

# Exhibit 4

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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

RODNEY CARVALHO and MARK MAHER,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

HP, INC., a Delaware corporation,

Defendant.

Case No. 5:21-cv-08015-PCP  
*Assigned to the Hon. P. Casey Pitts*

**NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT**

Date: January 16, 2025  
Time: 10:00 AM  
Crtrm: 8

Action Filed: October 13, 2021  
Trial Date: None Set

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on January 16, 2025 at 10:00 AM, in Courtroom 8 of the above-captioned Court, located at 280 South 1st Street, San Jose, California 95113, the Honorable P. Casey Pitts presiding, Plaintiffs Rodney Carvalho and Mark Maher, individually and on behalf of all others similarly situated, will, and hereby do, move this Court, pursuant to Federal Rule of Civil Procedure 23, for entry of an Order:

1. Preliminarily approving the proposed Settlement with Defendant HP Inc. (“HP”), as described in the Class Action Settlement Agreement and Release (“Settlement Agreement”);
2. Conditionally certifying the proposed Settlement Class;
3. Approving the proposed form and manner of notice to the Settlement Class;
4. Approving the proposed selection of Kroll Settlement Administration LLC as the Settlement Administrator;
5. Appointing Plaintiffs Rodney Carvalho and Mark Maher as the Settlement Class Representatives;
6. Appointing EDGE, A Professional Law Corporation, and Capstone Law, APC, as Settlement Class Counsel; and
7. Setting a hearing date for Final Approval of the Settlement.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement; (3) the Declaration of Cody R. Padgett and the exhibits attached thereto (“Padgett Decl.”), including the Settlement Agreement; (4) the Declaration of Daniel A. Rozenblatt and the exhibits attached thereto (“Rozenblatt Decl.”); (5) the Declaration of Christian Tregillis of Hemming Morse LLC and the exhibits attached thereto (“Tregillis Decl.”); (6) the Declaration of Patrick M. Passarella of Kroll Settlement Administration LLC and the exhibits attached thereto (“Passarella Decl.”); (7) the records, pleadings, and papers filed in this action; and (8) such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

On these grounds, Plaintiffs respectfully request that the Court grant Plaintiffs’ Motion and enter the proposed Preliminary Approval Order.

1 Dated: December 2, 2024

EDGE, A PROFESSIONAL LAW  
CORPORATION

2  
3 By:



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Natasha Dandavati

5 CAPSTONE LAW APC  
6 Cody R. Padgett  
7 Laura E. Goolsby

8 *Attorneys for Plaintiffs*  
9 *Rodney Carvalho and Mark Maher*

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1 **I. INTRODUCTION**

2 Plaintiffs Rodney Carvalho and Mark Maher (“Plaintiffs”) respectfully request preliminary  
 3 approval of their proposed class action Settlement<sup>1</sup> with Defendant HP, Inc. (“HP”). Pursuant to the  
 4 terms of the Settlement, HP has agreed to pay \$4 million into a *non-reversionary common fund*  
 5 (“Settlement Fund”) that will be used to pay cash benefits to class members, settlement  
 6 administration costs, and service and fee awards to the class representatives and class counsel, as  
 7 approved by the Court. No portion of the Settlement Fund will revert to HP, and no amount will be  
 8 paid to a *cy pres* recipient. Any residual funds will be distributed pro rata to class members pursuant  
 9 a claims process.

10 Plaintiffs brought this putative class action, alleging that HP displayed misleading  
 11 strikethrough and discounted prices on its website. The proposed settlement class (“Class”)<sup>2</sup>  
 12 consists of individuals who purchased computers, laptops, mice, and keyboards on HP’s website that  
 13 were offered at a discount more than 75% of the time from June 5, 2021, to October 28, 2024  
 14 (“Class Period”). The Settlement, if approved, will resolve all claims relating to the strikethrough  
 15 prices and discounts advertised on HP’s website that were brought or could have been brought by  
 16 Plaintiffs or the Class Members.

17 The Settlement was the product of arms-length negotiations between the Parties and their  
 18 respective counsel, and was reached with the assistance of the Honorable Irma E. Gonzalez (Ret.) of  
 19 JAMS, an experienced and well-respected class action mediator and former California jurist. In  
 20 determining how to fairly allocate the Settlement Fund among the class members, Plaintiffs retained  
 21 Christian Tregillis, CPA, ABV, CFF, CLP an expert in the valuation of economic damages with  
 22 over thirty years of experience. The Settlement provides significant monetary relief to Class  
 23 Members, particularly when viewed in relation to other deceptive pricing class action settlement,  
 24 and the difficulties and uncertainties Plaintiffs would have encountered had the litigation continued.

25  
 26 <sup>1</sup> Unless otherwise defined herein, all capitalized terms have the same meaning as set forth in the Class  
 27 Action Settlement Agreement and Release (“Settlement Agreement”), filed concurrently herewith.

28 <sup>2</sup> Unless otherwise specified, the terms “Class” and “Settlement Class” are used herein  
 interchangeably. For example, the term “Class Members” refers to the “Settlement Class Members”;  
 the term “Class Period” refers to “Settlement Class Period”; and so forth.

For the reasons stated below, Plaintiffs submit the proposed Settlement falls within the range of reasonableness applicable at the preliminary approval stage and respectfully request the Court grant preliminary approval of the proposed Settlement and (1) conditionally certify the proposed Settlement Class; (2) approve the proposed Notice and Notice program; (3) appoint Plaintiffs Rodney Carvalho and Mark Maher as Settlement Class Representatives; (4) appoint EDGE, A Professional Law Corporation, and Capstone Law, APC, as Settlement Class Counsel; (5) Appoint Kroll Settlement Administration, LLC as Settlement Administrator; (6) and set a hearing date for Final Approval of the settlement and additional related deadlines in connection therewith.

## **II. RELEVANT BACKGROUND**

### **A. Plaintiffs' claims of deceptive pricing on HP's website.**

As detailed in Plaintiffs' Second Amended Complaint, Plaintiffs allege that HP advertises false and misleading strikethrough prices on its website, HP.com. (Dkt. No. 43 ("SAC") ¶ 1.) Plaintiffs allege this pricing practice creates an illusion of savings and artificially increases demand for HP products. (*Id.* ¶¶ 22-23.) Plaintiffs allege that they and the Class were harmed by HP's conduct by, *inter alia*, paying more for their products than they would have paid and being induced to make purchases they would not have otherwise made absent the false and misleading prices and discounts. (*Id.* ¶¶ 5, 95.)

Based on the foregoing allegations, the SAC asserts four causes of action against HP: (1) violation of California's Consumer Legal Remedies Act ("CLRA"), California Civil Code sections 1750, et seq.; (2) unjust enrichment; (3) violation of California's False Advertising Law ("FAL"), California Business and Professions Code section 17500 et seq.; and (4) violation of California's Unfair Competition Law ("UCL"), California Business and Professions Code section 17200, et seq. (*Id.* ¶¶ 96-135.)

HP denies all of Plaintiffs' allegations or that Plaintiffs were harmed in any way as a result of the conduct alleged in the Complaint.

### **B. Plaintiffs' counsel's extensive pre-suit investigation.**

Six months before the filing of this lawsuit, Plaintiffs' counsel began investigating the facts underlying this matter. (Rozenblatt Decl. ¶ 4.) Plaintiffs' counsel reviewed and analyzed the

1 advertising on HP's website and began gathering available information relating to Plaintiffs' claims.  
2 (*Id.*) These efforts included analyzing the prices and discounts advertised on HP's website, including  
3 those displayed on landing pages, product category pages, product detail pages, and throughout the  
4 checkout process. (*Id.*) In addition to analyzing the prices and discounts on the website, Plaintiffs'  
5 counsel also tracked and monitored them by taking screenshots on a daily basis of the prices and  
6 discounts for hundreds of products. (*Id.*) The prices and discounts from those screenshots were input  
7 into a spreadsheet in which the data was organized in a tabular format to aid analysis and  
8 interpretation. (*Id.*)

9 In May 2021, Plaintiffs' counsel began development of a proprietary evidence preservation  
10 software application to acquire and store records of the prices and discounts displayed on HP's  
11 website. (*Id.* ¶ 5.) Plaintiffs' counsel dedicated significant time and resources into developing this  
12 software specifically for acquiring evidence of the prices and discounts displayed on HP's website.  
13 (*Id.*) Using this software, Plaintiffs' counsel tracked the prices and discounts for hundreds of  
14 products on a daily basis for approximately five months prior to filing this action. (*Id.*) The  
15 screenshots and data collected by the software were included in the Complaint. (*Id.*)

16 **C. Plaintiffs' counsel's additional extensive investigation after filing suit.**

17 On January 28, 2022, HP moved to dismiss the FAC. (Dkt. No. 19.) HP sought dismissal of  
18 Plaintiffs' entire FAC, arguing, *inter alia*, that the FAC failed to meet the heightened pleading  
19 standard of Federal Rule of Civil Procedure 9(b) because and that Plaintiffs failed to conduct any  
20 investigation about product prices offered by outside retailers. (Dkt. No. 29 at 7-9.) The Court found  
21 those arguments persuasive and held that Plaintiffs failed to meet their pleading burden for failing to  
22 adequately allege other retailers' pricing for HP's "non-exclusive" products. (Dkt. No. 42 at 7-10.)

23 In response to the Court's Order, Plaintiffs' counsel conducted additional extensive  
24 investigation to address the Court's order. (Rozenblatt Decl. ¶ 8.) As a result of this investigation,  
25 Plaintiffs amended their complaint. (*See* Second Amended Complaint, Dkt. Nos. 43 ¶¶ 52-53, 73,  
26 87; 43-1, Ex. A; and 43-2, Ex. B.). HP again sought dismissal of the SAC under Rule 9(b), but on  
27 this motion, the Court found Plaintiffs' allegations sufficient to meet the pleading standards of Rule  
28 9(b). (*See* Order Granting in Part and Denying in Part Motion to Dismiss Second Amended

1 Complaint, Dkt. No. 57 at 9 (“According to Plaintiffs’ allegations, which are based on a thorough  
 2 investigation and must be taken as true at this stage, the majority of the relevant HP products are not  
 3 sold at traditional big box retailers, suggesting they are not non-exclusive products.”) and 10 (“The  
 4 investigation was sufficient as to HP products as a whole to survive a motion to dismiss.”).)

5 **D. The Parties’ extensive discovery and settlement negotiations.**

6 Prior to reaching the proposed Settlement, the Parties have engaged in meaningful formal  
 7 and informal discovery of the prices and discounts at issue. With respect to the proposed Settlement,  
 8 Plaintiffs produced over 500,000 screenshots of HP’s website and an analysis of the pricing data  
 9 collected as part of their investigation. (Rozenblatt Decl. ¶ 11.) HP produced sales data for 287,784  
 10 orders placed during the Class Period that contain Class Products. (*Id.* ¶ 12.) The Parties met  
 11 through their respective counsel on several occasions to discuss and understand the pricing and sales  
 12 data each Party produced. (*Id.*)

13 The proposed settlement is the culmination of protracted discussions between the Parties  
 14 following contested motion practice and a thorough analysis of the pertinent facts and law, and the  
 15 pricing and sales data produced by the Parties. On June 12, 2024, the Parties attended over the Zoom  
 16 videoconferencing platform a full-day mediation conducted by the Honorable Irma E. Gonzalez.  
 17 (Padgett Decl. ¶ 9; Rozenblatt Decl. ¶ 11.) In advance of the mediation, the Parties submitted  
 18 mediation briefing setting forth their respective positions and evaluations of the claims. (*Id.*) Judge  
 19 Gonzalez helped to manage the Parties’ expectations and provided a useful, neutral analysis of the  
 20 issues and risks to both sides. (*Id.*) With Judge Gonzalez’s guidance, the Parties reached a settlement  
 21 in principle to resolve this matter on a class-wide basis, however it was not until several months later  
 22 that the Parties were eventually able to negotiate a complete resolution of Plaintiffs’ claims. (Padgett  
 23 Decl. ¶¶ 9-11; Rozenblatt Decl. ¶ 12) The terms of the Settlement are now set forth in complete and  
 24 final form in the Class Action Settlement Agreement and Release. (Padgett Decl., Ex. 1 (“Settlement  
 25 Agreement”).) At all times, the Parties’ negotiations were adversarial and non-collusive. (Padgett  
 26 Decl. ¶ 9; Rozenblatt Decl. ¶¶ 11-12.)

### 1 **III. THE PROPOSED SETTLEMENT**

#### 2 **A. The Settlement Class.**

3 The Settlement Class consists of all individuals nationwide who purchased the HP desktop  
 4 computers, laptops, mice, and keyboards between June 5, 2021, and October 28, 2024, that were  
 5 offered at a discount more than 75% of the time the products were offered for sale during that same  
 6 period. (Settlement Agreement, §§ 1.6, 1.29, 1.34.) The Settlement Class differs from the class  
 7 proposed in the SAC only to the extent the Class Period is limited to the period of June 5, 2021 to  
 8 October 28, 2024, which equates to roughly the same period over which Plaintiffs' counsel was  
 9 obtaining records of HP's prices and discounts through use of evidence preservation software.  
 10 Excluded from the class are individuals who (1) purchased more than two of the same products at a  
 11 time; (2) are employees of HP and members of his/her immediate family; (3) who are judicial  
 12 officers presiding over the action and members of their immediate family and judicial staff; (4) are  
 13 counsel of record for the Parties, and their respective law firms; and (5) timely and properly exclude  
 14 themselves from the Settlement Class. (*Id.*, §1.29.) Class counsel is unaware of any other lawsuit  
 15 that would be affected by the Settlement.

#### 16 **B. The Settlement Fund.**

17 HP has agreed to contribute \$4 million to a non-reversionary Settlement Fund. (*Id.*, § 1.32.)  
 18 The Settlement Fund will be used to pay (1) Settlement Class Members' claims; (2) court-approved  
 19 Notice and Settlement Administration Costs; (3) court-approved Settlement Class Representatives'  
 20 Service Awards; and (4) court-approved Settlement Class Counsel Attorneys' Fees and Costs. (*Id.*)  
 21 If any funds remain unclaimed or unused, they will be distributed pro rata to Settlement Class  
 22 members who submitted valid claims. (*Id.*, §§ 1.32, 3.2-3.3.) No unclaimed or unused funds will  
 23 revert to HP. (*See infra* Part III.F.)

#### 24 **C. The Released Claims.**

25 If the Court grants Final Approval of the Settlement, Class Members who do not timely and  
 26 validly exclude themselves from the Settlement Class, will release the following claims:

27 [A]ny and all actual or potential claims, actions, causes of action, suits, counterclaims,  
 28 cross claims, third party claims, contentions, allegations, and assertions of wrongdoing,  
 and any demands for any and all debts, obligations, liabilities, damages (whether

1 actual, compensatory, treble, nominal, punitive, exemplary, statutory, or otherwise),  
 2 attorneys' fees, costs, expenses, restitution, disgorgement, injunctive relief, any other  
 3 type of equitable, legal, or statutory relief, any other benefits, or any penalties of any  
 4 type whatever relating to or arising out of the claims that were or could have been  
 5 asserted by Plaintiffs or the Settlement Class Members *with respect to (1) the*  
 6 *strikethrough prices and discounts advertised on HP's website for the Settlement Class*  
 7 *Products during the Settlement Class Period; or (2) the allocation, division, or payment*  
 8 *of the Settlement Fund or any Class Member's cash benefit*, whether known or  
 9 unknown, suspected or unsuspected, contingent or non-contingent, or discovered or  
 undiscovered, whether asserted or unasserted, and, if asserted, whether asserted in  
 federal court, state court, arbitration, or otherwise, whether asserted in an individual  
 action, a putative class action, a parens patriae action, or other representative action  
 (including any action purportedly brought on behalf of the general public of the United  
 States or of a particular state, district, or territory therein), and whether triable before  
 a judge or jury or otherwise, through the Class Period.

10 (Settlement Agreement, § 1.23 ("Released Claims")), emphasis added.) The Released Claims are  
 11 narrowly tailored to the allegations asserted by Plaintiffs and limited to claims regarding (1) the  
 12 advertised prices and discounts for the Class Products during the Class Period, and (2) the allocation  
 13 of the Settlement Fund among the Class Members. (*Id.*) The Settlement further includes a waiver  
 14 under section 1542 of the California Civil Code, but only as to the Released Claims, and only upon  
 15 entry of the Final Approval Order and accompanying Judgment. (*Id.*, § 3.6.)

16 **D. Dissemination of Notice to the Class.**

17 Class members will be notified and provided information about the Settlement through a  
 18 combination of email, postcard, a dedicated Settlement Website, and a toll-free telephone helpline.

19 **Settlement Website:** Within thirty days of the Preliminary Approval Order, the Settlement  
 20 Administrator will establish a Settlement Website, which shall provide key deadlines, links to the  
 21 Claim Form, Long Form Notice (in both downloadable PDF format and HTML format), relevant  
 22 filings,<sup>3</sup> and contact information for the Settlement Administrator and Class Counsel. (*Id.*, § 4.2(a),  
 23 Ex. A.)

24 **Targeted emails:** Within forty-five days of the Preliminary Approval Order, the Settlement  
 25 Administrator will send notice of the Settlement to Class Members by electronic mail to the Class

26 \_\_\_\_\_  
 27 <sup>3</sup> The filings made available shall include Plaintiffs' Second Amended Complaint (the operative  
 28 complaint); this Motion for Preliminary Approval; any motions for service awards or attorneys' fees  
 and costs awards, the motion for Final Approval; any orders with respect to such motions; and any  
 other important documents in the case.

Members' email addresses provided by HP.<sup>4</sup> (*Id.*, § 4.2(c).)<sup>5</sup> No later than ten days before the Claim Submission Deadline, the Claims Administrator will send a second email to Class Members reminding them of the Claim Submission Deadline. (Passarell Decl. ¶ 9.) The Short Form Notice will include, *inter alia*, the key deadlines and terms of the Settlement, including instructions on how to submit a claim, opt out of the Settlement, object to the Settlement, and/or attend the Final Approval hearing. (Settlement Agreement, Ex. B.) Pursuant to the Northern District of California's Procedural Guidance for Class Action Settlements ("NDCA Procedural Guidance"),<sup>6</sup> the notice also includes: (a) contact information for class counsel to answer questions; (b) the address of Settlement Website; (c) instructions on how to access the case docket via PACER or in person; (d) the date and time of the Final Approval hearing, with a clear statement that the date may change without further notice to the class; and (e) instructions to check the Settlement Website or the Court's PACER site to confirm that the date has not been changed. *See* NDCA Procedural Guidance ¶ 3.

***Direct mailings:*** In addition to email notice, within forty-five days of the Preliminary Approval, the Settlement Administrator will also send a postcard notice by first-class mail to the physical addresses of all Settlement Class Members for whom HP provides a mailing address. (*See* Passarella Decl. ¶¶ 10-14 (detailing how notice by mail will be provided).)

***Toll-free helpline and dedicated mailing address:*** The Settlement Administrator will establish and maintain a toll-free helpline and post office box to which Settlement Class Members can call or write for more information about the Settlement. (Passarella Decl. ¶¶ 16-17.) Those who call the toll-free helpline or who write to the Settlement Administrator may request a printed copy of the Long Form Notice and/or Claim Form, which the Settlement Administrator shall provide by first class mail. (*Id.*)

<sup>4</sup> HP will provide to the Settlement Administrator the Class Members' contact information within thirty days of the Preliminary Approval Order. (Settlement Agreement, § 4.2(b).)

<sup>5</sup> For a more detailed explanation of how notice by email will be provided, see paragraphs 7-9 of the Passarella Declaration filed concurrently herewith.

<sup>6</sup> <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements> (last visited Nov. 29, 2024).



1 **CAFA Notice:** Notice of the proposed Settlement will also be provided to the U.S. Attorney  
 2 General and the attorneys general of each state or territory in which a Settlement Class Member  
 3 resides, in compliance with the Class Action Fairness Act, 28 U.S.C. § 1715. Within 10 days after  
 4 the proposed settlement is filed with the Court, HP will provide these government officials with  
 5 copies of all required materials so that the state and federal governments may make an independent  
 6 evaluation of the settlement and bring any concerns to the Court’s attention prior to Final Approval.

7 **E. Opportunity to object or opt out.**

8 Class Members will have at least sixty days from the date of Notice to opt out of or object to  
 9 the Settlement (the “Exclusion/Objection Deadline”). (Settlement Agreement, § 1.8.)<sup>7</sup> All three  
 10 forms of Notice (email, direct mail, website) will advise Settlement Class Members of these options  
 11 and provide instructions and deadlines for doing so. (*Id.*, § 4.2, Exs. A-B.) Any motions for service  
 12 awards or attorneys’ fees and costs awards must be filed no later than thirty-five (35) days prior to  
 13 the Exclusion/Objection Deadline, and will be posted to the Settlement Website. (*Id.*, §§ 3.4(a),  
 14 3.5(a).) This will ensure that, consistent with the NDCA Procedural Guidance, Class Members will  
 15 have at least thirty-five days to object to any such motions. *See* NDCA Procedural Guidance ¶ 9.

16 **F. Distribution of Cash Benefits to Class Members.**

17 Class Members will have at least sixty days from the date notice is sent by email and  
 18 postcard to submit a claim for a Cash Benefit (the “Claims Submission Deadline”). (Settlement  
 19 Agreement, § 1.5.)<sup>8</sup> Cash Benefits will be paid, in the form of a digital payment or check, to each  
 20 Settlement Class Member who submits a timely and valid claim by the Claim Submission Deadline.  
 21 (*Id.*, §§ 1.4-1.5, 4.3(a)-(c), Ex. C.) The Claim Form will be available on the Settlement Website and  
 22 can be submitted online or by mail. (*Id.*) The Settlement Administrator will also mail a Claim Form  
 23 to any Class Member upon request. (*Id.*) The Claim Form will be substantially in the form attached  
 24 as Exhibit C to the Settlement Agreement. (*Id.*, Ex. C.)

25  
 26 \_\_\_\_\_  
 27 <sup>7</sup> The Exclusion/Objection Deadline is 105 days after entry of the Preliminary Approval Order, and  
 Notice will be sent no later than 45 days of the Preliminary Approval Order. *See supra* Part III.D.

28 <sup>8</sup> The Claims Submission Deadline is 105 days after entry of the Preliminary Approval Order, and  
 Notice will be sent no later than 45 days of the Preliminary Approval Order. *See supra* Part III.D.



1 If the total Cash Benefits claimed by Class Members either exceed or are less than the  
 2 available Settlement Fund (after deducting the Court-approved notice and administration costs, and  
 3 any Court-approved service awards and attorneys' fee awards), the Cash Benefit amounts will be  
 4 adjusted pro rata. (*Id.*, §§ 1.32, 3.2-3.3.) All residual funds remaining will be distributed pro rata to  
 5 Settlement Class members who submitted valid claims and cashed checks, and no portion of the  
 6 Settlement Fund will revert to HP, and no residual amount will be paid to a *cy pres* recipient. (*Id.*)

7 **G. Allocation of Settlement Fund among Class Members.**

8 To assist in determining a fair allocation of the Settlement Fund among the Class Members,  
 9 Plaintiffs retained Christian Tregillis, CPA, ABV, CFF, CLP,<sup>9</sup> an expert in the valuation of  
 10 economic damages with over thirty years of experience. (Tregillis Decl. ¶ 3; *see also id.* ¶¶ 28-29  
 11 (discussing his experience analyzing damages in false advertising class actions).) Using actual sales  
 12 data provided by HP, Mr. Tregillis estimated the average “damages” for each of the Class  
 13 Products—i.e., the amount each Class Member overpaid per Class Product.<sup>10</sup> (Tregillis Decl. ¶¶ 24-  
 14 31.) Mr. Tregillis derived these estimates by analyzing the sales data to calculate the average  
 15 reference price, average sale price, and “true reference price”<sup>11</sup> for each of the Class Products. (*Id.*)  
 16 Mr. Tregillis then estimated the portion of the average sale price that exceeded the amount the  
 17 average Class Member would have otherwise been willing to pay for each Class Product but for the  
 18 inflated reference price (“Estimated Per-Unit Damages”). (*Id.*)

19 Based on Mr. Tregillis's settlement analysis, Plaintiffs propose five Cash Benefit tranches  
 20 based on the product type and Estimated Per-Unit Damages calculated by Mr. Tregillis:<sup>12</sup>

21 \_\_\_\_\_  
 22 <sup>9</sup> “CPA” stands for Certified Public Accountant; “ABV” stands for Accredited in Business Valuation,  
 23 a professional designation awarded by the American Institute of Certified Public Accountants  
 24 (AICPA); “CFF” stands for Certified in Financial Forensics, another professional designation awarded  
 25 by AICPA; “CLP” stands for Certified Licensing Professional.

26 <sup>10</sup> Mr. Tregillis's analysis was performed for settlement purposes only, using limited data that was  
 27 provided to him. (*See, e.g.,* Tregillis Decl. ¶ 25 n.29.) Mr. Tregillis's estimates of average “damages”  
 28 or average “overpayment” are based on the average reference prices and average sale prices of the  
 Class Products during the Class Period. (*Id.* ¶ 25.)

<sup>11</sup> The “true reference price” refers to an estimate of the price at which a product was most commonly  
 offered for sale during the Settlement Class Period.

<sup>12</sup> For a breakdown of the Cash Benefit allocation for each Class Product, see Exhibit F attached to  
 the Settlement Agreement.

Tranche	Product Type	Estimated Per-Unit Damages	Cash Benefit <sup>13</sup>
1	Accessory	Below \$10.00	<b>\$10</b>
2	Computers	Below \$25.00	<b>\$25</b>
3	Computers	Between \$25.01 and \$50.00	<b>\$50</b>
4	Computers	Between \$50.01 and \$75.00	<b>\$75</b>
5	Computers	Between \$75.01 and \$100.00	<b>\$100</b>

As shown, within each tranche, the expected Cash Benefit is at the upper end of the Estimated Per-Unit Damages. (*Id.* ¶ 32.) While the claims rate in false advertising class actions may vary widely depending on a host of factors, claims rates in other deceptive pricing cases against other computer manufacturers have ranged from 2.7% to 13.9%. (*Id.* ¶ 35; *see also* Passarella Decl. ¶ 5 (estimating a claims rate between 3% and 15%).) Thus, conservatively assuming a claims rate of 15%, each Class Member who submits a valid claim is likely to receive a cash payment that at least fully compensates them for the Estimated Per-Unit Damages calculated by Mr. Tregillis.<sup>14</sup> (*Id.* ¶ 36.) Accordingly, the Settlement Fund represents substantial and valuable relief to the Class.

#### **H. The Class Administrator and expected class administration costs.**

Plaintiffs have selected, and HP has approved, Kroll Settlement Administration, LLC (“Kroll”) as the proposed Class Administrator. (Rozenblatt Decl. ¶ 14.) Prior to selecting Kroll, Plaintiffs additionally solicited bids from three other class administrator firms—Analytics Consulting LLC, Atticus Administration LLC, and Verita Global LLC (formerly KCC). (*Id.*) Plaintiffs’ counsel carefully analyzed the bids provided by each of the four firms, and, when comparing apples-to-apples, Kroll’s bid was the most competitive. (*Id.*; Padgett Decl. ¶ 12.)<sup>15</sup>

Kroll is a leader in class action settlement administration, currently administrating or having

<sup>13</sup> The Cash Benefit amounts will be adjusted on a pro rata basis if the total claims submitted are either less than or exceed the Settlement Fund minus any fees, costs, and awards set forth in the Settlement Agreement. (Settlement Agreement, §§ 1.32, 3.2-3.3, Ex. F at 3.)

<sup>14</sup> This expectation is based on the assumption that \$2,750,000 will be available to pay Cash Benefits after payment of settlement administration costs, and any court-approved class representative service awards or class counsel fee and costs awards.

<sup>15</sup> After further consulting with Kroll, Plaintiffs elected to propose a more robust notice plan utilizing postcards sent by direct mail via USPS. (Rozenblatt Decl. ¶ 15.) Although the cost of the postage alone is estimated to be over \$110,000 (based on an estimate of 287,784 Class Members and \$0.406 per postcard), Plaintiffs’ counsel believes notice by direct mail *in addition to* notice by email will provide the best notice to the Class that is practicable under the circumstances. (*Id.*)

1 administered numerous technology-related matters that involve technology companies, computer  
 2 hardware, and software. (Passarella Decl. ¶¶ 3-5 and Ex. A; Rozenblatt Decl. ¶ 14.) In addition,  
 3 Kroll implements strict policies for data use and data security to ensure the security and privacy of  
 4 the Class Members. (Passarella Decl. ¶ 19-20.) Kroll also maintains standard business and liability  
 5 insurance, and takes steps to ensure administrative and ethical integrity of its employees, and has in  
 6 place crisis and risk management policies, physical access controls, and data retention policies. (*Id.*  
 7 ¶ 21-25.) Plaintiffs' counsel, Capstone Law APC, has worked with Kroll once in the past two years,  
 8 as notice administrator in *Victorino, et al v. FCA US LLC*, Case No. 3:16-cv-01617-GPC (S.D.  
 9 Cal.), which was finally approved on September 29, 2023, at which time Kroll proved itself  
 10 competent, efficient, and reliable. (Padgett Decl. ¶ 11.) Plaintiffs' counsel, EDGE, A Professional  
 11 Law Corporation, has not previously worked with Kroll. (Rozenblatt Decl. ¶ 14.)

12 The costs of settlement administration shall be paid out of the Settlement Fund. (Settlement  
 13 Agreement, § 1.32.) The anticipated administrative costs will be approximately \$246,467.20.  
 14 (Passarella Decl. ¶ 20.) Plaintiffs' counsel believes such costs to be reasonable in relation to the  
 15 value of the Settlement, particularly when considering that the hard costs of the postage alone  
 16 resulting from the direct mail notice is estimated to be over \$110,000. (Rozenblatt Decl. ¶ 15.)

#### 17 **I. Service awards to the Class Representatives.**

18 At Final Approval, Plaintiffs anticipate applying for service awards of \$5,000 each to be paid  
 19 from the Settlement Fund, to compensate them for their time and effort spent in connection with  
 20 prosecuting this action and their work on behalf of the Settlement Class. HP has agreed not to  
 21 oppose such a request, provided that Plaintiffs do not seek service awards of more than \$5,000 each.  
 22 (Settlement Agreement, § 3.4(a).) Plaintiffs have diligently prosecuted this action, a case in which  
 23 they had a modest personal interest, but which, if the Settlement is approved, will provide  
 24 significant benefits to the Class. Plaintiffs undertook this commitment without any guarantee of  
 25 recompense. (Rozenblatt Decl. ¶ 21.) As will be detailed in their forthcoming request for a service  
 26 award, Plaintiffs consulted with Class Counsel about the claims in this case, reviewed important  
 27 filings throughout the course of the litigation, searched for, reviewed, and provided documents to  
 28 Counsel, stayed generally aware of the status and progress of the litigation and Settlement

1 discussions, and reviewed and approved of the Settlement Agreement on behalf of the proposed  
 2 Settlement Class. (*Id.*)

3 **J. Attorneys' fees and costs award to Class Counsel.**

4 At Final Approval, Class Counsel anticipates seeking an award of attorneys' fees and costs  
 5 of up to one-fourth of the common fund established by the Settlement, or \$1 million. HP has agreed  
 6 not to oppose such a request, provided that Class Counsel do not seek an award of fees and costs of  
 7 more than \$1 million dollars. (Settlement Agreement, § 3.5(a).) Class Counsel will request  
 8 reimbursement of all reasonable and necessary costs advanced and carried for the duration of the  
 9 litigation. As will be detailed in their forthcoming request for an attorneys' fees and costs award,  
 10 Class Counsel diligently prosecuted this Action on a contingent basis and advanced all associated  
 11 costs, including expert costs, out-of-pocket with no expectation of recovery in the event the  
 12 litigation did not result in recovery for the Settlement Class.

13 **IV. ARGUMENT**

14 **A. The class action settlement approval process.**

15 Class action settlements must be approved by the court and notice of the settlement must be  
 16 provided to the class before the action can be dismissed. Fed. R. Civ. P. 23(e)(1)(A). To protect  
 17 absent class members' due process rights, approval of class action settlements involves three steps:

- 18 1. Preliminary approval of the proposed settlement, including (if the class has not  
 19 already been certified) conditional certification of the class for settlement purposes;
- 20 2. Notice to the class providing them an opportunity to exclude themselves; and
- 21 3. A final fairness hearing concerning the fairness, adequacy, and reasonableness of the  
 22 settlement.

23 *See* Fed. R. Civ. P. 23(e)(2); Manual for Complex Litigation § 21.632 (4th ed. 2004).

24 At preliminary approval, the Court first determines whether a class exists. *Stanton v. Boeing*  
 25 *Company*, 327 F.3d 938, 952 (9th Cir. 2003). Then, the Court evaluates whether the settlement is  
 26 within the "range of reasonableness," and whether notice to the class and the scheduling of a final  
 27 approval hearing should be ordered. *See generally* 3 Conte & Newberg, *Newberg on Class Actions*,  
 28 section 7.20 (4th ed. 2002) § 11.25. "Whether a settlement is fundamentally fair within the meaning

1 of Rule 23(e) is different from the question whether the settlement is perfect in the estimation of the  
 2 reviewing court.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

3 The law favors the compromise and settlement of class action suits. *See Churchill Village,*  
 4 *LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *see also Hanlon v. Chrysler Corp.*, 150 F.3d  
 5 1011, 1027 (9th Cir. 1998) (endorsing the trial court’s “proper deference to the private consensual  
 6 decision of the parties” when approving a settlement). “Litigation settlements offer parties and their  
 7 counsel relief from the burdens and uncertainties inherent in trial . . . . The economics of litigation  
 8 are such that pre-trial settlement may be more advantageous for both sides than expending the time  
 9 and resources inevitably consumed in the trial process.” *Franklin v. Kaypro*, 884 F.2d 1222, 1225  
 10 (9th Cir. 1989). Thus, the Court must determine whether a settlement is “fair, reasonable, and  
 11 adequate.” Fed. R. Civ. P. 23(e)(1).

12 To make this determination at preliminary approval, the Court may consider some or all of  
 13 the following factors: the extent of discovery completed and the stage of proceedings; the strength of  
 14 the plaintiff’s case and the risk, expense, complexity and likely duration of further litigation; the risk  
 15 of maintaining class action status throughout trial; the amount offered in settlement; and the  
 16 experience and views of counsel. *See Stanton*, 327 F.3d at 959. “Under certain circumstances, one  
 17 factor alone may prove determinative in finding sufficient grounds for court approval.” *Nat’l Rural*  
 18 *Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal. 2004) (citing *Torrissi v.*  
 19 *Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993)).

20 At the preliminary approval stage, the Court need only review the parties’ proposed  
 21 settlement to determine whether it is within the permissible “range of possible judicial approval” and  
 22 thus, whether the notice to the class and the scheduling of the formal fairness hearing is appropriate.  
 23 Newberg, § 11:25.

24 **B. The proposed Settlement should be preliminarily approved.**

25 (1) *The Settlement is the product of a thorough investigation.*

26 Courts may consider the extent of discovery and the current stage of the litigation to evaluate  
 27 whether parties have sufficient information to make an informed decision to settle the action. *See*  
 28 *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th Cir. 1998). A settlement negotiated

1 at an earlier stage in litigation will not be denied so long as sufficient investigation has been  
 2 conducted. *See Eisen v. Porsche Cars North American, Inc.*, Case No. 11-09405, 2014 WL 439006,  
 3 at \*13 (C.D. Cal. Jan. 30, 2014) (finding that counsel had “ample information and opportunity to  
 4 assess the strengths and weaknesses of their claims” despite “discovery [being] limited because the  
 5 parties decided to pursue settlement discussions early on”).

6 Here, based on their analysis of information and evidence produced by HP, close scrutiny of  
 7 all advertised pricing and extensive data collected by Plaintiffs’ counsel’s investigation, and input  
 8 from their damages expert, Plaintiffs were able to realistically assess the potential value of their  
 9 claims and intelligently engage in settlement discussions that culminated in the proposed Settlement  
 10 now before the Court. (Padgett Decl. ¶¶ 10, 12; Rozenblatt Decl. ¶¶ 13-18.) By engaging in a  
 11 thorough investigation and evaluation of their claims, Plaintiffs’ counsel believe that the Settlement,  
 12 for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and  
 13 adequate, and is in the best interests of Class Members in light of all known facts and circumstances,  
 14 including the risk of significant delay and uncertainty associated with litigation, and various  
 15 defenses asserted by HP and detailed below. (*Id.*)

16 (2) *The Settlement is fair, reasonable, and adequate given the alleged harm and*  
 17 *the potential risks of ongoing litigation.*

18 The proposed Settlement is well within the range of reasonableness, particularly when  
 19 considered in light of the risks and uncertainties of continuing to prosecute this action. In its  
 20 evaluation, “the district court’s determination is nothing more than an amalgam of delicate balancing,  
 21 gross approximations, and rough justice.” *Officers for Justice*, 688 F.2d at 625 (internal quotations  
 22 omitted). “An important consideration in judging the reasonableness of a settlement is the strength of  
 23 the plaintiffs’ case on the merits balanced against the amount offered in the settlement.” *Nat’l Rural*  
 24 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-26 (C.D. Cal. 2004). Preliminary  
 25 approval should be granted if “the proposed settlement appears to be the product of serious, informed,  
 26 non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential  
 27 treatment to class representatives or segments of the class, and falls within the range of possible  
 28 approval.” *Ruch v. AM Retail Group, Inc.*, No. 14-cv-05352-MEJ, 2016 WL 1161453, at \*7 (N.D.

1 Cal. Mar. 24, 2016) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal.  
2 2007).) While there is “no single formula” to be applied in considering the reasonable range of  
3 settlement, the court may presume that the parties’ counsel and the mediator arrived at their figures  
4 by considering Plaintiffs’ likelihood of recovery. *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 965  
5 (9th Cir. 2009). And, this Circuit expressly rejected any requirement that the settling parties value  
6 maximum damages that can be obtained at trial, as that figure would be inherently speculative. *Lane*  
7 *v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012) (“[N]ot only would such a requirement be  
8 onerous, it would often be impossible... [since] the amount of damages of a given plaintiff (or class of  
9 plaintiffs) has suffered in a question of fact that must be proved at trial.”).

10 In advance of mediation, Plaintiffs evaluated the strengths and weaknesses of their claims  
11 and objectively assessed the risks of continued litigation in order to determine a reasonable range of  
12 class relief. They also analyzed comparable deceptive pricing class actions and class action  
13 settlements to gain a better understanding of realistic ranges of compensation. Prior to finalizing the  
14 settlement, they consulted with a damages expert who analyzed the Class Members’ damages and  
15 the sufficiency of the Settlement Fund to adequately compensate the Class. (Rozenblatt Decl. ¶¶ 14-  
16 15; *see also generally* Tregillis Decl.)

17 Although Plaintiffs maintain a strong belief in the underlying merits of the claims, they also  
18 acknowledge the significant challenges posed by continued litigation through certification and trial.  
19 At the outset, both liability and damages are disputed in this action, and Plaintiffs would face a  
20 number of difficult challenges if this case were to proceed to trial. For example, HP will likely assert  
21 that Plaintiffs lack standing to assert claims on behalf of HP customers who purchased dissimilar  
22 products, and Plaintiffs did not suffer any damages because they received exactly the products that  
23 they paid for.

24 In addition, while Plaintiffs maintain that the strikethrough prices advertised were false, HP  
25 asserts that Plaintiffs cannot prove these prices that HP advertised were fictitious, as its website  
26 stated these are the Manufacturer’s Suggested Retail Prices (“MSRP(s)”), not the price for which HP  
27 typically sells the product. HP would argue that under the standards for determining whether MSRPs  
28 are misleading, the MSRPs that HP advertises are truthful and accurate.



1 Further, HP would also continue to challenge the claim for unjust enrichment and that it is  
2 not a recognized independent cause of action, which Plaintiffs dispute. HP would further contend  
3 that regardless of the propriety of such a claim, if Plaintiffs are unable to prove violations of the  
4 CLRA, FAL, and UCL, then the claim for unjust enrichment would not prevail either.

5 Aside from these defenses to their claims, Plaintiffs also would face challenges proceeding to  
6 class certification. Plaintiffs would face assertions that the purported nationwide class is overbroad  
7 and that it would be difficult to calculate damages or restitution on a classwide basis. HP would  
8 argue that there are variations in whether and how class members were exposed to an allegedly  
9 deceptive advertisement. Plaintiffs would also be confronted with assertions that there is a lack of  
10 predominance if they cannot show on a classwide basis that the class members saw and relied on  
11 HP's advertisements.

12 While Plaintiffs strongly disagree that HP could succeed with these defenses, they are  
13 indicative of the risks and hurdles Plaintiffs and the Settlement Class would face should this case  
14 proceed to trial. The proposed Settlement allows Settlement Class Members to avoid the risk of  
15 unfavorable rulings on these and other issues, while still providing them considerable relief. The  
16 Settlement also provides the Settlement Class with another significant benefit that they would not  
17 receive if they proceeded to trial—prompt relief. Proceeding to trial would likely add years to the  
18 resolution of this case, given the legal and factual issues raised and likelihood of appeals.

19 In summary, given the risks and potential benefits of proceeding with the litigation, the  
20 Settlement offers the class a significant recovery on claims that HP vigorously disputed, and  
21 continues to dispute. while Plaintiffs believe they have meritorious claims against HP, they  
22 recognize that several potential hurdles weigh in favor of settlement, including (1) uncertainties  
23 surrounding the import of the strikethrough prices and applicability and standards for the MSRP  
24 pricing, (2) differences between class member purchases/experiences and web page content during  
25 different times within the class period, and (3) HP's various affirmative defenses. In addition, the  
26 Parties and their respective experts could be expected to offer sharply conflicting testimony and  
27 opinions on how damages should be calculated and the amount of damages owed to individual Class  
28 Members. All told, the Settlement will provide a significant recovery to the Settlement Class while



1 eliminating the risk of a negative outcome in litigation.

2 (3) The amount of the Settlement Fund supports preliminary approval.

3 The Ninth Circuit instructs that “[t]he proposed settlement is not to be judged against a  
4 hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers*  
5 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (emphasis in original). Rather,  
6 “the very essence of a settlement is compromise.” *Id.* at 624. Thus, “the fact that a proposed  
7 settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean  
8 that the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular*  
9 *Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998).

10 Here, a \$4 million non-reversionary common fund is within the reasonable range for  
11 settlement of the Class Members’ claims, considering the uncertainties of prevailing on a motion for  
12 class certification, on subsequent motions for decertification, on a motion for summary judgment, on  
13 motions in limine, etc., and the challenge of obtaining a favorable judgment at trial in the face of  
14 competing expert testimony—not to mention the significant fees and costs that would be incurred to  
15 reach such resolution. (*See* Tregillis Decl. ¶ 15 (“[W]hen agreeing to a settlement, plaintiffs are  
16 inherently making a compromise by giving up the theoretical future benefits of winning the case  
17 (e.g., a damages award), while mitigating the risk of losing in litigation (from either a loss on  
18 liability or minimal damages), as well as accelerating the receipt of monetary proceeds and non-  
19 monetary remedies.”).)

20 Here, based on the damages analysis performed by their damages expert (*see supra* Part  
21 III.G), Plaintiffs estimate (for the purposes of settlement only) the average per-unit damages for the  
22 Class Products is between \$0 and \$91. (*See supra* Part III.G.) Plaintiffs further estimate (for the  
23 purposes of settlement only) that the total overpayment across all Class Products across all of the  
24 Class Members is approximately \$10.4 million. (Tregillis Decl. ¶ 31.) Thus, the \$4 million non-  
25 reversionary common fund represents significant monetary relief relative to the potential recovery,  
26 as estimated by Mr. Tregillis. *See, e.g., In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 459  
27 (9th Cir. 2000) (finding a settlement that paid plaintiffs one-sixth of the potential recovery to be fair  
28 and adequate).

1 Furthermore, the Settlement offers a Cash Benefit of \$10, \$25, \$50, \$75, or \$100 to Class  
2 Members based on the type of product purchased and the Estimated Per-Unit Damages. These Cash  
3 Benefit amounts are in line with amounts paid in other consumer cases involving false price  
4 referencing. *See also Brazil v. Dell Inc.*, Case No. 5:07-cv-01700, 2021 WL 1144303 (N.D. Cal. Apr.  
5 4, 2012), (\$50 per claimant monetary award); *Ponce v. Lenovo (United States) Inc.* (“*Lenovo*”), No.  
6 16-cv-01000-JNE-JSM (\$50 per claimant monetary award); *Chester v. TJX Companies, Inc.*, Case  
7 No. 5:15-cv-01437-ODW-DTB, Dkt. No. 123-1 at 3:17 (C.D. Cal. Apr. 16, 2018) (claimants to  
8 receive merchandise credit redeemable for \$25 merchandise credit or \$19 in cash).

9 Specifically, the class action settlements in *Brazil v. Dell* and *Ponce v. Lenovo*, which  
10 similarly involved allegations of deceptive pricing on the computer manufacturer’s websites of Dell  
11 and Lenovo. (Rozenblatt Decl. ¶¶ 17-18, Ex. 1.) Each of these cases culminated in claims-made  
12 settlements, with each class member who submitted a valid claim receiving a \$50 monetary award.  
13 Here, based on a conservative estimate of a 15% claims rate (*see Passarella Decl. ¶ 5*; Tregillis Decl.  
14 ¶¶ 34-36), on average, Class Member will receive \$63.70. (Rozenblatt Decl. ¶ 16.) This reflects  
15 substantial monetary relief given that in *Brazil v. Dell* and in *Ponce v. Lenovo*, the settlement class  
16 products consisted only of computers, whereas this Settlement includes both computer products and  
17 accessories such as mice and keyboards. (*Id.* ¶¶ 17-18.)

18 Moreover, when comparing the total amount of the Settlement Fund here, \$4 million, of  
19 which no portion will revert to HP, to the claims-made settlements in *Brazil v. Dell* and *Ponce v.*  
20 *Lenovo*, the Settlement is eminently reasonable and fair to the Class. Filings in *Brazil v. Dell*,  
21 indicate that at the end of the claims process, the total paid to the settlement class members was  
22 approximately \$479,300. (*Id.* ¶ 18, Ex. 2.) Filings in *Ponce v. Lenovo*, indicate that at the end of the  
23 claims process, the total paid to the settlement class members was \$1,835,900. (*Id.* ¶ 18, Ex. 3.)  
24 Here, even after deducting from the Settlement Fund the settlement administration costs and any  
25 service and fee awards to the class representatives and class counsel, the total cash paid to the Class  
26 is expected to be approximately \$2,750,000, which exceeds the amounts received by the classes in  
27 *Brazil v. Dell* and *Ponce v. Lenovo*. (*Id.* ¶¶ 16-18.)

(4) The views of Plaintiffs' counsel should be accorded substantial weight.

Courts give considerable weight to settlements reached by sophisticated parties with experienced counsel as “parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in the litigation.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

Here, the Parties achieved a settlement after a thorough review of relevant pricing data, and a rigorous analysis of each Parties’ claims and defenses, and likelihood of Plaintiffs’ prevailing at class certification. The terms of the Settlement are non-collusive and the product of arms-length negotiations between experienced class action attorneys with the assistance of a respected mediator and former jurist. Plaintiffs are represented by seasoned class action attorneys who possess significant experience in class action matters and have zealously prosecuted this action. (See Padgett Decl., ¶¶ 4-7, Ex. 2; Rozenblatt Decl. ¶¶ 4-9.) Likewise, HP’s counsel is the preeminent global law firm, Morgan Lewis & Bockius LLP. Thus, the Parties’ recommendation to approve this Settlement should “be given great weight.” *Eisen v. Porsche*, 2014 WL 439006, at \*5 (crediting the experience and views of counsel and the involvement of a mediator in approving settlement). Based on the foregoing, the Court should find the proposed Settlement to be fair and adequate.

**C. Conditional certification of the proposed Settlement Class is appropriate.**

(1) The Settlement Class meets the requirements of Rule 23.

Before granting preliminary approval of the settlement, the Court should determine that the proposed settlement class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex Litigation, § 21.632. An analysis of the requirements of Rule 23(a) and (b)(3), commonly referred to as numerosity, commonality, typicality, adequacy, predominance, and superiority, shows that certification of this proposed Settlement Class is appropriate for settlement purposes.

(2) The Settlement Class is sufficiently numerous.

The numerosity requirement is met where “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Generally, courts will find a class sufficiently numerous if it consists of 40 or more members. *Maslic v. ISM Vuzem D.O.O.*, No. 21-cv-02556-

1 BLF, 2023 WL 4335290, \*4 (N.D. Cal. June 26, 2023) (numerosity presumed where the class  
 2 contains forty or more members); *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114,  
 3 1121 (E.D. Cal. 2009) (numerosity is presumed at a level of 40 members). Here, the Parties estimate  
 4 that 287,784 individuals fall within the class definition, clearly satisfying the numerosity  
 5 requirement. (Rozenblatt Decl. ¶ 12.)

6 (3) *There are questions of law and fact that are common to the Settlement Class*  
 7 *for settlement purposes.*

8 The second Rule 23(a) requirement is commonality, which is satisfied “if there are questions  
 9 of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The operative criterion for  
 10 commonality is “the capacity of a class-wide proceeding to generate common answers apt to drive  
 11 the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (citation  
 12 and quotation marks omitted). The commonality requirement is “construed permissively.” *Hanlon*,  
 13 150 F.3d at 1019-1020. Where “the circumstances of each particular class member vary but retain a  
 14 common core of factual or legal issues with the rest of the class, commonality exists.” *Parra v.*  
 15 *Bashas, Inc.*, 536 F.3d 975, 978-79 (9th Cir. 2008). A single common question of law or fact  
 16 satisfies this requirement. *See Dukes*, 564 U.S. at 369.

17 Plaintiffs’ contend that this action presents multiple common questions of law and fact:

- 18 1. Whether HP disseminated false or misleading advertising on its website regarding the  
 19 prices and discounts for the Class Products during the Class Period;
- 20 2. Whether HP’s advertisements had a tendency to mislead a reasonable consumer;
- 21 3. Whether a reasonable consumer would interpret the strikethrough prices on HP’s  
 22 website as the regular price or former price of the Class Products offered for sale on HP’s website;
- 23 4. Whether HP ever sold or offered for sale the Class Products at the advertised  
 24 strikethrough prices; and
- 25 5. Whether HP’s pricing practices on its website violated established law.

26 Accordingly, the commonality element is well established by the facts and allegations of the case.

27 (4) *Plaintiffs’ claims are typical of the Settlement Class.*

28 “In determining whether typicality is met, the focus should be on the defendants’ conduct

1 and plaintiff's legal theory, not the injury caused to the plaintiff." *Lozano v. AT&T Wireless*  
 2 *Services, Inc.*, 504 F.3d 718, 734 (9th Cir. 2007). Thus, typicality is "satisfied when each class  
 3 member's claim arises from the same course of events, and each class member makes similar legal  
 4 arguments to prove the defendant's liability." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir.  
 5 2001) (citation omitted).

6 Plaintiffs contend that their claims are typical of the proposed Settlement Class because they  
 7 arise from the same factual basis and are based on the same legal theories applicable to the other  
 8 Class Members. Plaintiffs, like all members of the Settlement Class, purchased computers and  
 9 accessories that were offered at a discount from an advertised reference price. And Plaintiffs further  
 10 contend that their claims are typical of the Class because, they allege, reasonable consumers rely on  
 11 the advertised reference prices and discounts based thereon, and reasonable consumers are induced  
 12 to pay more for HP products as a result of the advertised reference prices and discounts.

13 (5) *Plaintiffs and Plaintiffs' Counsel will adequately represent the interests of the*  
 14 *Settlement Class.*

15 Adequacy is satisfied, because "the representative parties will fairly and adequately protect  
 16 the interests of the class," Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal  
 17 adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class  
 18 members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on  
 19 behalf of the class?" *Hanlon*, 150 F.3d at 1020 (citation omitted). Here, Plaintiffs contend they are  
 20 adequate class representatives since they have no conflict of interest with the proposed Settlement  
 21 Class. Indeed, Plaintiffs share a common interest in holding HP accountable for the alleged  
 22 deceptive advertising, which caused them to believe their products were being offered at a discount.  
 23 In addition, Plaintiffs further contend that they are represented by competent counsel with  
 24 significant experience in litigating class actions, who do not have a conflict of interest with the class,  
 25 have a thorough understanding of the facts and legal issues underlying deceptive pricing class  
 26 actions, and have zealously prosecuted this action (Padgett Decl. ¶¶ 4-7, Ex. 2; Rozenblatt Decl. ¶¶  
 27 4-9.) Thus, Plaintiffs and their counsel satisfy the adequacy prong.

1 (6) Common issues predominate over individual issues for settlement purposes.

2 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class  
3 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or  
4 (3).” *Hanlon*, 150 F.3d at 1022. The predominance inquiry under Rule 23(b)(3) asks “whether the  
5 common, aggregation-enabling issues in the case are more prevalent or more important than the  
6 non-common, aggregation-defeating, individual issues.” *Tyson Foods v. Bouaphakeo*, 577 U.S. 442,  
7 454 (2016) (citation omitted). “When one or more of the central issues in the action are common to  
8 the class and can be said to predominate, the action may be proper under Rule 23(b)(3) even though  
9 other important matters will have to be tried separately, such as damages or some affirmative  
10 defenses peculiar to some individual class members.” *Id.* So long as there is a “clear justification for  
11 handling the dispute on a representative rather than an individual basis,” *Hanlon*, 150 F.3d at 1022,  
12 the inquiry is satisfied.

13 Manageability at trial is not a concern in the class action settlement context “for the proposal  
14 is that there be no trial.” *Amchem*, 521 U.S. at 620. Indeed, the predominance inquiry in the context  
15 of a nationwide settlement should be considered under “three guideposts”:

16 [F]irst, that commonality is informed by the defendant’s conduct as to all class  
17 members and any resulting injuries common to all class members; second, that  
18 variations in state law do not necessarily defeat predominance; and third, that concerns  
regarding variations in state law largely dissipate when a court is considering the  
certification of a settlement class.

19 *Sullivan v. DB Invs. Inc.*, 667 F.3d 273, 297 (3d Cir. 2011) (*en banc*); *see also Wakefield v. Wells*  
20 *Fargo & Co.*, No. C 13-05053 LB, 2014 WL 7240339, at \*4 (N.D. Cal. Dec. 18, 2014) (adopting  
21 Sullivan’s analysis that state law variations dissipate in a settlement class).

22 Here, the proposed Class is maintainable under Rule 23(b)(3), as Plaintiffs contend that  
23 common questions predominate over any question affecting only individual members, and class  
24 resolution is superior to other available methods for a fair resolution of the controversy. *Hanlon*, 150  
25 F.3d at 1022 (citing Fed. R. Civ. P. 23(b)(3)). Moreover, for purposes of settlement, Plaintiffs  
26 contend that the predominance test is satisfied, as the Settlement makes the relief of compensation  
27 for HP’s deceptive pricing practices available to all Settlement Class Members based on easily  
28 ascertainable criteria (*see* Settlement Agreement, Ex. E (showing list of Class Products by part

1 number), bypassing whatever individual evidentiary and factual issues that could arise in litigation  
2 in determining liability or damages.

3 (7) Class settlement is superior to other available means of resolution.

4 Similarly, there can be little doubt that resolving all class members' claims through a single  
5 class action is superior to a series of individual lawsuits. "From either a judicial or litigant  
6 viewpoint, there is no advantage in individual members controlling the prosecution of separate  
7 actions. There would be less litigation or settlement leverage, significantly reduced resources and no  
8 greater prospect for recovery." *Hanlon*, 150 F.3d at 1023. Indeed, the terms of the Settlement  
9 negotiated on behalf of the Class demonstrate the advantages of a collective bargaining and  
10 resolution process.

11 Furthermore, the damages sought by each Class Member here are not so large as to weigh  
12 against the certification of a class action. *See Smith v. Cardinal Logistics Mgmt. Corp.*, 2008 WL  
13 4156364, at \*32-33 (N.D. Cal. Sep. 5, 2008) (finding that class members had a small interest in  
14 personally controlling the litigation even where the average amount of damages were \$25,000-  
15 \$30,000 per year). The sheer number of separate trials that would otherwise be required also weighs  
16 in favor of approving the Settlement. *See Amchem*, 521 U.S. at 617 ("The policy at the very core of  
17 the class action mechanism is to overcome the problem that small recoveries do not provide the  
18 incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves  
19 this problem by aggregating the relatively paltry potential recoveries into something worth  
20 someone's (usually an attorney's) labor."). Here, the efforts and funds required to marshal the type  
21 of evidence, including expert testimony, to establish liability against a well-financed corporate  
22 defendant would discourage Class Members from pursuing litigation on an individual basis.

23 The superiority of proceeding through the class action mechanism is demonstrable in this  
24 action. Through the class action device, Plaintiffs' counsel were able to negotiate a valuable  
25 Settlement with HP that, if approved, will provide Class Members with immediate and significant  
26 monetary relief on a non-reversionary basis. As the class action device provides the superior means  
27 to effectively and efficiently resolve the instant dispute, and as the other requirements of Rule 23 are  
28 satisfied, certification of the proposed Settlement Class is appropriate.



**D. The proposed notice forms and notice plan will provide sufficient notice.**

Upon certifying a Rule 23(b)(3) class, Rule 23(c)(2)(B) requires the Court to “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” In addition, Rule 23(e)(1) requires that before a proposed settlement may be approved, the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” The notice given “must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The Parties have agreed on a notice plan that satisfies the requirements of Rule 23. (*See supra* Part III.D.) Under this plan, the Parties will disseminate notice of the settlement via directed emails in addition to postcard mailings to Settlement Class Members and posts to a dedicated website. The form of the notice to be electronically and physically mailed includes all the content required by Rule 23(c)(2)(B), such as a description of the action and Class claims, as well as class members’ right to submit claims for payment, opt out of the settlement, and object or comment on the proposed Settlement, including any application for attorneys’ fees, costs, and service awards. *See Churchill Village*, 361 F.3d at 576 (“Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.”) (internal quotation omitted).

**V. CONCLUSION**

It is respectfully submitted that the proposed Settlement is within the range of what is fair, reasonable, and adequate. Thus, for the reasons set forth above, and consistent with Fed. R. Civ. P. 23.1, Plaintiffs respectfully request the Court: conditionally certify the proposed Settlement Class; approve the proposed form and manner of notice to the Settlement Class; approve selection of Kroll Settlement Administration LLC as the Settlement Administrator; appoint Plaintiffs Rodney Carvalho and Mark Maher as the Settlement Class Representatives; appoint EDGE, A Professional Law Corporation, and Capstone Law, APC, as Settlement Class Counsel; and set a hearing date and briefing schedule for Final Approval of the Settlement.



1 Dated: December 2, 2024

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