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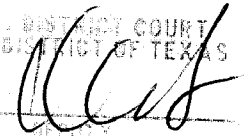
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY



MARC ABRAMS, on behalf of himself and
all others similarly situated,

Plaintiffs,

vs.

DELL INC., KEVIN B. ROLLINS
and, JAMES M SCHNEIDER,

Defendants.

Case No. A-06-CA-726-SS

....

UNION ASSET MANAGEMENT
HOLDING AG, On Behalf of itself and
All Others Similarly Situated,

Plaintiff,

vs.

DELL INC., MICHAEL DELL, KEVIN
B. ROLLINS, JAMES M SCHNEIDER,
AND PRICEWATERHOUSECOOPERS LLP

Defendants.

CLASS ACTION

AMENDED COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

DEMAND FOR JURY TRIAL

TO: THE HONORABLE SAM SPARKS, JUDGE OF SAID COURT:

Pursuant to the Court's November 16, 2006, Order, Plaintiff Union Asset Management Holding AG ("Plaintiff"), on behalf of itself and all other similarly situated, files this Amended Complaint for violation of the federal securities laws identified herein.

STATEMENT OF THE CASE

1. This is a shareholder securities fraud class action on behalf of the purchasers of publicly traded securities of Dell Inc. ("Dell" or the "Company") during the period from February 13, 2003 through September 8, 2006, inclusive (the "Class Period") against Dell, Michael S. Dell ("M.Dell"), Dell's founder and Chairman, Kevin B. Rollins ("Rollins"), Dell's President and Chief Executive Officer, James M. Schneider ("Schneider"), Dell's former Chief Financial Officer (collectively M. Dell, Rollins, and Schneider are hereinafter referred to as "Individual Defendants"), and Pricewaterhouse Coopers ("PWC"), Dell's outside auditor, for violations of §§10(b), 20(a) and 20A of the Securities Exchange Act of 1934 ("1934 Act") and Securities and Exchange Commission ("SEC") Rule 10b-5 promulgated thereunder.

2. In essence, Defendants' materially false and misleading statements about Dell's financial condition were designed to artificially inflate the Company's stock price by assuring the investing public that: (1) Dell's "unique" business model was robust; (2) its market share, sales revenue and earnings were expanding; and (3) the Company's gross profit margins were not diminishing. The Dell Defendants' primary motivation for this scheme was to inflate Dell's stock price so they could reap *billions* of dollars selling their Dell stock, while earning *tens of millions* of dollars in bonus cash compensation and additional stock option grants.

3. To continue the increasing trend in Dell's stock price as a growth company it was critical that Defendants assured the investing public that Dell had steadily and consistently increased earnings growth, through profitable revenue expansion, at rates greater than the overall economy and Dell's competitors. In January 2004, Defendants told investors that Dell's revenues would double to \$60 billion by the end of 2006, claiming that this would be achieved through 15% annual sales revenue increases.

4. Unbeknownst to investors, in August 2005 the Securities and Exchange Commission ("SEC") began investigating the Company's accounting practices. In light of those investigations, in mid 2005 Defendants had begun to condition the market for bad news by reducing Dell's revenue and earnings projections because the Company would no longer be able to utilize Defendants' accounting fraud to smooth its financial results. In response to this news, and each subsequent announcement of missed revenue and earnings targets and reduced earnings expectations, Dell's stock price continued to decline late in the Class Period.

5. On August 17, 2006 Dell first revealed the SEC's ongoing investigation into the Company's accounting practices that had begun *a year prior* and announced another quarter of disappointing financial results, missing its own earnings projections by \$.10 per share, nearly 30%. Dell's disclosures reflect that the Company's reported profits had fallen nearly 51% from the same financial quarter a year prior. At this time, incredibly, Defendant Rollins told investors that there "was really no reason" to disclose the investigation earlier. Dell's stock price declined 9%, to a low of \$20.65 on August 18, 2006, in response to the Company's announcement.

6. Dell delayed providing additional information to investors about these critical matters until September 11, 2006, when the Company announced that the U.S. Attorney's Office for the Southern District of New York had served a subpoena requesting documents concerning Dell's "accounting and financial reporting between 2002 and 2006." Dell stated that the Company would not be able to file its second quarter 2006 financial report because of questions raised in connection with the SEC's investigation.

7. After hours on November 15, 2006, Dell announced that the SEC had upgraded its investigation into the Company's revenue and other accounting practices to "formal" status

and that it was delaying disclosure of its preliminary financial results for the third fiscal quarter of 2006 due to “the level of complexity the company is facing in the preparation of” those results. Dell explained that the “complexity arises out of the ongoing investigations by the Securities and Exchange Commission (SEC) and the company's Audit Committee into certain accounting and financial reporting matters, and the fact the company has not filed its Form 10-Q for the second fiscal quarter.”

8. A *BusinessWeek* news article published on November 19, 2006, characterized Dell's November 15 announcement as a “double-barrel surprise” to Wall Street. “It postponed the release of its financial results until the end of this month and disclosed that it's now under a formal probe by the Securities & Exchange Commission.” The article continued in part:

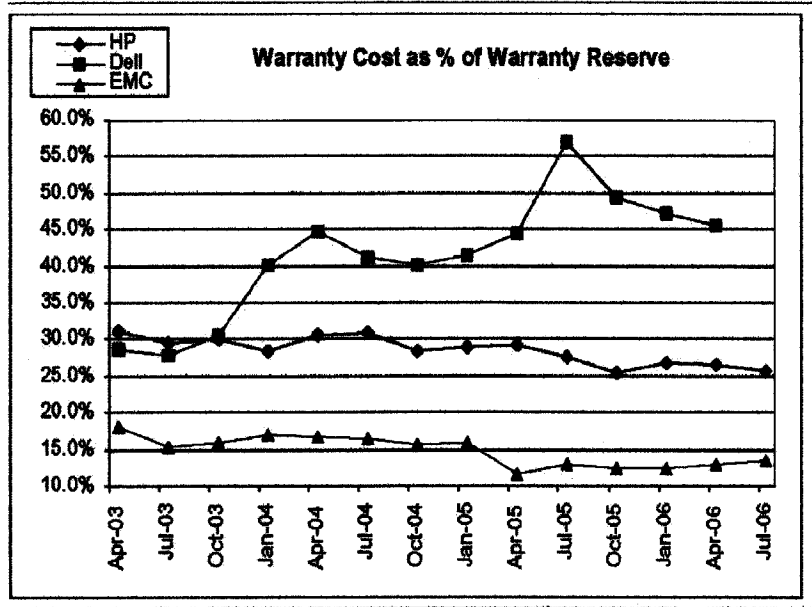
Indeed, the SEC's decision to upgrade its probe of Dell's books to a formal investigation suggests the agency may be unsatisfied with the level of disclosure from the company. Often, the SEC declares a formal investigation because this gives it the right to issue subpoenas.

9. Some light was finally shed on the nature of Defendants' accounting fraud when, on December 1, 2006, securities analyst Freidman Billings Ramsey & Co. Inc. (“FBR”) issued a report asserting that Dell had been improperly manipulating its earnings and financial reporting by under-accruing for warranty repair expenses.¹ FBR identified “at least three troubling conclusions” and summarized them as follows:

First, it appears that *Dell regularly uses warranty accruals to materially manage margins and earnings*, rendering the reported results less useful for gauging actual margin trends. Second, as of the last quarter for which a 10-Q is available, the cost of actual claims as a percentage of product sales was rising steadily - up 30% [year-over-year] in [fiscal 2006], reducing cash gross margins by 60 [basis points] - and costs may be heading higher. Third, *Dell's warranty disclosure is unusual, possibly unique, making it difficult to identify Dell's warranty accruals using only Dell's SEC filings. For this reason, we believe this information is not in the consensus, and that restatements of earnings may be coming* if this turns out to be one of the issues currently under SEC investigation.

¹ The FBR report is set forth in its entirety in Appendix 1, and incorporated herein.

10. FBR found this manipulation to be “a strong indicator of earnings management,” ultimately determining that Dell’s per-share earnings had been “over-stated...in five of the last 12 quarters.” FBR’s report commented on the fact that, although Dell’s disclosed rate of warranty claims had remained stable, Dell’s accrual rate for the associated expenses tended to vary widely. FBR demonstrated this in a chart comparing Dell’s warranty accruals with those of the EMC and HP corporations:



Source: Company documents and FBR Research

11. Earnings smoothing involves the deliberate manipulation of financial results through various improper accounting techniques across different financial reporting periods. It is intended to demonstrate the appearance of steady financial metrics, such as earnings growth, consistent with management’s and analyst’s expectations. The appearance of consistent earnings growth gives investors confidence in management’s predictions and disclosures about the likelihood of future earnings growth, and investors are therefore willing to pay a higher price for the company’s stock, thereby inflating the stock price.

12. Putting a finer point on the issue, FBR commented:

- When the accrual rates do not follow the claims rates, and specifically if a company significantly under-funds its warranty reserve, *the company is really just sandbagging the estimated warranty expense, which is equivalent to overstating gross margins*. If the company continues to overstate gross margin in this matter for a sustained number of quarters, claims costs will increasingly represent a larger portion of the reserve, which is what has been happening at Dell since [the third quarter of 2003].
- [T]he overall trend since CY3Q03 has been toward under-accrual, and thus overstatement of gross margins. This is clearly evident when measuring actual warranty costs against the "warranty reserve," (the net balance of outstanding cumulative warranty accruals), where Dell's claim costs in F1Q07 were running at 46% of the warranty reserve.
- We believe EMC, whose customers are almost exclusively corporate, is actually a better comparable for Dell than HP. With claims at 13% of its reserve, EMC is essentially "reserved" for about 23 months of warranty expense, while Dell, at 46%, is "reserved" for about 6.5 months.
- The warranty accrual balance is a GAAP-mandated measure of warranty costs, governed by FASB Interpretation 45, designed to match the costs associated with warranty service against the revenue from the warranty that is recognized at the time of product sale.
- Because a rising warranty claims rate indicates deteriorating product quality, and because accruals for these rising cash costs should result in reduced reported gross margin each quarter, we consider Dell's warranty claims rate to be a critical metric to monitor moving forward.
- *Dell's warranty disclosure hides all this stuff - it is not in the consensus.*

(Emphasis added).

13. The FBR report further observed that Dell obfuscated the issue through its "unusual" approach to disclosing its warranty costs, "making it very difficult to identify Dell's warranty accruals at all using only Dell's SEC filings." According to FBR, Dell lumped together into a single disclosure, its entire expense accrual for both standard and extended warranties even though they require different accounting treatment. FBR's report has significant credibility in light of the fact that FBR serves as a market maker for Dell's stock on the NASDAQ, the securities exchange on which Dell's stock trades.

14. Moreover, Defendants' Class Period representations concerning the amount of Dells' warranty expense accrual liabilities and its aggregate warranty life all were also materially false and misleading. As demonstrated in the FBR analysis, Dell was experiencing standard warranty expenses that were utilizing between 30% to as much as 55% of the reserve, which, based on industry practice, should have been in the 15% to 20% utilization range. The 15% to 20% utilization range is a function of the months of anticipated warranty cost that Dell has set aside funds, or "reserved" for. Since Dell disclosed that its aggregate warranty life is 20 months, Dell should have reserved twenty months of anticipated warranty expenses. In fact, however, Dell only "reserved" for about 6.5 months of warranty expense.

15. Finally, on January 25, 2007 Dell announced that NASDAQ's Listing Qualifications Panel would continue to list Dell's stock on that exchange if the Company provided the panel "with certain information regarding the previously announced Audit Committee investigation by March 1, 2007, and file its delinquent periodic reports, along with any required restatements of prior financial statements, by March 14, 2007." Although Dell stated that it would be "able to provide NASDAQ with the requested information by the March 1 deadline," the Company did not expect that it would be able to "file the delinquent [quarterly and restated financial] reports with the SEC" by March 14.

16. While the Defendants were engaging in accounting chicanery in order to portray Dell as a profitable growth vehicle to the investment community, the Individual Defendants, while in possession of adverse non-public information, took advantage of the artificially inflated price of Dell stock to engage in massive insider selling during the Class Period. The three Individual Defendants, *alone*, collectively sold almost *90 million shares* of their personal holdings of Dell stock reaping proceeds of almost *\$3 billion*. These Individual Defendants also

collectively received \$18 million in cash bonus compensation for fiscal years 2003 – 2006 based on “overall company and business performance, as well as . . . customer satisfaction.” In addition, other non-defendant, senior Dell officers and directors collectively sold over 10 million shares of Dell stock during the Class Period reaping proceeds of over \$385 million.

17. It also appears that defendant M. Dell received back dated or spring loaded stock option grants on August 9, 1996. On that date, M. Dell received 9.6 million stock option grants at “fair market value.” Three days later, on August 12, 1996, Dell “reported earnings per share 35% above consensus expectations driven by a surge in gross margins.” Based on testimony by Lynn Turner (former Chief Accountant for the SEC) before the U.S. Senate Committee on Banking, Housing and Urban Affairs Hearings on September 6, 2006, M. Dell’s receipt of 9.6 million stock option grants three days prior to Dell exceeding analyst earnings estimates, by 35%, appears to demonstrate classic spring loading:

Let’s say a government contractor receives notice from the government that it has been awarded a profitable contract. The company’s stock is trading at \$15 before news of the new contract is disclosed to the investors. Three days later, upon the announcement and disclosure of the contract, the company’s stock price increases to \$20. But before the disclosure is made, while the stock is still trading at \$15, a grant of options to the top executives is made with an exercise price of \$15. In essence, the options have been “spring-loaded” to the tune of \$5.

There are a few key points I want to highlight with respect to this spring-loading example. First the options were not granted at the fair value of the underlying stock. It is clear if the market had the information on the date of the grant with respect to the new contract, the stock would have traded higher. Second, if properly valued using all the available information at the time of the option grant, the grant would have resulted in a benefit to the recipient, as it was granted in-the-money, not at the market price. And finally, generally accepted accounting principles (GAAP) would require the value of such in-the-money options to be expensed under the old accounting rule, Accounting Principles Board Opinion No. 25, or the new accounting rule, FASB statement No. 123R.

No, some would lead you to believe that granting such “in the money” options, or spring-loading, is not a bad thing, not illegal. I beg to differ.

18. In fact, a former Dell employee in the accounting department indicated that one of the areas being investigated internally by the Company was the back dating of options. The former employee also confirmed that the SEC was investigating how the accounting for revenues and costs related to warranties was handled. Finally, a number of mid-level former Dell employees, including employees in Dell's accounting department, did not learn about the SEC investigation until the Fall of 2006 when the SEC began taking documents and removing computers. Defendants concealed the SEC investigation from their own employees.

19. Defendant PWC, Dell's longtime auditors, certified that Dell's financial statements during the Class Period were prepared in accordance with Generally Accepted Accounting Practices ("GAAP") when in fact they were not. While the massive accounting fraud was taking place at Dell, PWC received \$36.5 million in compensation for their purported auditing and other services. PWC assisted Dell and the Individual Defendants in perpetrating their fraudulent scheme, violating 8 of the 10 standards of Generally Accepted Auditing Standards ("GAAS"), including lacking independence in performing Dell's auditing services. Indeed, on numerous occasions PWC has been accused of violating its own professional standards, including those relating to its independence, even after having been sanctioned by the SEC. PWC's Austin, Texas, office in particular (the office that had primary responsibility for Dell's audit), previously has been subject to legal action for their failure to comply with GAAS and standards of independence.

JURISDICTION AND VENUE

20. The claims asserted herein arise under and pursuant to §§ 10(b), 20(a) and 20(A) of the 1934 Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. §240.10b-5. This Court has jurisdiction over the subject matter of this action

pursuant to 28 U.S.C. §§1331 and 1367 and §27 of the 1934 Act, 15 U.S.C. §78aa. Venue is proper pursuant to §27 of the 1934 Act and 28 U.S.C. § 1391(b). Dell was headquartered in this District during the Class Period and many of the alleged false and misleading statements were made in and/or distributed from this District.

THE PARTIES

21. Plaintiff Union Asset Management Holding AG (“Plaintiff”), one of Europe’s largest investment fund management companies, purchased a total of 3,228,000 shares of Dell common stock at artificially inflated prices due to Defendants’ fraud during the Class Period for account of the funds listed in Schedule A (the “Funds”) to the attached Certification, suffering massive losses as a result.² Plaintiff is an adequate and typical plaintiff pursuant to the provisions of the Private Securities Litigation Reform Act of 1995 (“PSLRA”).

22. Defendant Dell Inc. (“Dell” or the “Company”) is a Delaware corporation with its principal place of business at One Dell Way, Round Rock, Texas, 78682. According to the Company’s 2006 Form 10-K filed with the SEC on March 15, 2006, Dell is a “premier provider” of information technology products and services:

Dell offers a broad range of product categories, including desktop computer systems, mobility products, software and peripherals, servers and networking products, enhanced services, and storage products. During calendar 2005, Dell was the number one supplier of personal computer systems worldwide as well as in the United States.

23. Defendant Michael Dell (“M. Dell”), Dell’s founder, served as Dell’s Chief Executive Officer and its Chairman during the Class Period. During the Class Period Defendant M. Dell was a signatory to Dell’s Form 10-K for the periods ending 01/31/2003, 01/30/2004, 01/28/2005, and 02/03/2006. Defendant M. Dell also certified Dell’s financial condition and

² Plaintiff’s original Certification and Schedule A, as well as a copy of its Supplemental Declaration discussing its commitment to this litigation, is provided at Appendix 2 and

internal controls over financial reporting in Dell's Form 10-Ks for the periods ending 01/31/2003 and 01/30/2004, and Form 10-Qs for the periods ending 05/02/2003, 08/01/2003, 10/31/2003 and 04/30/2004.

24. Defendant Kevin B. Rollins ("Rollins") served as Dell's President and Chief Operating Officer, Chief Executive Officer, and a director during the Class Period. During the Class Period Defendant Rollins was a signatory to Dell's Form 10-K for the periods ending 01/28/2005 and 02/03/2006. Defendant Rollins also certified Dell's financial condition and internal controls over financial reporting in Dell's Form 10-K for the periods ending 01/28/2005 and 02/03/2006, and Form 10-Q for the periods ending 07/30/2004, 10/29/2004, 04/29/2005, 07/29/2005, 10/28/2005, and 05/05/2006.

25. Defendant James M. Schneider ("Schneider") served as Dell's Senior Vice President and Chief Financial Officer during the Class Period and until his December 19, 2006 resignation. During the Class Period Defendant Schneider was a signatory to Dell's 10-K for the periods ending 01/31/2003, 01/30/2004, 01/28/2005, and 02/03/2006. Defendant Schneider also certified Dell's financial condition and internal controls over financial reporting in Dell's Form 10-Ks for the periods ending 01/31/2003, 01/30/2004, 01/28/2005 and 02/03/2006, and Form 10-Qs for the periods ending 05/02/2003, 08/01/2003, 10/31/2003, 04/30/2004, 07/30/2004, 10/29/2004, 04/29/2005, 07/29/2005, 10/28/2005 and 05/05/2006.

CLASS ACTION ALLEGATIONS & CLAIMS

26. Plaintiff brings this action as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of a Class consisting of purchasers of Dell's publicly-traded securities during the Class Period who were damaged by Defendants' fraud (the "Class"). Excluded from the Class are Defendants, the officers and directors of Dell, members of their immediate families

incorporated herein.

and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

27. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Through the Class Period, Dell's common stock was actively traded on the NASDAQ. Dell had more than 2.3 billion shares of stock outstanding. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands, if not tens of thousands, of members in the proposed Class.

28. Plaintiff's claims are typical of the claims of the members of the Class because all members of the Class were similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

29. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained legal counsel experienced in class action securities litigation.

30. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether the federal securities laws were violated by Defendants' acts as alleged herein;
- (b) Whether Defendants omitted and/or misrepresented material facts;
- (c) Whether Defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether Defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) Whether the prices of Dell's publicly traded securities were artificially inflated; and
- (f) To what extent members of the Class have sustained damages and the proper measure of damages.

31. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

DEFENDANTS' ACCOUNTING FRAUD SCHEME

32. Throughout the Class Period Defendants concealed Dell's true financial condition, smoothing the Company's reported operating results by falsely inflating Dell's reported gross margin, net income and earnings per share. Defendants also made materially false and misleading statements about other matters related to these critical metrics. To accomplish this, Defendants engaged in accounting fraud, violating Generally Accepted Accounting Principles ("GAAP"), to manipulate Dell's standard warranty liability accrual and related warranty expenses.

33. Defendants obscured Dell's true standard warranty liability and related expense accrual to conceal their illegal activities from the investing public. Defendants also made materially false and misleading statements about a variety of matters that impacted upon investors' perception of Dell's ability to deliver improving gross margins and earnings growth and the reasons for those improvements; namely, the efficiency in Dell's business model and its greatly expanding revenue through sales efforts. However, the true reason Defendants were able to report improvement in Dell's gross margins, net income and earnings, was because Defendants had engaged in accounting fraud related to its accrual for warranty expenses, among other things. In essence, Defendants created a "cookie jar" from which to take or add funds to

adjust the Company's gross margins, net income and to manipulate or smooth out Dell's earnings.

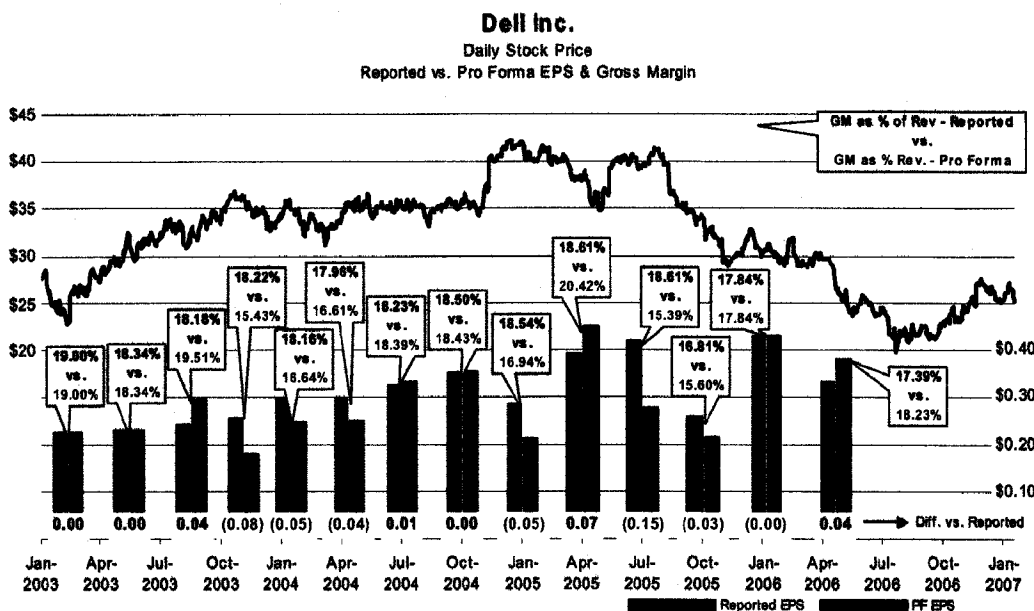
34. In financial reporting periods where management has more income than it needs to achieve the desired net income or earnings result, it parks the excess funds in a "cookie jar" for use in future financial reporting periods. A "cookie jar" is a liability account on the balance sheet that management can manipulate without alerting investors where the expense is coming from or going to. Thus, in a reporting period where the company's true financial condition will not produce the desired net income or earnings result, management reallocates the expense to the "cookie jar" to produce the desired financial results. Such conduct is deliberately misleading to investors; it misstates the true financial condition of the company at the time of the disclosure.

35. Defendants accomplished this by creating a cookie jar from Dell's warranty liability by understating the liability and masking that understatement. Since Dell may not actually incur costs to service a particular warranty until a future reporting period, the estimated warranty expense goes into a "warranty reserve" on the balance sheet. Then, when Dell actually incurs costs in honoring the warranty, the actual warranty costs are recorded in the reserve. Conversely, each quarter Dell was required to record an accrual to the reserve corresponding to its expected warranty liability. This accrual and withdrawals from the reserve directly impact Dell's gross margin, and therefore its net income and earnings.

36. Based in part on the FBR analysis, throughout the Class Period Defendants materially understated Dell's standard warranty liability by approximately \$680 million to \$1.8 billion, overstated its net income in five different quarters by as much as \$433 million, and overstated its earnings by as much as \$.15 per share. Dell perpetrated this fraud by manipulating the amount of its standard warranty liability reserve relative to the amount of reserve it should

have accrued in order to cover the warranty expenses incurred over the life of its standard warranty.

37. Defendants not only overstated Dell's earnings per share and gross margin during six Class Period financial quarters, but Defendants also improperly engaged in earnings smoothing, misstating Dell's earnings per share and gross margin in six other financial quarters. This is demonstrated through the comparison of Dell's actual reported earnings per share (grey) to what Dell should have disclosed (blue) had it not manipulated its warranty liability accrual and expenses.³



DEFENDANTS' MATERIALLY FALSE & MISLEADING CLASS PERIOD STATEMENTS

1. Defendants' Material Misstatements About Dell's Financial Statements, Lies About The Company's Accounting Policies, And Related Misrepresentations

38. Defendants issued a series of disclosures throughout the Class Period in press

³ Appendix 3, incorporated herein, provides a comparison of Dell's reported financial results to the pro forma results Defendants should have reported had they not engaged in their accounting fraud.

releases, Form 10-Qs and Form 10-Ks, reporting Dell's financial results, specifically its gross margins, net income, earnings and earnings per share.

39. By manipulating Dell's accrual for the standard warranty, and failing to adequately disclose Dell's standard warranty activity separate and apart from its extended warranty activity, Defendants were able to mask the inadequacy of Dell's warranty accrual for its standard warranty. Defendants' representations concerning the financial results during the Class Period were materially false and misleading because Defendants, in violation of GAAP, improperly reported Dell's standard warranty liability and the related expense. As a result, the Company's reported gross margin, earnings and earnings per share, were materially misrepresented during the Class Period.⁴

40. In addition to the foregoing accounting impropriety, Dell suffered from a serious lack of controls over its financial reporting throughout the Class Period which rendered the Company's financial reporting inherently corrupt, subject to manipulation and unreliable, further making each of Defendants' Class Period statements that Dell's financial results complied with GAAP materially false and misleading.⁵

41. Throughout the Class Period Defendants misrepresented in each of Dell's Form 10-Ks and 10-Qs filed with the SEC that the Company "prepares its financial statements in conformity with generally accepted accounting principles in the U.S." In addition, in each Form

⁴ Appendix 4, incorporated herein, identifies and sets forth Dell's materially false and misleading financial results.

⁵ Appendix 5, incorporated herein, identifies and sets forth each false and misleading statement concerning Dell's accounting related disclosures, including disclosures concerning Dell's warranty accrual policies, aggregate product warranty liability accrual amounts, compliance with GAAP, adequacy of controls over financial reporting, and certifications concerning the accuracy of the financial statements as a whole.

10-Q and 10-K filed with the SEC throughout the Class Period at least two of the three Individual Defendants certified Dell's financial condition and internal controls over financial reporting, disclosing, in relevant part that:

- "Based on my knowledge, this . . . report does not contain any untrue statement of a material fact or omit to state a material fact in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report";
- "Based on my knowledge, the financial statements, and other financial information included in this...report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this...report";
- "All significant deficiencies in the design or operation of internal controls which could adversely affect . . . [Dell's] ability to record, process, summarize and report financial data and have identified for . . . [Dell's] auditors any material weaknesses in internal controls; and
- Any fraud, whether or not material, that involves management or other employees who have a significant role in . . . [Dell's] internal controls. . . ."

42. Contrary to GAAP and SEC requirements, the Dell Defendants either failed to implement and maintain an adequate financial reporting control system, or knowingly and/or recklessly tolerated the failure to use existing controls in a manner that would ensure non compliance with GAAP. Dell's failure to timely file two quarterly SEC Form 10-Qs because of the "possibility of misstatements in prior period financial reports, including issues relating to accruals, reserves and other balance sheet items that may affect the company's previously reported financial results" strongly indicates that Dell did not, in fact, have adequate internal controls over its financial reporting.

2. Defendants' Material Misstatements About The Reasons For Dell's Success

43. Defendants made numerous public statements throughout the Class Period discussing the reasons for Dell's growth, purported improving gross margins, net income,

earnings and earnings per share results, as well as the Company's future profitable growth expectations. Defendants linked these statements to Dell's continuing cost reductions relating to the Company's warranty expenses, among other things, and Dell's unique business model, highlighted by outstanding customer service and product quality. Each such statement is alleged to be materially false and misleading, examples of which are as follows:⁶

- “[W]e expect to significantly reduce our warranty cost, and we intend to use the cost savings the same way this year to fuel share gains, optimize operating income and improve operating income margins.” (Statement by Defendant Rollins during February 13, 2003, earnings conference call);
- Dell improved its “operating margins by 70 basis points. We took our operating expenses down to a record low of 9.9, hit down below 10 percent of revenue, and generated record operating income of \$2.8 billion If you look at the revenue growth here at 14 percent, our EPS was at 23 percent. We drove improvements in operating margins and we said we would gain share.” (Statement by Defendant Schneider during April 03, 2003 Spring Analyst Meeting);
- Dell's Results of Operations discussion in its April 28, 2003, Form 10-K links shareholder value, profitability and growth to the Company's “direct model” which “enables Dell to provide customers with superb value; high-quality, relevant technology; customized systems; superior service and support; and products and services that are easy to buy and use.”;
- Defendant Rollins was quoted in an August 20, 2003, press release stating that:

“The efficiency of the Dell model has enabled us to continually reduce prices and return savings to the customer,” added Mr. Rollins. “Today's announcement is another example of how Dell consistently delivers the products and services that customers need at the best quality and prices in the market. This in turn has driven consistent and leading levels of customer satisfaction across our product lines and has helped deliver shareholder value and company growth.”
- Dell's “Results From Operations” section in its Form 10-Q for the quarter ending August 1, 2003, filed with the SEC on September 15, 2003, linked the Company's improved gross margins and profitability to reduced costs related to, among other things, warranty expenses:

Despite the intensified pricing environment, Dell has outperformed the

⁶ Appendix 6, incorporated herein, identifies and sets forth Defendants' materially false and misleading statements about the purported reasons for Dell's success.

market by increasing year-over-year market share while improving operating profitability. . . .

As part of management's focus on improving margins, Dell remains committed to reducing costs through four primary cost reduction initiatives: manufacturing costs, warranty costs, structural or design costs, and overhead or operating expenses. . . .

- On February 12, 2004, Dell issued a press release, titled "Dell Posts Record Operating Results in Fiscal Fourth Quarter." Explaining the Company's "Record Operating Results," for the fourth quarter of 2004, Defendant Rollins stated:

Dell is alone in simultaneously providing customers great value, growing faster than the industry and earning a compelling profit for investors. . . . Doing that requires a high-quality, low-cost business model and great discipline. We have both. . . . Much of the industry's quarterly growth was at the low ends of the desktop and notebook categories, which offer little if any profitability. Dell met its operating targets by pursuing profitable growth.

Defendant Rollins also touted the quality of Dell's products and customer service, linking those issues to Dell's financial results:

Dell is alone in simultaneously providing customers great value, growing faster than the industry and earning a compelling profit for investors," said Kevin Rollins, the company's president and chief operating officer. "Doing that requires a high-quality, low-cost business model and great discipline. We have both.

- Describing the Company's "\$80-Billion Revenue Goal" and expectation to "to reach that level within three to four years," Defendant Rollins stated: "Our growth and profitability are based on a disciplined approach to defining new product and service categories, accelerating growth in existing businesses, and extending the value we create for customers in all of those areas." (Statement of Defendant Rollins in April 6, 2005, press release);
- During an August 11, 2005, earnings conference call discussing Dell's financial results for the second fiscal quarter of 2006, Defendant Rollins stated, among other things:

[W]e intend to drive balanced growth but with more discipline around average selling prices, and a heightened focus on cost reduction opportunities such as warranty costs, structural materials, infrastructure cost and sales efficiency. This strategy has proven itself in the past and is the right one for the current industry dynamics. . . .

- Responding to a question from a securities analyst concerning Dell's operating costs during a November 10, 2005, earnings conference call, Defendant M. Dell stated:

I think that with the growth that we're going to experience this coming quarter, the actions that we've already taken we think are going to be very helpful in driving efficiency. If you are looking at the P&L, you can see that our margins actually were enhanced, gross margins, so we're in very good shape with the efficiencies of our overall business model, supply chain and manufacturing model, our OpEx was creeping up faster than we want -- wanted and so we've taken some actions and I think you'll see us continue to -- to hold pretty tightly to control of those costs in the future and with the growth that we anticipate, even with the guidance we've given, we think that we can manage those costs back into shape.

44. Each of Defendants' public statements throughout the Class Period reporting and discussing the reasons for Dell's purported improving gross margins, net income, earnings and earnings per share results, as well as the Company's future profitable growth expectations, were materially false and misleading because Defendants, in violation of GAAP, improperly reported Dell's standard warranty liability accrual and related expenses, manipulated the reserve figures from such warranty accrual, and failed to disclose this to investors.

45. Each of Defendants' public statements throughout the Class Period touting Dell's unique business model, customer service and product quality as the reasons for Dell's profitable growth also were materially false and misleading because, in fact, Dell was experiencing customer service problems and deteriorating product quality due to its efforts to cut costs.

46. For example, on October 31, 2005, Dell announced a \$450 million estimated charge relating to the "cost of servicing systems that included a vendor part that failed to perform. . . ." Defendants portrayed this mishap as a one-time non-recurring charge.

47. Then, during an earnings conference call on May 18, 2006, Defendant Rollins linked the Company's declining revenues to, among other things, customer service issues, announcing that the Company had "ceded ground on customer service and support."

Consequently, Rollins said that "this year we expect to spend over \$100 million to regain our leadership position" and to "rebuild[] our model, leveraging the fundamental and unique elements that are extendable. . . . To help us get there, we hired over 2000 new sales and support personnel in the U.S., and we're enhancing the training of over 5000 support personnel globally." Just a few months later, Dell announced that would raise the amount of its customer service investment to \$150 million.

48. On August 14, 2006, Dell subsequently announced the largest-ever electronics recall, involving a total of 4.2 million Dell-branded lithium-ion batteries included with the Company's notebook computers sold between April 1, 2004, and July 18, 2006. The recall was expected to cost Dell between \$200 to 400 million. According to a U.S. Consumer Product Safety Commission ("CPSC") press release issued the same day, "Dell ha[d] received six reports of [these] batteries overheating, resulting in property damage to furniture and personal effects." In fact, it has been reported in the press that Dell was aware of the problem with the batteries as far back as 2003-2004.

49. A November 28, 2006, Forbes.com article titled "Dell's A Pig In A Poke," commented on Dell's "massive" \$150 million investment to remedy its customer service problems. The article opined that "[c]onsidering the basics of [Dell's] business proposition, massive investment in 'customer experience' should never have become necessary."

50. As the FBR analyst report noted on December 1, 2006, "Dell is also now forecasting heavy and ongoing warranty/service investments during the current quarter and next year, saying that the often discussed \$150 million in services investment will actually be heavily back-end loaded into F4Q07, and that similar investments will be ongoing in FY08." The fact that Dell needed to make such extensive warranty/service investments (indeed another \$50 million

worth between May and December 2006) reflects that Dell's customer service and product quality were not as represented and were not reasons for Dell's profitable growth. According to the FBR report, Dell's:

rising warranty claims rate indicates deteriorating product quality. . . . [W]e note that investors should not overlook "charges" taken during a quarter for warranty-related issues, such as the \$307 million charge taken in F3Q06. This charge was taken to increase Dell's allowance for warranty claims related to a bad part in Dell's Optiplex PC line, and the effect was to partially refill Dell's depleted warranty reserve. While Dell succeeded in getting the Street to back this charge out of consensus non-GAAP estimates, the fact is that it equates to a cost of goods sold for Dell, which was understated when Dell took poor quality parts without reserving (expensing) enough warranty cost for them. In effect, Dell gross margins got the benefit of using cheap parts, without suffering from the increased repair costs that resulted.

(Emphasis added). As a result of these matters, Defendants also violated Item 303 of SEC Regulation S-K, 17 C.F.R. 229.303, requiring Dell to disclose any known trends in Item 7 of Form 10-K, and Item 2 of Form 10-Q.

PROXIMATE LOSS CAUSATION/ECONOMIC LOSS

51. Defendants' various Class Period misrepresentations presented a misleading picture of Dell's financial condition. This, in turn, artificially inflated Dell's stock price throughout the Class Period and maintained that artificial inflation, reaching as high as \$42 per share in December 2004. Until Defendants scheme came under scrutiny, the truth about the Company's true financial condition materialized in Dell's earnings shortfall. Dell's lower gross margin, net income and earnings shortfalls resulted from Defendants' inability to continue their fraud because of the ongoing SEC investigation. These shortfalls were a signal to the marketplace that Dell had been less than forthcoming about its true financial condition.

52. After the close of the market on October 31, 2005, Dell announced that it would miss its third quarter revenue projections and would produce earnings at the "low end of the

range" of its prior guidance. Dell also announced a \$450 million estimated charge relating to the "cost of servicing systems that included a vendor part that failed to perform. . . ." In response to the news, Dell's stock price dropped \$2.64 per share the next day, November 1, 2006, on near record trading volume of 105 million shares.

53. After the market closed on February 16, 2006, Dell disclosed a sharp decline in its profit margins and disappointing revenue growth, lowering its earnings guidance for fiscal 2007. Dell's stock price declined roughly \$2.15 or 6.7% between the Thursday February 16 close of \$31.96 to the Monday February 21 close of \$29.81, on very heavy trading volume.

54. On Friday April 21, 2006, Citigroup downgraded Dell's stock to "sell" status, opining on the Company's declining profit margins and business model. In response, Dell's stock price declined \$1.74 (approximately 4.4%) between the Thursday April 20 close of \$28.21 and the following Monday close of \$26.47.

55. On May 9, 2006, Dell "pre-announced" a short-fall in earnings per share for the first quarter of fiscal 2007, indicating a further decline in its reported profit margins. Dell's stock price fell another \$1.23 or 4.7% from the May 8 close of \$26.43 to the May 9 close of \$25.20. Additional drops in Dell's stock price amounting to about a \$1.20 per share occurred over the next two or three days.

56. On July 21, 2006, Dell disclosed that its second quarter fiscal 2007 earnings would be "between 21 cents and 23 cents per share . . . below the earnings of 32 cents per share analysts had expected." The resulting sell-off of Dell's stock wiped out nearly \$5 billion of Dell's market value in a single day, plunging Dell's stock to its lowest level in nearly five years. Indeed, Dell's stock price fell \$2.19 from its July 20 close of \$22.10 to the July 22 close of \$19.91, roughly a 10% hit on historically high volume. Analysts have referred to Dell's July 21

announcement as a “very material” miss. Indeed, a UBS analyst opined that the “Dell era” was over. The same analyst noted that the Company’s gross margins were “lower than anyone expected.”

57. On August 17, 2006, Dell first announced that the SEC had begun an investigation into the Company’s revenue recognition and other accounting practices beginning in August of 2005. Dell also announced that, in connection with its own internal investigation into these matters, the Company had “discovered information that raises potential issues relating to certain periods prior to fiscal 2006.” Three weeks later, on September 11, 2006, prior to the opening of market trading, Dell announced that the U.S. Attorney’s Office for the Southern District of New York had served Dell with a subpoena requesting documents concerning its “accounting and financial reporting between 2002 and 2006.” Dell also announced that it would not be able to file its second quarter financial report because of questions raised in connection with the SEC’s investigation, which indicated “the possibility of misstatements in prior period financial reports, including issues relating to accruals reserves and other balance sheet items . . .” In response to this news, Dell’s stock price further declined on September 11, 2006, trading below \$21 per share.

58. In sum, as a result of Defendants’ meted-out partial admissions regarding the truth about Dell’s financial condition, and the public revelations about the nature of the governmental investigations, Dell’s stock price declined a total of more than \$21 per share from the Company’s Class Period high stock price of about \$42 per share. Additional declines in Dell’s stock price, and additional resulting losses to Plaintiff and other investors, may arise if and when Dell restates its earnings from prior financial quarters as a result of the various ongoing governmental investigations into Dell’s accounting practices during the Class Period or the NASDAQ de-lists

Dell's stock, causing the market for it to become illiquid and lose value.

59. The declines in Dell's stock price through the end of the Class Period were a direct result of the nature and extent of Defendants' prior misstatements and fraudulent conduct being partially revealed to investors and the market. The timing and magnitude of Dell's stock price declines negate any inference that the losses suffered by Plaintiff and other Class members were caused by changed market conditions, macroeconomic or industry forces or Dell-specific facts unrelated to Defendants' fraudulent conduct as set forth herein. The economic loss, *i.e.*, damages, suffered by Plaintiff and other Class members, was a direct result of Defendants' fraudulent scheme to artificially inflate Dell's stock price and the subsequent significant declines in the value of Dell's stock when Defendants' prior misrepresentations and other fraudulent conduct has been partially revealed.

PWC'S KNOWING OR RECKLESS PARTICIPATION IN THE FRAUD

60. Accompanying and incorporated into each of Dell's Form 10-Ks for fiscal years 2003, 2004, 2005 and 2006 was an unqualified audit opinion by PwC that its audit of Dell was performed in accordance with Generally Accepted Auditing Standards ("GAAS"), as approved and adopted by the American Institute of Public Accountants ("AICPA"), and that Dell's financial statements were presented in conformity with GAAP. Each such unqualified audit opinion was materially false and misleading in violation of § 10(b) of the 1934 Act and Rule 10b(5) promulgated thereunder.⁷

61. GAAS required PWC, when auditing Dell, to, among other things:

- "maintain independence in mental attitude in all matters relating to the audit";

⁷ Appendix 7, incorporated herein, identifies and sets forth the materially false and misleading PWC audit opinions.

- “exercise due professional care in the performance of the audit and the preparation of the report”;
- “obtain a sufficient understanding of [Dell] . . . and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures”;
- “adequately plan the work and must properly supervise any assistants”;
- “obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit”;
- state in its audit report whether Dell’s financial statements were presented in accordance with GAAP;
- identify in its audit report “those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period”; and
- state in its audit report “that informative disclosures are not reasonably adequate” when it so determined.

62. In auditing Dell’s financial statements for fiscal years 2003, 2004, 2005 and 2006, however, PWC repeatedly violated each of these GAAS requirements, thereby violating GAAP. For example, PWC “lacked independence”:

- Given the systemic nature and the extent of Dell’s manipulation of its estimated warranty expense accrual, and the other fraudulent conduct by Dell and the Individual Defendants during the Class Period, PWC must have been aware of the fraud, but nevertheless turned a blind eye to it. PWC therefore could not have been independent.
- PWC has a pervasive firm-wide history of a lack of independence prior to and during the Class Period.⁸
- According to Dell’s Proxy Statements, over the four years covering the Class Period in which PWC served as Dell’s outside auditors, PWC earned almost \$11.3 million, \$10.9 million, \$7 million and \$7.4 million in total fees for the fiscal years 2006, 2005, 2004, and 2003 respectively.

⁸ Appendix 8, incorporated herein, alleges additional facts supporting PWC’s lack of historical independence.

- PWC also earns substantial additional auditing and non-auditing fees relating to services it performs for Dell Financial Services (DFS), as well as Dell's joint venture partner in DFS, CIT Corporation, a former Tyco subsidiary. Pursuant to Section 6.3 of the September 8, 2004, Amended and Restated Agreement of Limited Partnership of Dell Financial Services L.P., between Dell, CIT and certain of their subsidiaries, DFS also utilizes PWC as its "independent auditors." DFS is a joint venture between Dell and CIT, providing consumer purchase financing and leasing, financing, disposition, and recovery systems, for business IT systems. Among other things, prior to its consolidation into Dell's financial statements in late 2003, Dell's relationship with DFS enabled Dell to understate its expenses relating to the risk of credit losses from sales of its computer equipment, thereby causing Dell's gross margins, net income and earnings to be overstated. After DFS' consolidation into Dell's financial statements, Dell continued to be able to mask the effect of such credit losses on Dell's gross margins, net income and earnings because income or losses from DFS were not included in Dell's results from operations.

63. PWC also served as an independent auditor for EMC Corporation, one of Dell's key competitors. EMC, like Dell, reserved for and disclosed in its audited financial statements its warranty expense accrual. In the performance of its auditing services for EMC, PWC would have reviewed EMC's warranty expense estimates and related expense accruals. PWC therefore would have had a basis to compare both the adequacy of Dell's warranty expense estimates and its related accruals, as well as Dell's disclosures concerning these matters. Indeed, according to the securities analyst that lambasted Dell's manipulated warranty expense accruals and lack of transparency regarding the same, the investing public should be comparing Dell's warranty expense accruals to EMC's. So should PWC.

64. As a direct and proximate result of PWC's materially false and misleading statements and other wrongful conduct,⁹ Plaintiff and the other Class members suffered damages in connection with their purchase of Dell's securities during the Class Period.

⁹ Appendix 9, incorporated herein, identifies and sets forth additional violations of GAAP by all the Defendants.

INSIDER TRADING & OTHER INDICIA OF SCIENTER

**The Individual Defendants Benefited From Their Fraud
From Proceeds Due to Massive Insider Trading**

65. The Individual Defendants engaged in their fraudulent scheme to artificially inflate the Company's stock price so they, among other Dell senior officers and directors could cash in on, and maximize the value of, their personal holdings in Dell stock. The Individual Defendants benefited tremendously from this activity as evidenced in the summary chart below.

Defendant	Class Period Shares Sold	Proceeds	% of Holdings Sold
M. Dell	85,138,000	\$2,829,788,560	27.35%
Rollins	2,163,000	\$74,190,052	13.65%
Schneider	1,686,000	\$57,838,518	45.50%
Total	88,987,000	\$2,961,817,129	

66. During the Class Period, non-defendant Dell senior officers and directors also sold a total of 10,625,098 shares of Dell stock for combined proceeds of \$385,783,362.¹⁰

67. Defendants' fraudulent scheme to defraud investors by artificially inflating Dell's stock price is inextricably intertwined with the Individual Defendants' fraudulent practice of insider trading to sell their artificially-inflated Dell stock during the Class Period, giving rise to an exceptionally strong inference that the Defendants' acted with scienter to defraud investors.

**The Individual Defendants Benefited From Their Fraud
Through Tremendous Amounts of Bonus Compensation**

68. Individual Defendants Dell, Rollins, and Schneider earned substantial

¹⁰ Appendix 10, incorporated herein, provides a summary of insider sales by certain non-defendant Dell senior officers and directors. Appendix 11, also incorporated herein, provides a detailed list of sales of Dell stock during the Class Period by each of the Individual Defendants and the non-defendant Dell senior officers and directors.

compensation during the Class Period through their regular salaries and bonuses, as well as stock option grants, all of which were tied to Dell's reported financial performance and motivated the Individual Defendants to engage in their fraudulent scheme.

69. According to Dell's 2006 Proxy Statement on Form 14A, the Company's Annual Bonus Plan, adopted in early 2003 to replace the Company's prior Executive Incentive Bonus Plan, the measure of performance during the Class Period for the award of incentive bonus compensation to the Individual Defendants was based on "overall company and business segment performance, as well as customer satisfaction." Under the Annual Bonus Plan, the Individual Defendants could be awarded an incentive bonus in any fiscal year of up to "0.5% of the Consolidated Net Income for that fiscal year." Thus, Defendants were highly motivated throughout the Class Period to manipulate the Company's overall financial performance, including net income and customer satisfaction, key criteria that were directly affected by Defendants' accounting fraud, particularly Dell's warranty accrual.

70. Pursuant to the Annual Bonus Plan and/or other bonus compensation plans, the Individual Defendants earned tremendous amounts of cash compensation in the form of such bonus compensation. The following chart summarizes the Individual Defendants' Class Period Compensation:

Defendant	Fiscal Year	Salary	Bonus	Salary + Bonus
M. Dell	2003	\$950,000	\$2,479,500	\$3,429,500
	2004	\$950,000	\$2,052,000	\$3,002,000
	2005	\$950,000	\$2,280,000	\$3,230,000
	2006	\$950,000	\$1,805,000	\$2,755,000
Total:		\$3,800,000	\$8,616,500	\$12,416,500
Rollins	2003	\$770,962	\$2,012,210	\$2,783,172
	2004	\$797,115	\$1,721,768	\$2,518,883
	2005	\$869,231	\$2,086,154	\$2,955,385

	2006	\$944,231	\$1,794,039	\$2,738,270
	Total:	\$3,381,539	\$7,614,171	\$10,995,710
Schneider	2003	\$417,692	\$643,507	\$1,061,199
	2004	\$500,000	\$720,000	\$1,220,000
	2005	\$535,385	\$822,351	\$1,357,736
	2006	\$566,539	\$538,211	\$1,104,750
	Total:	\$2,019,616	\$2,724,069	\$4,743,685

71. In early January 2006, shortly before the first adverse information began to trickle out, Dell advanced the vesting of all unvested stock options that were in the money, providing the opportunity for executives and other key employees to cash in while, unbeknownst to the market, Dell's stock price remained artificially inflated. The announcement of the advanced vesting of options furthered the fraud (although not necessarily fraudulent in of itself) because, according to one analyst, it had the effect of providing a one-time artificial boost to Dell's future "earnings by moving [those] expenses to a place (FY06) where investors generally won't see them." The analyst did "not look favorably on this tactic."

APPLICABILITY OF PRESUMPTION OF RELIANCE:
FRAUD-ON-THE-MARKET DOCTRINE

72. At all relevant times, the market for Dell's securities was an efficient market for the following reasons, among others:

- A. Dell's stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- B. As a regulated issuer, Dell filed period public reports with the SEC;
- C. Dell regularly communicated with public investors by established market communication mechanisms, including through regular disseminations of press releases on national circuits of major news wire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- D. Dell was followed by numerous securities analysts employed by major

brokerage firms who wrote reports, which were distributed to the sales force and certain customers of their respective brokerage firms. Each of those reports was publicly available and entered the public marketplace.

73. As a result of the foregoing, the market for Dell's securities promptly digested current information regarding Dell from all publicly available sources and reflected such information in Dell's stock price. Under these circumstances, all purchasers of Dell's securities during the Class Period suffered similar injury through their purchase of Dell's securities at artificially inflated prices and a presumption of reliance applies.

NO SAFE HARBOR EXISTS FOR DEFENDANTS' FALSE STATEMENTS

74. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false and/or misleading statements pleaded in this Complaint. The specific statements pleaded herein either were not identified as "forward-looking statements" when made or were not accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are still liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false and misleading, and/or the forward-looking statement was authorized and/or approved by an executive officer of Dell who knew that those statements were false when made.

COUNT I

**Violation of §10(b) of the 1934 Act and Rule 10b-5 Promulgated Thereunder
(Against All Defendants)**

75. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

76. During the Class Period, Defendants, and each of them, carried out a plan, scheme and course of conduct in violation of §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, that was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (b) artificially inflate and maintain the market price of Dell's securities; and (c) cause Plaintiff and other Class members to purchase Dell's securities at artificially inflated prices and, as a result, suffer economic losses as the truth about Defendants' fraud has been partially revealed. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

77. During the Class Period, Defendants disseminated or approved the false and misleading statements set forth above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose materials facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

78. During the Class Period, Defendants: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and a course of business that operated as a fraud and deceit upon the purchasers of Dell's securities in an effort to maintain artificially high market prices for Dell's securities in violation of §10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder. Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

79. In addition to the duties of full disclosure imposed on Defendants as a result of

their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, Defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X, 17 C.F.R. §§210.01, *et seq.*, and Regulation S-K, 17 C.F.R. §§229.10, *et seq.*, and other SEC regulations, including accurate and truthful information with respect to Dell's operations, financial condition, revenue and earnings so that the market price of Dell's securities would be based on truthful, complete and accurate information.

80. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Dell as specified herein.

81. These Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices and a course of conduct as alleged herein in an effort to assure investors of Dell's value, smooth earnings performance and continued substantial and profitable revenue growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Dell and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices, and a course of business that operated as a fraud and deceit upon the purchasers of Dell's securities during the Class Period.

82. The Individual Defendants' primary liability, and controlling person liability,

arises from the following facts: (a) the Individual Defendants were high-level executives and directors at Dell during the Class Period; (b) the Individual Defendants were privy to and participated in the creation, development and reporting of Dell's financial condition and the Company's revenue, warranty accrual and other critical accounting practices; and (c) the Individual Defendants were aware of Dell's dissemination of information to the investing public that they knew or recklessly disregarded was materially false and misleading.

83. The Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth because they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and omissions were done knowingly or recklessly and for the purpose and effect of concealing from the investing public Dell's true financial condition, profit margins and warranty expense accruals, thereby supporting the artificially inflated price of Dell's securities. As demonstrated by Defendants' own misstatements and omissions regarding these matters throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

84. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Dell's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Dell's publicly traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which these securities trade and/or on the absence of material adverse information that was known to or

recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other Class Members acquired Dell securities during the Class Period at artificially inflated prices and were damaged thereby.

85. At the time of Defendants' misrepresentations and omissions set forth above, Plaintiff and the other Class members were ignorant of their falsity, and believed them to be true. If Plaintiff and the other Class members and the marketplace had known of Dell's true financial condition, net income and accounting improprieties, Plaintiff and the other Class members would not have purchased or otherwise acquired their Dell securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices that they paid.

86. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other Class members suffered damages in connection with their respective purchases and sales of Dell securities during the Class Period.

COUNT II

For Violation of §20(a) of the 1934 Act Against Dell And The Individual Defendants

87. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

88. The Individual Defendants acted as controlling persons of Dell within the meaning of §20(a) of the Exchange Act as alleged herein. Dell controlled all of its employees and each of the Individual Defendants. By virtue of their high-level positions, and their ownership and contractual rights, participation in and awareness of the Company's operations and intimate knowledge of the statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did

influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of Dell's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading before and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

89. In particular, the Individual Defendants had direct and supervisory involvement in the day-to-day operations of Dell and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

90. As set forth above, Dell and the Individual Defendants each violated §10(b) and Rule 10b-5 by their acts and omission as alleged in this Complaint. By virtue of their positions as controlling persons, Dell and the Individual Defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and the other Class members suffered damages in connection with their purchase of Dell's securities during the Class Period.

COUNT III
For Violation of §20A of the 1934 Act
Against The Individual Defendants

91. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

92. By virtue of their positions as the executive officers of Dell and their roles in the fraudulent scheme described herein, the Individual Defendants possessed material non-public information about Dell when they contemporaneously sold millions and millions of shares of

their Dell stock to Plaintiff and other members of the Class in violation of §20A of the 1934 Act.

93. By virtue of either their participation in the scheme to defraud investors or their sales of Dell common stock while in possession of material adverse non-public information about Dell, the Individual Defendants violated §10(b) of the Exchange Act and applicable rules and regulations promulgated thereunder.

90. Notwithstanding their duty to refrain from trading in Dell common stock unless they disclosed the material adverse non-public information about Dell in their possession, and in violation of their fiduciary duties to the Plaintiff and other members of the Class, the Individual Defendants sold in the aggregate billions of dollars worth of Dell common stock during the Class Period contemporaneously with Plaintiff's and other Class members' purchases of Dell common stock.¹¹

91. The Individual Defendants sold their shares of Dell common stock, as alleged above, at market prices artificially inflated by the nondisclosure and/or misrepresentations of material adverse facts in the public statements released during the Class Period.

92. The Individual Defendants knew that they were in possession of material adverse information which was not known to the investing public, including Plaintiff and other members of the Class. Before selling their stock to the public, the Individual Defendants were obligated to disclose the material adverse information to the Plaintiff and other members of the Class.

93. By reason of the foregoing, the Individual Defendants, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of the

¹¹ Appendix 12, incorporated herein, identifies sales of stock by the Individual Defendants' during the Class Period that were contemporaneous with purchases of Dell stock by Plaintiff.

national securities exchanges, employed devices, schemes, and artifices to defraud, and engaged in acts and transactions and a course of business which operated as a fraud or deceit upon members of the investing public who purchased Dell common stock contemporaneously with the sale of such stock by the Individual Defendants.

94. Plaintiff and all other members of the Class who purchased shares of Dell common stock contemporaneously with the Individual Defendants' sales of Dell common stock: (1) have suffered substantial damages because they relied upon the integrity of the market and paid artificially inflated prices for Dell common stock as a result of the violations of §10(b) and Rule 10b-5 alleged herein; and (2) would not have purchased Dell common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements and concealment. At the time of the purchases by Plaintiff and members of the Class the fair and true market price of Dell common stock was substantially less than the prices paid by them.

95. This action was commenced within five years after the sales by the Individual Defendants while in possession of material, non-public information.

96. As a result of the foregoing, Plaintiff and the other members of the Class have suffered substantial damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Designating Plaintiff as the Lead Plaintiff and Class representative pursuant to Rule 23 of the Federal Rules of Civil Procedure, and approving Plaintiff's counsel as lead counsel for the Class;
- C. Awarding compensatory damages in favor of Plaintiff and the other Class

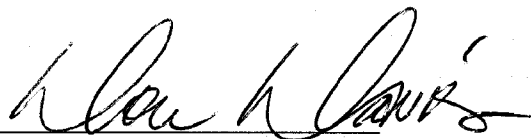
members against Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongful conduct as alleged herein, together with pre-judgment interest;

- D. Awarding Plaintiff and the other Class members their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- E. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands trial by jury.

DATED: January 31, 2007



Don L. Davis, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAW was served upon all counsel of record by telefax, without the appendices, and a second copy served with all attachments as follows on this the 31st day of January, 2007:

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Dated this 31st day of January, 2007



Don L. Davis