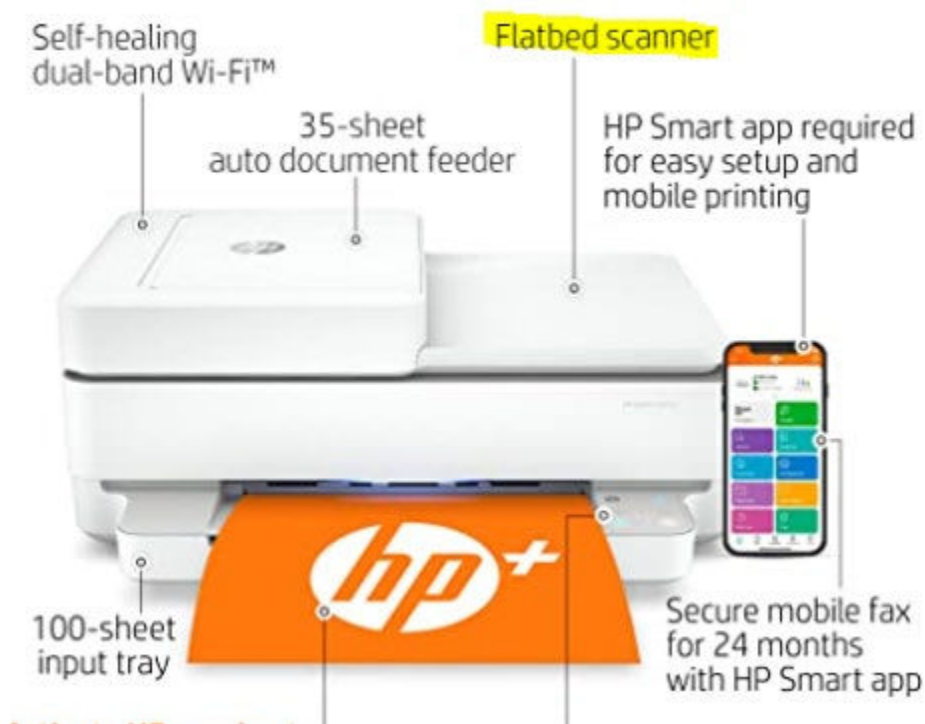
41. Plaintiff Freund purchased the HP Envy 6455e All-in-One Wireless Color Printer to use for its advertised scanning purposes.

42. HP made explicit representations that the HP Envy 6455e All-in-One Wireless Color Printer would be able to scan and did not include any qualifying language that such features would not work if the ink cartridge levels were low or depleted:

About this item

- BEST FOR BUSY FAMILIES – Print documents, borderless photos, homework and creative projects
- KEY FEATURES – Print, copy and scan in color, automatic 2-sided printing, auto document feeder, borderless photos, mobile and wireless printing
- HP+ SMART PRINTING SYSTEM – The optional HP+ system enables your printer to think ahead so it's more secure, more productive and ready when you are. Requires an HP account, internet connection and use of only Original HP Ink for the life of the printer.
- 6 FREE MONTHS OF INSTANT INK & AN EXTRA YEAR OF HP WARRANTY – when you activate optional HP+ and Instant Ink when setting up your printer. Only with HP+.
- EASY SETUP – Get started fast on any device with the HP Smart app that guides you step by step
- CONNECT THE WHOLE FAMILY – Easily connect everyone from virtually any device. Self-healing Wi-Fi helps keep you connected and reduces interruptions.
- HP SMART APP – Print, scan and copy from your phone—whenever, wherever. Get advanced features for 24 months with HP+.

43. Further, the images for the HP Envy 6455e All-in-One Wireless Color Printer on Amazon advertise the scan function but do *not* disclose that it will not scan when the ink is low or depleted, or if the ink cartridge is damaged or missing:



At a Glance

Main features



Additional features

- Dual-band Wi-Fi™
- Bluetooth 5.0®
- Flatbed scanner
- Auto 2-sided printing
- USB port for PC connection
- Borderless printing
- Separate photo tray
- Included Not included

44. The box packaging containing the HP Envy 6455e All-in-One Wireless Color Printer advertises the same explicit representations that the device would be able to “scan” and likewise did not include any qualifying language that such features would not work if the ink cartridge levels were low or depleted:



45. After purchasing and using the device, Plaintiff Freund discovered that the device did not function as a scanner if the ink cartridges are low or empty.

46. Plaintiff Freund suffered injury and was damaged as a result of HP's conduct.

47. Plaintiff Freund would not have purchased the device or would not have paid as much for it had he known that he would have to maintain ink in the device in order to scan documents.

48. Plaintiff Freund may purchase a HP All-in-One Printer again in the future should HP continue to advertise a product as all-in-one as he would think it meant HP fixed the issue.

Plaintiff Wayne McMath

49. In or about September 2019, Plaintiff McMath purchased an HP Deskjet 2655 All-in-One Compact Printer from an online retailer.

50. Plaintiff McMath purchased the HP Deskjet 2655 All-in-One Compact Printer to use for its advertised scanning purposes.

51. HP made explicit representations that the device would be able to scan and did

1 not include any qualifying language that such features would not work if the ink cartridge levels
2 were low or depleted:

- 3 • Main functions of this HP compact color printer: print, scan, copy, wireless
4 printing, AirPrint, Instant Ink ready so you'll never run out of ink, and more
- 5 • Print, copy, and scan while saving money and space with a wireless all-in-one
6 printer.
- 7 • The power of your printer in the palm of your hand: The HP Smart app allows you
8 to easily set up your printer, scan from your smartphone.
9 <https://www.amazon.com/HP-DeskJet-2655-Compact-Replenishment/dp/B06XH>
10 XWB7B (last visited Dec. 6, 2021) (highlighting added).

11 52. Further, the images for the HP Deskjet 2655 All-in-One Compact Printer online
12 do *not* disclose that it will not scan when the ink is low or depleted, or if the ink cartridge
13 is damaged or missing:



53. The box packaging containing the HP Deskjet 2655 All-in-One Compact Printer advertises the same explicit representations that the device would be able to “scan” and likewise did not include any qualifying language that such features would not work if the ink cartridge levels were low or depleted:



54. After purchasing and using the device, Plaintiff McMath discovered that the device did not function as a scanner if the ink cartridges are low or empty.

55. Plaintiff McMath suffered injury and was damaged as a result of HP’s conduct.

56. Plaintiff McMath would not have purchased the device or would not have paid as much for it had he known that he would have to maintain ink in the device in order to scan documents.

57. Plaintiff McMath may purchase a HP All-in-One Printer again in the future should HP continue to advertise a product as all-in-one as he would think it meant HP fixed the issue.

CLASS ACTION ALLEGATIONS

58. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of the following Nationwide Class:

1 All persons who purchased a HP All-in-One Printer, in the United States, for
2 personal/household use, at any time within the applicable statute of limitations
(the “Nationwide Class”).

3 59. Plaintiff Freund brings this action individually and on behalf of the following
4 California subclass:

5 All persons residing in California who purchased a HP All-in-One Printer for
6 personal/household use, at any time within the applicable statute of limitations (the
“California subclass”).

7 60. Plaintiff McMath brings this action individually and on behalf of the following
8 Minnesota subclass:

9 All persons residing in Minnesota who purchased a HP All-in-One Printer for
10 personal/household use, at any time within the applicable statute of limitations (the
“Minnesota subclass”).

11 61. Specifically excluded from the Classes are HP, its officers, directors, agents,
12 trustees, representatives, employees, principals, servants, partners, joint venturers or entities
13 controlled by HP, and their heirs, successors, assigns, or other persons or entities related to or
14 affiliated with HP and/or its officers and/or directors, the judge assigned to this action and any
15 member of the judge’s immediate family.

16 62. Plaintiff reserves the right to amend the Class definitions above if further
17 investigation and/or discovery reveals that the Classes should be expanded, narrowed, divided into
18 subclasses or otherwise modified in any way.

19 63. **Numerosity: Federal Rule of Civil Procedure 23(a)(1).** The members of the
20 Classes are so numerous and geographically dispersed that individual joinder of all class members
21 is impracticable. Plaintiffs are informed and believes—based upon the publicly-available
22 information discussed herein—that there are millions of class members, making joinder
23 impracticable. Those individuals’ identities are available through HP’s records and class members
24 may be notified of the pendency of this action by recognized, Court-approved notice dissemination
25 methods.

26 64. **Commonality and Predominance: Federal Rules of Civil Procedure 23(a)(2)**
27 **& 23(b)(3).** HP has acted with respect to Plaintiffs and the other members of the proposed Classes
28 in a manner generally applicable to each of them. There is a well-defined community of interest

1 in the questions of law and fact involved, which affect all class members. The questions of law
2 and fact common to the Classes predominate over the questions that may affect individual class
3 members include the following:

- 4 a. Whether HP intentionally designed its All-in-One Printers so that the
5 scanning and faxing functionality was disabled if the devices were low or
6 out of ink;
- 7 b. Whether HP disclosed to consumers that its All-in-One Printers would not
8 scan nor fax if the devices were low or out of ink;
- 9 d. Whether the fact that the All-in-One Printers would not scan nor fax if the
10 devices were low or out of ink was material to reasonable consumers;
- 11 e. Whether the omission that the All-in-One Printers would not scan nor fax if
12 the devices were low or out of ink was deceptive to reasonable consumers;
- 13 f. Whether HP All-in-One Printers function as a scanner with low or empty
14 ink and
- 15 g. The nature of relief, including damages and equitable relief, to which
16 Plaintiffs and members of the Classes are entitled.

17 **65. Typicality: Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are
18 typical of other class members' claims because Plaintiffs and class members were subjected to the
19 same allegedly unlawful conduct and damaged in the same way.

20 **66. Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4).**
21 Plaintiffs are adequate class representatives because their interests do no conflict with the interests
22 of class members whom they seek to represent, Plaintiffs have retained counsel competent and
23 experienced in complex class action litigation, and Plaintiffs intend to prosecute this action
24 vigorously. The class members' interests will be fairly and adequately protected by Plaintiffs and
25 counsel.

26 **67. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).**
27 The prosecution of separate actions by individual class members would create a risk of inconsistent
28 or varying adjudications with respect to individual class members that would establish

1 incompatible standards of conduct for HP. Such individual actions would create a risk of
 2 adjudication that would be dispositive of the interests of other class members and impair their
 3 interests. HP has acted and/or refused to act on grounds generally applicable to the Classes,
 4 making injunctive relief or corresponding declaratory relief appropriate.

5 68. **Superiority: Federal Rule of Civil Procedure 23(b)(3).** A class action is
 6 superior to any other available means for the fair and efficient adjudication of this controversy,
 7 and no unusual difficulties are likely to be encountered in the management of this class action.
 8 The damages or other financial detriment suffered by Plaintiffs and class members are relatively
 9 small compared to the burden and expense that would be required to individually litigate their
 10 claims against HP, so it would be impracticable for class members to individually seek redress for
 11 HP's wrongful conduct. Even if class members could afford litigation, the court system could not.
 12 Individualized litigation creates a potential for inconsistent and or contradictory judgments and
 13 increases the delay and expense to all parties and the court system. By contrast, the class action
 14 device presents far fewer management difficulties and provides the benefits of single adjudication,
 15 economies of scale, and comprehensive supervision by a single court.

16 69. Plaintiffs know of no difficulty which will be encountered in the management of
 17 this litigation which would preclude its maintenance as a class action.

CAUSES OF ACTION

COUNT I FRAUDULENT OMISSION (On behalf of Plaintiffs & the Nationwide Class)

21 70. Plaintiffs reincorporate and re-allege each preceding paragraph herein and bring
 22 this claim on behalf of the Nationwide Class.

23 71. HP intentionally omitted certain material facts regarding its All-in-One Printers.

24 72. Specifically, HP failed to warn consumers that its All-in-One Printers will disable
 25 the scanning and faxing functionality if the device is low or out of ink, despite the fact that ink is
 26 not required to perform either function.

27 73. Had HP disclosed these issues, rather than falsely advertising the convenience and
 28 functionality of the All-in-One Printers, consumers would not have purchased or, alternatively,

1 would have paid significantly less for the devices.

2 74. The advertisements, which were made expressly through uniform representations
3 from HP were material and would have been considered by a reasonable consumer in making
4 purchasing decisions.

5 75. Plaintiffs and Nationwide Class members acquired the All-in-One Printers
6 believing they would function as advertised.

7 76. As a result, Plaintiffs and class members were directly and proximately injured
8 by HP's failure to inform Plaintiffs and Nationwide Class members of the All-in-One Printers will
9 disable the scanning and faxing functionality if the device is low or out of ink despite the fact that
10 ink is not required to perform either function.

11 **COUNT II**
12 **California's Consumer Legal Remedies Act**
13 **Cal. Civ. Code § 1750 et seq. ("CLRA")**
14 **(On Behalf of Plaintiff Freund and California Subclass Members)**

15 77. Plaintiff Freund repeats and realleges the allegations in the previous paragraphs as
16 if fully set forth herein.

17 78. The CLRA prohibits deceptive practices in connection with the conduct of a
18 business that provides goods, property, or services primarily for personal, family, or household
19 purposes.

20 79. HP intentionally omitted certain material facts regarding its All-in-One Printers.

21 80. Specifically, HP failed to warn consumers that its All-in-One Printers will disable
22 the scanning and faxing functionality if the device is low or out of ink despite the fact that ink is
23 not required to perform either function.

24 81. HP's false and misleading advertising and other policies, acts, and practices were
25 designed to, and did, induce the purchase and use of the All-in-One Printers for personal, family,
26 or household purposes by Plaintiff Freund and California Subclass Members, and violated and
27 continue to violate the following sections of the CLRA:

28 a. § 1770(a)(5): representing that goods have characteristics, uses, or
benefits which they do not have;

1 material facts as alleged herein.

2 89. Specifically, HP failed to warn consumers that its All-in-One Printers will disable
3 the scanning and faxing functionality if the device is low or out of ink despite the fact that ink is
4 not required to perform either function.

5 90. Defendant’s “unfair” acts and practices include:

- 6 a. Knowingly designing, developing, manufacturing, advertising and selling
7 All-in-Printers to not be operational without ink or with low ink;
- 8 b. Concealing material information from consumers regarding their All-in-
9 One Printers require ink to use the scan and fax functions;
- 10 c. Using uniform, deceptive business practices causing consumers to spend
11 additional money to secure additional ink cartridges in order to get their
12 devices to work.

13 91. HP’s conduct with respect to the labeling, advertising, and sale of All-in-Printers
14 is also unfair because it violates public policy as described below.

15 92. HP has engaged in “unlawful” business practices by violating multiple laws
16 including Cal. Bus. & Prof. Code §§ 17500, *et seq.*, and California common law.

17 93. HP’s unlawful, unfair, and deceptive acts and practices include:

- 18 a. Knowingly designing, developing, manufacturing, advertising and selling
19 All-in-Printers with significant Design Flaws that result in the devices not
20 operating as intended, represented or advertised under normal usage;
- 21 b. Concealing material information from consumers regarding their All-in-
22 One Printers require ink to use the scan and fax functions; and
- 23 c. Using uniform, deceptive business practices requiring consumers to spend
24 additional money to secure additional ink cartridges in order to get their
25 devices to work.

26 94. HP violated § 17200’s prohibition against engaging in unlawful acts and practices
27 by engaging in false and misleading advertising by omitting material facts from purchasers of their
28 Devices.

1 95. This conduct is substantially injurious to consumers, offends public policy, is
2 immoral, unethical, oppressive and unscrupulous as the severity of the conduct—advertising All-
3 in-One printers as convenient and capable of scanning and faxing (among other things) but not
4 disclosing that the devices will not scan or fax without ink—outweighs any alleged benefit.

5 96. HP engaged in this conduct to gain an unfair commercial advantage over its
6 competitors. Defendant withheld critical and material information from Plaintiff Freund and
7 California Subclass Members, competitors and the marketplace, all to their unfair competitive
8 advantage. Thus, consumers are not able to avoid the injury described herein.

9 97. As a direct and proximate result of HP’s unfair, unlawful and fraudulent acts and
10 practices, Plaintiff Freund and California Subclass Members were injured and lost money or
11 property, including from not receiving the benefit of their bargain in purchasing the devices, and
12 increased time and expense in dealing with the devices’ performance issues.

13 98. Plaintiff and the California Subclass do not have an adequate remedy at law
14 because damages alone will not stop Defendant’s unlawful omissions. Damages will only address
15 past injuries visited on Plaintiff and the California Subclass. Only injunctive relief can prevent any
16 future harm. For example, Defendant can remedy the software issue that prevents consumers from
17 using the scan and fax functions when an ink cartridge is low, missing or damaged. Alternatively,
18 Defendant should be required to disclose the fact that the scan and fax does not function when an
19 ink cartridge is low, missing or damaged.

20 99. Additionally, Plaintiff seeks restitution if monetary damages are not available.
21 Indeed, restitution under the UCL can be awarded in situations where the entitlement to damages
22 may prove difficult. *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 177 (2000)
23 (Restitution under the UCL can be awarded “even absent individualized proof that the claimant
24 lacked knowledge of the overcharge when the transaction occurred.”); *Gutierrez v. Wells Fargo*
25 *Bank, NA*, 589 F. App’x 824, 827 (9th Cir. 2014) (same); *Caro v. Procter & Gamble Co.*, 18 Cal.
26 App. 4th 644, 661 (1993) (“In a suit arising under Business and Professions Code section 17200
27 et seq., the court ‘is empowered to grant equitable relief, including restitution in favor of absent
28 persons, without certifying a class action.’”).

1 100. But even if damages were available, such relief would not be adequate to address
 2 the injury suffered by Plaintiff and the California Subclass. Unlike damages, the Court's discretion
 3 in fashioning equitable relief is very broad. *Cortez*, 23 Cal.4th at 180. Thus, restitution would allow
 4 recovery even when normal consideration associated with damages would not. *See, e.g., Fladeboe*
 5 *v. Am. Isuzu Motors Inc.*, 150 Cal. App. 4th 42, 68 (2007), as modified (Apr. 24, 2007) (noting
 6 that restitution is available even in situations where damages may not be available).

7 101. Plaintiff Freund and California Subclass Members seek all monetary and non-
 8 monetary relief allowed by law, including restitution stemming from HP's unfair, unlawful and
 9 fraudulent business practices; declaratory relief; reasonable attorneys' fees and costs under
 10 California Code of Civil Procedure § 1021.5; injunctive relief and other appropriate equitable
 11 relief.

12 **COUNT IV**
 13 **VIOLATIONS OF CALIFORNIA'S FALSE**
 14 **ADVERTISING LAW, CAL. BUS. & PROF. CODE § 17500, ET SEQ.**
 15 **(ON BEHALF OF PLAINTIFF FREUND & THE CALIFORNIA SUBCLASS)**

16 102. Plaintiff Freund reincorporates and realleges each preceding paragraph herein and
 17 brings this claim on behalf themselves and the California Subclass.

18 103. By its actions and omissions as set forth herein, HP disseminated uniform
 19 advertising regarding the All-in-One Printers into California.

20 104. The advertising was, by its very nature, unfair, deceptive, untrue and misleading
 21 within the meaning of Cal. Bus. & Prof. Code § 17500, *et seq.*

22 105. Such advertisements were intended to and likely did deceive the consuming
 23 public for the reasons detailed herein.

24 106. The above-described false, misleading and deceptive advertising HP
 25 disseminated continues to have a likelihood to deceive in that HP failed to disclose the fact that its
 26 All-in-One printers will disable the scanning and faxing functionality if the device is low or out of
 27 ink despite the fact that ink is not required to perform either function.

28 107. Had HP disclosed these issues, rather than falsely advertising the convenience and
 functionality of the All-in-One printers, consumers would not have purchased or, alternatively,
 paid significantly less for the devices.

1 108. In making and disseminating the statements alleged herein, HP knew, or should
2 have known, its advertisements were untrue and misleading in violation of California law.

3 109. Plaintiff Freund and California Subclass Members based their purchasing
4 decisions on HP’s omission of certain material facts.

5 110. The revenue attributable to products sold in those false and misleading
6 advertisements likely amounts to hundreds of millions of dollars.

7 111. Plaintiff Freund and California Subclass Members were injured in fact and lost
8 money and property as a result.

9 112. The omission by Defendant of the material facts described and details herein
10 constitute false and misleading advertising and, therefore, constitute violations of Cal. Bus. & Prof.
11 Code § 17500, *et seq.*

12 113. Plaintiff and the California Subclass do not have an adequate remedy at law
13 because damages alone will not stop Defendant’s unlawful omissions. Damages will only address
14 past injuries visited on Plaintiff and the California Subclass. Only injunctive relief can prevent any
15 future harm. For example, Defendant can remedy the software issue that prevents consumers from
16 using the scan and fax functions when an ink cartridge is low, missing or damaged. Alternatively,
17 Defendant should be required to disclose the fact that the scan and fax does not function when an
18 ink cartridge is low, missing or damaged.

19 114. Additionally, Plaintiff seeks restitution if monetary damages are not available.
20 Indeed, restitution under the FAL can be awarded in situations where the entitlement to damages
21 may prove difficult. *Cortez*, 23 Cal.4th at 177 (Restitution under the UCL can be awarded “even
22 absent individualized proof that the claimant lacked knowledge of the overcharge when the
23 transaction occurred.”); *Gutierrez*, 589 F. App’x at 827 (same); *Caro*, 18 Cal. App. 4th at 661 (“In
24 a suit arising under Business and Professions Code section 17200 et seq., the court ‘is empowered
25 to grant equitable relief, including restitution in favor of absent persons, without certifying a class
26 action.’”).

27 115. But even if damages were available, such relief would not be adequate to address
28 the injury suffered by Plaintiff and the California Subclass. Unlike damages, the Court’s discretion

1 in fashioning equitable relief is very broad. *Cortez*, 23 Cal.4th at 180. Thus, restitution would allow
2 recovery even when normal consideration associated with damages would not. *See, e.g., Fladeboe*,
3 150 Cal. App. 4th at 68 (2007) (noting that restitution is available even in situations where damages
4 may not be available).

5 116. Plaintiff Freund and California Subclass Members seek all monetary and non-
6 monetary relief allowed by law, including restitution of all profits stemming from Defendant's
7 unfair, unlawful, and fraudulent business practices; declaratory relief; reasonable attorneys' fees
8 and costs under California Code of Civil Procedure § 1021.5; injunctive relief and other
9 appropriate equitable relief.

10 **COUNT V**
11 **VIOLATIONS OF MINNESOTA'S DECEPTIVE TRADE PRACTICES ACT,**
12 **Minn. Stat. § 325D.44, et seq.**
13 **(On behalf of Plaintiff McMath and Minnesota Subclass Members)**

14 117. Plaintiff McMath reincorporate and reallege each preceding paragraph herein and
15 brings this claim on behalf himself and the Minnesota Subclass.

16 118. Defendant intentionally concealed the material fact that the scan and fax functions
17 on the All-in-One Printers does not work when an ink cartridge is low, missing or damaged.

18 119. The following are ways in which Defendant violated Minn. Stat. § 325D.44 :

- 19 a. Knowingly designing, developing, manufacturing, advertising and selling
20 Knowingly designing, developing, manufacturing, advertising and selling
21 All-in-Printers to not be operational without ink or with low ink;
- 22 b. Concealing material information from consumers regarding their All-in-
23 One Printers require ink to use the scan and fax functions;
- 24 c. Using uniform, deceptive business practices causing consumers to spend
25 additional money to secure additional ink cartridges in order to get their
26 devices to work.

27 120. The Minnesota statutes prohibiting unfair and deceptive trade practices apply
28 because Defendant's deceptive scheme was carried out in Minnesota and affected Plaintiff McMath
and the Minnesota Subclass who purchased All-in-One Printers which would not work as a fax

1 machine or scanner with a low, missing, or damaged ink cartridge.

2 121. HP engaged in this conduct to gain an unfair commercial advantage over its
3 competitors. Defendant withheld critical and material information from Plaintiff McMath and the
4 Minnesota Subclass Members, competitors and the marketplace, all to their unfair competitive
5 advantage.

6 122. As a direct and proximate result of HP's unfair, unlawful and fraudulent acts and
7 practices, Plaintiff McMath and the Minnesota Subclass Members were injured and lost money or
8 property, including from not receiving the benefit of their bargain in purchasing the devices, and
9 increased time and expense in dealing with the devices' performance issues.

10 123. Plaintiff McMath and the Minnesota Subclass Members seek all monetary and
11 non-monetary relief allowed by law, including restitution and all profits stemming from HP's
12 unfair, unlawful and fraudulent business practices; declaratory relief; reasonable attorneys' fees
13 and costs; injunctive relief and other appropriate equitable relief.

14 **COUNT VI**
15 **VIOLATIONS OF MINNESOTA'S FALSE ADVERTISING LAW,**
16 **MINN. STAT. § 325F.67, ET SEQ.**
17 **(ON BEHALF OF PLAINTIFF MCMATH & THE MINNESOTA SUBCLASS)**

18 124. Plaintiff McMath reincorporates and realleges each preceding paragraph herein
19 and brings this claim on behalf themselves and the Minnesota Subclass.

20 125. By its omissions as set forth herein, HP disseminated uniform advertising
21 regarding the All-in-One Printers into Minnesota.

22 126. The advertising was, by its very nature, unfair, deceptive, untrue and misleading
23 within the meaning of Minn. Stat. § 325F.67, *et seq.*

24 127. Such advertisements were intended to and likely did deceive the consuming
25 public for the reasons detailed herein.

26 128. The above-described false, misleading and deceptive advertising HP
27 disseminated continues to have a likelihood to deceive in that HP failed to disclose that its All-in-
28 One Printers will disable the scanning and faxing functionality if the device is low or out of ink
despite the fact that ink is not required to perform either function.

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**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiffs and the Class

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