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Attorneys for Plaintiff:  
PAUL HUTCHINS, as a representative of a class of participants and  
beneficiaries on behalf of the HP Inc. 401(k) Plan

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

PAUL HUTCHINS, as a representative)  
of a class of participants and ) CASE NO.  
beneficiaries on behalf of the HP Inc. )  
401(k) Plan, ) **CLASS ACTION COMPLAINT**  
) **AND DEMAND FOR JURY TRIAL**  
Plaintiff, )  
v. )  
HP INC.; HP INC. PLAN )  
COMMITTEE; and DOES 1 to 10 )  
inclusive, )  
Defendants. )



1           5.     Defendant HP is an information technology company headquartered in  
2 Palo Alto, California.

3           6.     HP is both the Plan sponsor under 29 U.S.C. § 1002(16)(B) and the Plan  
4 administrator under 29 U.S.C. § 1002(16)(A) with broad authority over the  
5 administration and management of the Plan.  
6

7           7.     The Committee was created by HP to assist in the management of the  
8 Plan and was delegated with authority to, among other things, direct the trustee with  
9 respect to the crediting and distribution of the Plan assets.  
10

11           8.     HP and the Committee (together “Defendants”) are both named  
12 fiduciaries of the Plan and each exercised discretionary authority and discretionary  
13 control over the management and administration of the Plan with respect to the  
14 matters alleged herein and were fiduciaries of the Plan within the meaning of 29  
15 U.S.C. § 1002(21)(A).  
16  
17

18           9.     Plaintiff is a current participant of the Plan whose account has been  
19 charged with a share of the Plan’s administrative expenses. Plaintiff brings this  
20 action in a representative capacity only on behalf the HP Plan and its participants  
21 and beneficiaries.  
22

23           10.    The defendants sued by the fictitious names DOES 1 through 10,  
24 inclusive, are Plan fiduciaries unknown to Plaintiff who exercise or exercised  
25 discretionary authority or discretionary control respecting the management of the  
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1 Plan, exercise or exercised authority or control respecting the management or  
2 disposition of its assets, or have or had discretionary authority or discretionary  
3 responsibility in the administration of the Plan and are responsible or liable in some  
4 manner for the conduct alleged in the complaint. Plaintiff will amend this complaint  
5 to allege the true names and capacities of such fictitiously named defendants when  
6 they are ascertained.  
7  
8

9 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

10 11. As required by 29 U.S.C. § 1102(a)(1), the HP Plan is maintained under  
11 a written document.  
12

13 12. In accordance with 29 U.S.C. § 1103(a), the assets of the HP Plan are  
14 held in a trust fund.  
15

16 13. As an individual account, defined contribution retirement plan, the HP  
17 Plan “provides for an individual account for each participant and for benefits solely  
18 upon the amount contributed to the participant’s account, and any income, expenses,  
19 gains and losses, and any forfeiture of accounts of other participants which may be  
20 allocated to such participant’s account.” 29 U.S.C. § 1002(34).  
21  
22

23 14. The Plan is funded by a combination of wage withholdings by Plan  
24 participants and Company matching contributions, each of which is deposited into  
25 the Plan’s trust fund.  
26

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1           15. The Company matching contribution is a fixed contribution equal to  
2 100% of the first 4% of eligible earnings a participant contributes each pay period.

3           16. Upon their deposit into the Plan's trust fund, all participant  
4 contributions and Company contributions become assets of the Plan.  
5

6           17. Participants in the HP Plan are fully vested at all times with regard to  
7 their own contributions and earnings thereon.  
8

9           18. Participants are subject to a three-year cliff vesting schedule with  
10 regard to Company matching contributions and earnings thereon, after which time  
11 they become 100% vested in the Company matching contributions and earnings  
12 thereon.  
13

14           19. Certain expenses of the Plan for administrative services are paid  
15 directly by the Plan, except to the extent the Company chooses to pay such expenses.  
16 Each participant's account is charged a fixed amount of \$34 per year for  
17 recordkeeping services.  
18

19           20. The deduction of these administrative expenses from participant  
20 accounts reduces the funds available to participants for distribution and/or investing.  
21  
22

23           21. When a participant has a break in service prior to full vesting of the  
24 Company's matching contributions, the participant forfeits the balance of unvested  
25 Company contributions in his or her individual account and Defendants exercise  
26 discretionary authority and control over how these Plan assets are thereafter  
27  
28

1 reallocated.

2 22. At the discretion of Defendants, forfeited nonvested accounts may be  
3 used to pay the Plan's expenses or reduce the Company's contributions to the Plan.  
4

5 23. Although Defendants have discretion to use the forfeited funds to pay  
6 Plan expenses, and thereby reduce or eliminate the amounts charged to the  
7 participants' individual accounts to cover such expenses, Defendants have  
8 consistently declined to use any of these Plan assets for such purposes.  
9

10 24. Instead, Defendants have consistently chosen to utilize the forfeited  
11 funds in the Plan exclusively for the Company's own benefit, to the detriment of the  
12 Plan and its participants, by using these Plan assets solely to reduce Company  
13 contributions to the Plan.  
14

15 25. In January 2019, Defendants utilized approximately \$8,300,000 in  
16 forfeited funds to reduce the 2018 Company matching contribution. No forfeited  
17 funds were used to pay any part of the \$2,371,000 in Plan administrative expenses.  
18

19 26. In January 2020, Defendants utilized approximately \$4,700,000 in  
20 forfeited funds to reduce the 2019 Company matching contribution. No forfeited  
21 funds were used to pay any part of the \$1,631,000 in Plan administrative expenses.  
22

23 27. In January 2021, Defendants utilized approximately \$4,400,000 in  
24 forfeited funds to reduce the 2020 Company matching contribution. No forfeited  
25 funds were used to pay any part of the \$2,113,000 in Plan administrative expenses.  
26  
27  
28

1 28. In January 2022, Defendants utilized approximately \$1,600,000 in  
2 forfeited funds to reduce the 2021 Company matching contribution. No forfeited  
3 funds were used to pay any part of the \$2,434,000 in Plan administrative expenses.  
4

5 29. In January 2023, Defendants utilized approximately \$1,000,000 in  
6 forfeited funds to reduce the 2018 Company matching contribution. No forfeited  
7 funds were used to pay any part of the \$2,851,000 in Plan administrative expenses.  
8

9 30. While Defendants' reallocation of the forfeitures in the Plan's trust fund  
10 to reduce its matching contributions benefitted the Company by reducing its own  
11 contribution expenses, it harmed the Plan, along with its participants and  
12 beneficiaries, by reducing future Company contributions that would otherwise have  
13 increased Plan assets and by causing participants to incur deductions from their  
14 individual accounts each year to cover administrative expenses that would otherwise  
15 have been covered in whole or in part by utilizing forfeited funds.  
16  
17

18 **CLASS ACTION ALLEGATIONS**  
19

20 31. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the  
21 Plan to bring an action individually on behalf of the Plan to enforce a breaching  
22 fiduciary's liability to the Plan under 29 U.S.C. § 1109(a).  
23

24 32. In acting in this representative capacity and to enhance the due process  
25 protections of unnamed participants and beneficiaries of the Plan, as an alternative  
26 to direct individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2),  
27  
28

1 Plaintiff seeks to certify this action as a class action on behalf of all HP Plan  
2 participants and beneficiaries. Plaintiff seeks to certify the following class:

3 All participants and beneficiaries of the HP Plan from January 1,  
4 2019 through the date of judgment, excluding Defendants and  
5 members of the Committee.  
6

7  
8 33. This action meets the requirements of Rule 23 and is certifiable as a  
9 class action for the following reasons:

10 a. The class includes over 30,000 members and is so large that  
11 joinder of all its members is impracticable.  
12

13 b. There are questions of law and fact common to the class because  
14 Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries  
15 and took the actions alleged herein as to the Plan and not as to any individual  
16 participant. Thus, common questions of law and fact include the following, without  
17 limitation: Who are the fiduciaries liable for the remedies provided by 29 U.S.C. §  
18 1109(a)? Did the fiduciaries of the Plan breach their fiduciary duties to the Plan with  
19 respect to their management and allocation of Plan assets? Did fiduciaries of the  
20 Plan engage in prohibited transactions with Plan assets? Did fiduciaries of the Plan  
21 violate the anti-inurement provision of ERISA by using Plan assets for their own  
22 benefit? What are the losses to the Plan resulting from each alleged breach of  
23 ERISA? What Plan-wide equitable and other relief should the Court impose to  
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25  
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28



1 remedy Defendants' alleged breaches?

2 c. Plaintiff's claims are typical of the claims of the class because  
3 Plaintiff was a participant of the Plan during the class period and all participants in  
4 the Plan were harmed by the same alleged misconduct by Defendants.  
5

6 d. Plaintiff is an adequate representative of the class because he was  
7 a participant of the plan during the class period, has no interests that conflict with  
8 any other members of the class, is committed to the vigorous representation of the  
9 class, and has engaged experienced and competent attorneys to represent the class.  
10

11 e. Prosecution of separate actions for these breaches of fiduciary  
12 duties and prohibited transactions by individual participants and beneficiaries would  
13 create the risk of (A) inconsistent or varying adjudications that would establish  
14 incompatible standards of conduct for Defendants with respect to their discharge of  
15 their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §  
16 1109(a), and (B) adjudications by individual participants and beneficiaries regarding  
17 these breaches of fiduciary duties, prohibited transactions, and remedies for the Plan  
18 would, as a practical matter, be dispositive of the interests of the participants and  
19 beneficiaries not parties to the adjudication or would substantially impair or impede  
20 those participants' and beneficiaries' ability to protect their interests. Therefore, this  
21 action should be certified as a class action under Rule 23(b)(1)(A) or (B).  
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1           37. Pursuant to 29 U.S.C. § 1104(a)(1)(A), Defendants were required to  
2 discharge their duties to the HP Plan “solely in the interest of the participants and  
3 beneficiaries” and “for the exclusive purpose of: (i) providing benefits to participants  
4 and their beneficiaries; and (ii) defraying reasonable expenses of administering the  
5 plan.”  
6

7           38. Defendants have continually breached this duty of loyalty with respect  
8 to their control and management of the Plan’s assets throughout the class period by  
9 choosing to utilize forfeited funds in the Plan for the benefit of the Company rather  
10 than solely in the interest of the participants and beneficiaries.  
11

12           39. Instead of acting solely in the interest of Plan participants by utilizing  
13 forfeited funds in the Plan to reduce or eliminate the administrative expenses charged  
14 to their individual accounts, Defendants chose to use these Plan assets for the  
15 exclusive purpose of reducing their own matching contributions to the Plan, thereby  
16 saving the Company millions of dollars at the expense of the Plan which received  
17 decreased Company contributions and its participants and beneficiaries who were  
18 forced to incur avoidable expense deductions to their individual accounts.  
19

20           40. As a direct and proximate result of Defendants’ fiduciary breaches  
21 described herein, the Plan suffered injury and loss for which they are personally  
22 liable and are subject to appropriate equitable relief, pursuant to 29 U.S.C. § 1109,  
23 including, without limitation, the disgorgement of all ill-gotten profits to Defendants  
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1 resulting from the breach of their duty of loyalty.

2 41. Each Defendant knowingly participated in the breach of the other  
3 Defendants, knowing that such acts were a breach, enabled other Defendants to  
4 commit a breach by failing to lawfully discharge its own fiduciary duties, knew of  
5 the breach by the other Defendants and failed to make any reasonable effort under  
6 the circumstances to remedy the breach. Thus, each Defendant is liable for the losses  
7 caused by the breach of its co-fiduciary under 29 U.S.C. § 1105(a).  
8  
9

10 **SECOND CLAIM**

11 **BREACH OF FIDUCIARY DUTY OF PRUDENCE**

12 **(29 U.S.C. § 1104(a)(1)(B))**

13  
14 42. Plaintiff realleges and incorporates herein by reference each and every  
15 allegation contained in the preceding paragraphs of this Complaint as though fully  
16 set forth herein.  
17

18 43. Pursuant to 29 U.S.C. § 1104(a)(1)(B), Defendants were required to  
19 discharge their duties with respect to the HP Plan “with the care, skill, prudence, and  
20 diligence under the circumstances then prevailing that a prudent man acting in a like  
21 capacity and familiar with such matters would use in the conduct of an enterprise of  
22 a like character and with like aims.”  
23  
24

25 44. Defendants have continuously breached their duty of prudence under  
26 29 U.S.C. § 1104(a)(1)(B) throughout the class period by declining to use the  
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28

1 forfeited funds in the plan to eliminate the administrative expenses charged to  
2 participant accounts and instead using such Plan assets to reduce the Company's own  
3 contributions to the Plan.  
4

5 45. Defendants failed to engage in a reasoned and impartial decision-  
6 making process to determine that using the forfeited funds in the Plan to reduce the  
7 Company's own contribution expenses, as opposed to the administrative expenses  
8 charged to participant accounts, was in the best interest of the Plan's participants or  
9 was prudent, and failed to consider whether participants would be better served by  
10 another use of these Plan assets after considering all relevant factors.  
11  
12

13 46. By declining to use forfeited funds in the Plan to eliminate the  
14 administrative expenses charged to participant accounts, and instead using such Plan  
15 assets to reduce the Company's own contribution expenses, Defendants caused the  
16 Plan to receive fewer contributions that would otherwise have increased Plan assets  
17 and caused participants to incur expense deductions from their individual accounts  
18 that would otherwise have been covered in whole or in part by utilizing the forfeited  
19 funds to pay Plan expenses.  
20  
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22

23 47. As a direct and proximate result of Defendants' fiduciary breaches  
24 described herein, the Plan suffered injury and loss for which Defendants are  
25 personally liable and are subject to appropriate equitable relief, pursuant to 29 U.S.C.  
26 § 1109, including, without limitation, the disgorgement of all ill-gotten profits to  
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1 Defendants resulting from the breach of their duty of prudence.

2 48. Each Defendant knowingly participated in the breach of the other  
3 Defendants, knowing that such acts were a breach, enabled other Defendants to  
4 commit a breach by failing to lawfully discharge its own fiduciary duties, knew of  
5 the breach by the other Defendants and failed to make any reasonable effort under  
6 the circumstances to remedy the breach. Thus, each Defendant is liable for the losses  
7 caused by the breach of its co-fiduciary under 29 U.S.C. § 1105(a).  
8

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10 **THIRD CLAIM**

11 **BREACH OF ERISA’S ANTI-INUREMENT PROVISION**

12 **(29 U.S.C. § 1103(c)(1))**

13  
14 49. Plaintiff realleges and incorporates herein by reference each and every  
15 allegation contained in the preceding paragraphs of this Complaint as though fully  
16 set forth herein.  
17

18 50. Pursuant to 29 U.S.C. § 1103(c)(1), “the assets of a plan shall never  
19 inure to the benefit of any employer and shall be held for the exclusive purpose of  
20 providing benefits to participants in the plan and their beneficiaries and defraying  
21 reasonable expenses of administering the plan.”  
22

23 51. The balance in a participant’s account that is forfeited because of a  
24 break in service prior to full vesting of the Company’s matching contributions is an  
25 asset of the HP Plan.  
26  
27  
28



1           56. HP and the Committee are parties in interest, as that term is defined  
2 under 29 U.S.C. § 1002 (14), because they are Plan fiduciaries and because HP is  
3 the employer of Plan participants.  
4

5           57. By electing to use forfeited funds in the Plan as a substitute for  
6 employer matching contributions to the Plan, and thereby saving the Company  
7 millions of dollars in contribution expenses, Defendants caused the Plan to engage  
8 in transactions that constituted a direct or indirect exchange of existing Plan assets  
9 for future employer contributions and/or a use of Plan assets by or for the benefit of  
10 a party in interest.  
11  
12

13           58. As a result of these prohibited transactions, Defendants caused the Plan  
14 to suffer losses in the amount of the Plan assets that were substituted for future  
15 employer contributions and the lost investment returns on those assets.  
16

17           59. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make  
18 good to the Plan any losses to the Plan resulting from the prohibited transactions  
19 alleged in this claim, to reverse and/or correct the prohibited transactions, to restore  
20 to the Plan all assets and profits obtained through the use of Plan assets and is subject  
21 to other equitable or remedial relief as appropriate.  
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**FIFTH CLAIM**

**PROHIBITED TRANSACTIONS**

**(29 U.S.C. § 1106(b)(1))**

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5       60. Plaintiff realleges and incorporates herein by reference each and every  
6 allegation contained in the preceding paragraphs of this Complaint as though fully  
7 set forth herein.  
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9       61. 29 U.S.C. § 1106(b) provides that “[a] fiduciary with respect to a plan  
10 shall not,” among other things, “deal with the assets of the plan in his own interest  
11 or for his own account.”  
12

13       62. Defendants violated this prohibition in their management and control  
14 of forfeiture funds in the Plan. By utilizing these Plan assets as a substitute for  
15 employer matching contributions to the Plan, thereby saving the Company millions  
16 of dollars in contribution expenses, Defendants dealt with the assets of the Plan in  
17 their own interest and for their own account.  
18  
19

20       63. As a result of this prohibited conduct, Defendants caused the Plan to  
21 suffer losses in the amount of the Plan assets that were substituted for employer  
22 matching contributions and the lost investment returns on those assets.  
23

24       64. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make  
25 good to the Plan any losses to the Plan resulting from the prohibited conduct alleged  
26 in this claim, to restore to the Plan all assets and profits obtained through the use of  
27  
28

1 Plan assets and is subject to other equitable or remedial relief as appropriate.

2 **SIXTH CLAIM**

3 **FAILURE TO MONITOR FUDICIARIES**

4  
5 65. Plaintiff realleges and incorporates herein by reference each and every  
6 allegation contained in the preceding paragraphs of this Complaint as though fully  
7 set forth herein.  
8

9 66. This claim is asserted against HP only.

10 67. HP oversaw the overall governance of the Plan and had the authority to  
11 delegate fiduciary responsibilities.  
12

13 68. HP created the Committee to assist in the management of the Plan and  
14 delegated to the Committee the authority and discretion to direct the trustee with  
15 respect to the crediting and distribution of the Plan assets.  
16

17 69. A monitoring fiduciary must ensure that the person to whom it  
18 delegated fiduciary duties is performing its fiduciary obligations and must take  
19 prompt and effective action to protect the plan and participants when the delegate  
20 fails to properly discharge its duties. To the extent any of the fiduciary  
21 responsibilities of HP were delegated to another fiduciary, the Company's  
22 monitoring duties included an obligation to ensure that any delegated tasks or  
23 responsibilities were being performed in accordance with ERISA's fiduciary  
24 standards.  
25  
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28



- 1 • order Defendants to provide all accounting necessary to determine the
- 2 amounts Defendants must make good to the Plan under 29 U.S.C. §
- 3 1109(a);
- 4
- 5 • remove the fiduciaries who have breached their fiduciary duties and enjoin
- 6 them from future ERISA violations;
- 7
- 8 • surcharge against Defendants and in favor of the Plan all amounts involved
- 9 in any transactions which such accounting reveals were improper,
- 10 excessive and/or in violation of ERISA;
- 11
- 12 • certify the class, appoint Plaintiff as a class representative, and appoint
- 13 Hayes Pawlenko LLP as class counsel;
- 14
- 15 • award to Plaintiff and the class their attorneys' fees and costs under 29
- 16 U.S.C. § 1132(g)(1) and the common fund doctrine;
- 17
- 18 • order the payment of interest to the extent it is allowed by law; and
- 19 • grant other equitable or remedial relief as the Court deems appropriate.

20 **DEMAND FOR JURY TRIAL**

21  
22 Plaintiff hereby demands trial of these claims by jury to the extent authorized  
23 by law.

24  
25 DATED: November 14, 2023

HAYES PAWLENKO LLP

26 By: /s/Kye D. Pawlenko  
27 Attorneys for Plaintiffs

28  
CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL