**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| SECURITIES AND EXCHANGE COMMISSION,<br>100 F Street N.E. Washington, D.C. 20549<br><br>Plaintiff,<br><br>vs.<br><br>ROBERT W. DAVIS,<br><br>Defendant. | Civil Action No.<br><br>**COMPLAINT**<br><br>**ECF CASE** |
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Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") alleges as follows:

## SUMMARY

1. The SEC brings this action for various accounting violations involving Dell Inc. ("Dell") from 2001 to 2005. Dell's fraudulent and improper accounting during this period wrongfully made it appear that Dell was consistently meeting Wall Street earnings targets and reducing its operating expenses as a percentage of revenue. Dell committed the accounting violations through the conduct of its most senior former accounting executives.

2. Robert W. Davis ("Davis"), one of Dell's most senior former accounting personnel, and others maintained a number of "cookie jar" reserves that they used to cover shortfalls in Dell's operating results from FY02 to FY05. Through this improper accounting, Davis materially misrepresented Dell's financial results. As a result, Dell was forced to restate its financial statements for its fiscal years 2003 through 2006, including the interim periods within those years, and Q1FY07, with a cumulative balance sheet adjustment for periods before fiscal year 2003 (the "Restatement").

3. Davis, by engaging in the conduct alleged below, violated Section 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(2) and (3)], Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2], promulgated thereunder, and aided and abetted Dell's violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B) ], and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13], promulgated thereunder, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)]. Unless restrained and enjoined, Davis will in the future violate such provisions.

## JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

5. Davis, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with acts, practices and courses of business alleged in this Complaint.

Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because, among other reasons, certain of the transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within this District.

## DEFENDANT

6. **Robert W. Davis**, CPA, 51, resides in Laurel Hollow, New York. Davis joined Dell in 1996. In 2001 he was named Vice President of Corporate Planning and Reporting. In November 2002, Davis was named Vice President of Corporate Finance and Chief Accounting Officer ("CAO"), a position he retained until he voluntarily left Dell in February 2005 to become CFO of Computer Associates, Inc. Earlier in his career, Davis, a Certified Public Accountant ("CPA") licensed in Virginia, worked as an auditor at what was then Price Waterhouse from 1980 to 1991, where he rose to the level of senior manager and worked in the SEC Services Department in the firm's national office. Davis holds a bachelor's degree in Commerce and Accounting from the University of Virginia and an MBA from Columbia University. During his time as Vice President of Corporate Planning and Reporting, Davis reviewed certain of Dell's annual reports on Forms 10-K and quarterly reports on Forms 10-Q filed with the Commission. During his time as Chief Accounting Officer, Davis reviewed, approved and signed Dell's annual reports on Forms 10-K and quarterly reports on Forms 10-Q filed with the Commission. He served as a member of Dell's Disclosure Review Committee ("DRC") from November 2002 until February 2005.

## RELEVANT ENTITIES

7. **Dell Inc. ("Dell")** is a Fortune 50 company in the business of providing electronic products, including mobility products, desktop PCs, peripherals, servers, networking equipment, and storage. Dell also offers services, including software, infrastructure technology, consulting and applications, and business process services. Dell was incorporated in Delaware in 1984 and is based in Round Rock, Texas. Since July 2006, Dell's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the NASDAQ Global Select Market. During the prior relevant period, Dell's common stock was registered with the

Commission under Section 12(g) of the Exchange Act and quoted on the Nasdaq National Market System.

8. **PricewaterhouseCoopers LLP ("PWC")** is a national public accounting firm with its headquarters in New York, New York. PWC audited Dell's financial statements throughout the relevant period.

**DELL'S FISCAL YEAR**

9. Dell's fiscal year is the 52 or 53 week period ending on the Friday closest to January 31. Each quarter runs for either 13 or 14 weeks, also ending on Fridays.

**THE ACCOUNTING VIOLATIONS**

10. For approximately four years, from FY02 to FY05, Dell engaged in improper accounting involving "cookie jar" reserves and other manipulations of reserve accounts. As explained more fully below, these manipulations were undertaken to meet consensus earnings targets or to misstate materially other important financial metrics. These manipulations not only materially misstated Dell's financial results, but caused additional material misstatements in Dell's annual and quarterly reports filed with the Commission during the period.

11. Contrary to generally accepted accounting principles ("GAAP"), Dell created and maintained excess accruals in multiple reserve accounts. Dell used the excess accruals in these reserves to offset the financial statement impacts of future expenses. During this period, Davis was actively involved in these manipulations.

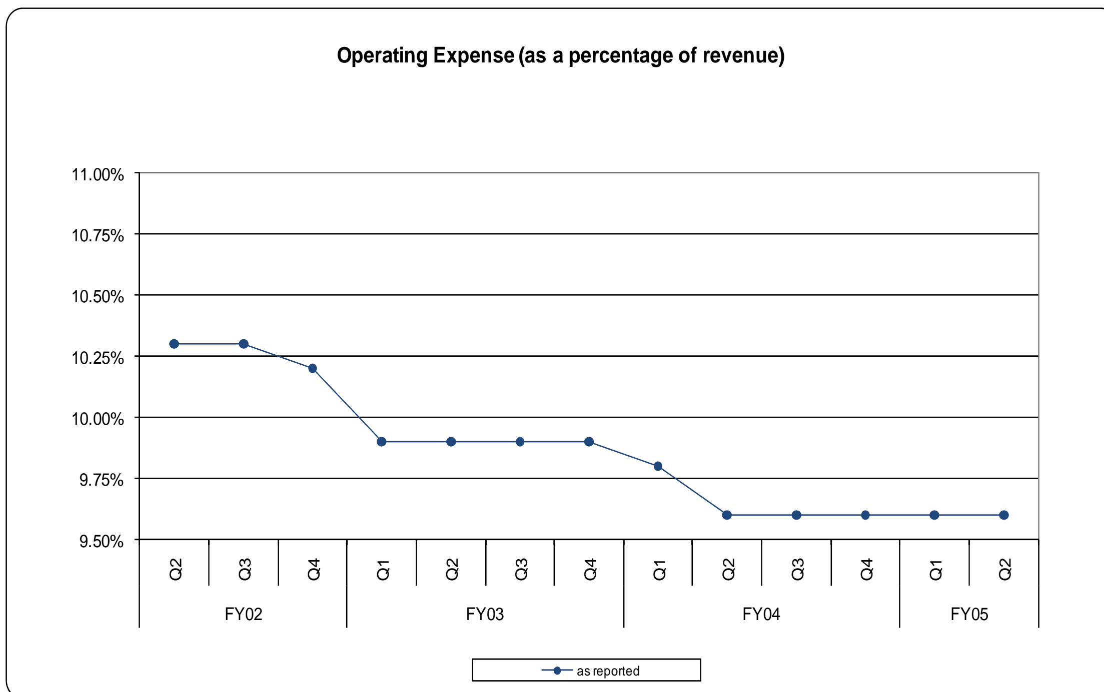
12. As set forth in detail below, Dell manipulated reserves including a) the Strat Fund and other "Corporate Contingencies;" b) accrued relocation accruals; c) a Corporate restructuring reserve; d) several reserves in EMEA, one of Dell's overseas business units; e) bonus and profit-sharing accruals; and f) an under-accrued restructuring Las Cimas reserve.

13. The Financial Accounting Standards Board ("FASB") Statement of Financial

Accounting Standards No. 5, Accounting for Contingencies ("SFAS 5"), and the related interpretations are among the principal GAAP provisions that govern the recognition of loss accruals and reserves. These accounting principles provide, among other things, that a loss accrual should be recognized with a charge to income when a loss is probable and reasonably estimable. The maintenance of reserves for general or unspecified business risks (sometimes called "general reserves" or "cookie jar reserves") is not permitted under GAAP. Further, the accounting principles generally provide, among other things, that any over-accrual of a reserve should be reversed into the income statement as soon as the over-accrual is discovered.

14. The impacts of Dell's reserve manipulations materially misstated Dell's operating results. In certain quarters, the manipulations enabled Dell to meet analyst consensus estimates for earnings per share ("EPS"). The manipulations also enabled Dell to misstate materially the trend and amount of operating income from Q3FY03 through Q1FY05 of its EMEA segment, an important business unit that Dell highlighted. Instead of increasing every quarter from Q2FY03 through Q1FY05, EMEA's operating income varied substantially.

15. The reserve manipulations also allowed Dell materially to misstate its operating expenses ("OpEx") as a percentage of revenue ("OpEx percentage" or "OpEx ratio"), and the quarter to quarter trend in this ratio, for over three years, from about Q2FY02 through about Q2FY05. The OpEx ratio was an important financial metric that the Company itself highlighted. As reported, Dell's OpEx ratio during this period was an artificial and fabricated pattern, as shown below:




In the MD&A of every Form 10-Q from Q1FY03 through Q2FY05, and in other public statements, Dell highlighted each decrease in the ratio as achieving a "record low," and each instance where the ratio remained flat as maintaining or continuing the "record low." Dell attributed such "records" to reported decreases in the ratio of 0.3% in Q1FY03 (from 10.2 % to 9.9%); 0.2% in Q2FY04 (from 9.8% to 9.6%), and just 0.1% in Q1FY04 from (9.9% to 9.8%). Dell attributed achieving or continuing the "record lows" to "cost reduction initiatives" or a "focus on cost controls." In fact, Dell's reported OpEx ratio during this period was impacted by accounting manipulations, and the actual ratio generally varied materially from quarter to quarter during this period.

16. Dell repeatedly told investors and analysts that its business model was superior to its competitors' models. Dell's senior management used the company's ability to meet or exceed analysts' consensus to support this claim.

17. Analyst reports reflect that Dell's apparent ability to consistently meet analysts' consensus for EPS was important to investors. For example, in February 2003, a Goldman Sachs research report stated, "consistency is the hallmark of Dell's financials." In May, 2003, Dell's Head of the Investor Relations department informed Dell senior management, commenting on a prior email from the department forwarding analyst comments for Q1FY04: "The consistency of messaging throughout these notes is at a level I have never seen for any company. While I know at times we grow weary of saying the same thing over and over again, this consistency of message and performance drove analysts to raise price targets absent an increase in estimates. . . ." Dell's CEO replied: "It's a beautiful thing. ☺" In November 2003, Dell's Investor Relations department informed the company's senior management that "there have been no upgrades or downgrades, but [an analyst] reduced his risk rating to medium risk from high risk based on our historical earnings consistency." Also, in February 2005, a Bear Stearns report lauded Dell "as a core holding in any tech portfolio given its consistency in achieving operating targets."

**a. The Strat Fund and Other "Corporate Contingencies"**

18. From about FY02 to FY05, Dell maintained a cookie jar reserve, contrary to GAAP, called the "Strat Fund" (short for "Strategic Fund"). Davis and others in Dell's corporate finance group referred to the Strat Fund and other specified improper cookie jar reserves maintained by Corporate as "contingencies," and they will be referred to herein as "Corporate Contingencies." The Corporate Contingencies consisted of excess, unsupported balances that resided in Corporate accounts, including an "other accrued liabilities" account that Dell personnel sometimes referred to by its number, 24990. The Strat Fund was a "sub-account," or subset, of account 24990. Dell used the Corporate Contingencies primarily to reduce its future operating expenses by releasing these excess accruals to offset unforeseen expenses.

19. Davis planned and issued instructions regarding Dell's build-up and use of the Corporate Contingencies. His accounting decisions and actions concerning the reserves were contrary to GAAP. Davis instructed subordinates that when excess reserves were identified – *e.g.*, previously-reserved amounts no longer needed for *bona fide* liabilities – the subordinates were to check with him about the disposition of the excess reserves instead of releasing them to the income statement. When the excess accruals were significant, Davis often directed the subordinates to transfer them to account 24990. Davis viewed the Corporate Contingencies as a way to offset future liabilities. He substantially participated in the "earmarking" of the excess accruals for various purposes.

20. At Davis's direction, certain of his subordinates tracked the Corporate Contingencies in schedules entitled "Estimated Contingencies in Corporate" (hereinafter "Corporate Contingency Schedules"). Davis asked subordinates to provide him with these schedules at least once per quarter. The improper reserves were reflected in the schedules in a column labeled "Available Balance." The Corporate Contingency Schedules typically reflected total available balances in the range of $20 million to $30 million. The highest available balance was $39 million in June/July 2003. The lowest available balance was $3 million in September 2002.

21. In the 14 quarters from Q1FY02 through Q2FY05, Dell made at least 23 releases from the Strat Fund and other corporate contingencies, 16 of which were recorded after quarters ended, while Dell was in the process of closing its books. In a Restatement filed in October 2007, Dell reversed all Strat Fund activity and all excess balances for the other reserves that appeared on the corporate contingency schedules.

22. An example of how Dell used its Corporate Contingency general reserves to offset unforeseen expenses involved the release of an excess tax reserve from Q4FY03 to offset the impact of a litigation settlement in Q2FY04. At the end of FY03, Dell Japan had a tax reserve of about $17 million that Dell concluded was unnecessary. The tax reserve was referred to as the "Japanese Consumption Tax", or "JCT", reserve. Under GAAP, Dell should have released the entire $17 million excess accrual to its income statement by the end of FY03. Instead, during the FY03 close, Dell released only $5 million of the JCT reserve to income, and transferred about $12 million of the excess accrual to account 24990. The Japanese Consumption Tax reserve was unsupported in Q4FY03 and should have been released by the end of FY03, yet only a portion of it was released, and that the balance was improperly carried over to FY04 and transferred to Corporate.

23. On April 7, 2003, Dell's Assistant Corporate Controller sent Davis an email with the subject line "JCT Reserve Transferred to Corp Books" that stated, "Following up . . . we are carrying a remaining reserve on Corp's balance sheet of roughly $12M." The next day, the Assistant Corporate Controller forwarded the email to Davis with the additional message, "The amount is $12M and it's on [a Corporate Planning Manager's] balance sheet in [account 24990]." On April 16, 2003 (Q1FY04), Davis received an email with the current Corporate Contingency Schedule that listed the $12 million excess Japanese Consumption Tax reserve as an "Available Balance." The excess tax reserve had been added to the Corporate Contingency Schedule as an "Available Balance" at Davis's direction.

24. Towards the end of Q2FY04, Dell agreed to settle litigation (the "Tulip Litigation") at an estimated cost to Dell, net of insurance, of $9.3 million. Dell had not established a reserve for this settlement.

25. On August 1, 2003, Davis received an email with the current Corporate Contingency Schedule. The Japanese Consumption Tax reserve was listed on the schedule in the amount of about $12 million, with about $7 million in the "Required Funds" column and about $5 million in the "Available Balance" column. The "Description" column stated that the $7 million was required to "Cover Tulip Settlement in July." On August 7, 2003, late in the process of closing its books for Q2FY04, Dell deflected the $9.3 million impact of the Tulip Settlement by releasing $7.1 million from the excess Japanese Consumption Tax reserve that had been transferred to the Corporate Contingencies, $700,000 from the Strat Fund, and $1.5 million of excess from an accrued legal services account. On the same day, Dell released the remaining $5 million of the excess Japanese Consumption Tax reserve to provide an additional boost to Dell's operating results.

26. The Japanese Consumption Tax reserve was an excess accrual from a prior period that Dell released in Q2FY04 to offset the impact of the settlement of the Tulip Litigation and otherwise to provide an additional boost to Dell's operating results. On August 8, 2003, Davis received a Corporate Contingency Schedule that was "As of" August 8, 2003. The schedule showed the Japanese Consumption Tax reserve as having been reduced by $12 million with the description, "Cover Tulip Settlement $7m."

**b. Other Cookie Jar Reserves Identified in "R&O Schedules"**

27. In addition to the Strat Fund and the Corporate Contingency Schedules, from time to time, Dell's Corporate Reporting group assembled a list of items that could help or hinder Dell's efforts to meet its financial targets. Corporate Reporting compiled the items in spreadsheets called "Risks and Opportunities Schedules" ("R&O Schedules"). Dell's Assistant Corporate Controller and his subordinates prepared the schedules when Davis asked for them. Like the Corporate Contingency Schedules, the R&O Schedules included excess reserves that Dell was carrying from period to period. Unlike the Corporate Contingency Schedules, which were limited only to Corporate accounts, the R&O Schedules included non-Corporate accounts, such as excess reserves maintained in Dell's business units. One item listed on several R&O Schedules involved accrued relocation accruals.

28. During the Q2FY02 close in August 2001, a payroll and benefits accounting manager informed Dell's Assistant Controller that she had identified excess relocation accruals of $6M. Under GAAP, Dell should have released the $6 million as a reduction of operating expenses in Q2FY02. Instead, the Assistant Controller told Dell's CFO and Davis that he had directed that it be carried into Q3FY02, when he would be working to determine whether that account had even more excess accruals. The R&O Schedule that the Assistant Corporate Controller and his team prepared for Davis in Q3FY02 reflects the $6 million excess accrual as an item available to reduce Dell's operating expenses in that quarter. Dell released the $6 million excess accrual in Q3FY02. In its Restatement, Dell moved the income effect of the release of the excess accrual from Q3FY02 back to Q2FY02.

29. In March 2002 (Q1FY03), the payroll and benefits accounting manager again informed the Assistant Controller that Dell had excess relocation accruals. She told him that she

had identified another $5 million in excess accruals and asked when she should release these excess reserves. The Assistant Corporate Controller responded, "My sense is that it will be okay to reverse the unneeded accrual at EOQ [end of quarter]." This would have been the appropriate treatment of the excess reserve under GAAP. The Assistant Corporate Controller forwarded his response to Davis. On April 11, 2002, Davis asked a Corporate Planning employee how the $5 million in excess accruals had been handled in a recent financial forecasting document. The employee replied that it was not reflected in the document, but that Dell could "flow it through the P&L in Q1 if needed." Dell did not release the excess reserve in Q1 or Q2. The excess accrual ultimately was released in Q3FY03, understating Dell's operating expenses ("OpEx") and overstating its operating income that quarter.

**c. Dell's Improper Establishment and Use of Restructuring Reserves**

30. FASB Emerging Issues Task Force Issue No. 94-3, Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity, (including Certain Costs Incurred in a Restructuring) ("EITF 94-3"), and the related interpretations are among the principal GAAP provisions that relate to accounting and disclosure of certain costs and liabilities for restructuring activities, which include such things as involuntary employee terminations, contract terminations, and efforts to consolidate or close facilities. These principles allow companies to accrue for restructuring expenses to be incurred in future quarters when certain conditions are met, such as commitment to a formal restructuring plan, notification to affected employees and establishment of a probable and reasonable estimate of the anticipated restructuring costs. Further, the principles provide that related restructuring reserves should be regularly re-evaluated and any amounts no longer needed for the original purpose reversed to income. Retaining excess reserve amounts or using them for purposes other than that for which

they were originally intended is not permitted under GAAP. Furthermore, costs incurred, but not specifically contemplated in the original estimate, must be charged to income in the period in which the expense is incurred.

31. In Q2FY02 (ended August 3, 2001), Dell recorded a $482 million charge to income and established related restructuring liabilities in various reserve accounts. In its Form 10-Q for the quarter ended August 3, 2001, Dell disclosed that it recorded the charge to reduce its workforce and exit certain activities. Under GAAP, the amount of the charge should have been based on Dell's best estimates of future qualifying restructuring costs. If Dell subsequently determined that amounts in the reserves were no longer needed for their originally intended purposes, or exceeded what the company believed would ultimately be needed, Dell should have released those excess amounts to the company's income statement.

32. Dell improperly built excess accruals into the reserve at its inception, and from Q3FY02 to Q3FY04, maintained excess amounts from the restructuring reserve. Over at least six quarters during this period, Dell used this excess to offset the impacts of unrelated period costs resulting in a material misrepresentation of its operating expenses as a percentage of revenue.

33. In November 2001, Dell's Assistant Controller informed Dell's CFO of excess in the restructuring reserve and Dell's CFO instructed Davis and Dell's Assistant Controller not to take a "negative charge" (*i.e.*, reverse excess amounts back to the income statement in keeping with GAAP) for any excess amounts in the reserve.

34. Following the CFO's instruction not to take a negative charge, the Assistant Controller and Davis directed, over the course of several periods, the transfer of the excess restructuring accruals to account number 24990, discussed in greater detail above, where it operated as a general reserve. Davis subsequently used "re-designated" funds to offset expenses

unrelated to Dell's restructuring. For example, in Q3FY04, Dell funded an $8.6 million required payment to the IRS relating to Dell's 401(k) plan using excess accruals from the restructuring reserve. In the prior quarter, the Assistant Controller informed Dell's CFO that he and Davis had "held back $10 million of redesignated special charge reserves" to make this payment.

35. Although the utilization of excess from the restructuring reserve in this manner was not in conformance with GAAP, Davis signed one or more management representation letters to PWC in which he certified that Dell's consolidated financial statements complied with GAAP. For example, Davis signed the representation letter to PWC dated February 14, 2002, which falsely stated that "[t]he restructuring accrual and all significant changes, in any, from the original restructuring plan have been properly recognized, classified and disclosed in accordance with EITF 94-3 and SAB 100."

36. Davis tracked excess amounts in the restructuring reserves, which was referred to internally as "cushion" or "available" balances. From Q4FY02 to Q2FY04, the Assistant Controller provided Davis with status updates at least once every quarter that tracked these improper accruals. These documents identified amounts that were "re-designated" and, in some cases, identified how "re-designated" amounts were to be utilized for unrelated operating expenses.

37. Dell failed to disclose that excess amounts were utilized for non-restructuring related activities. Dell's annual report on Form 10-K filed with the Commission on May 1, 2002 and Dell's quarterly reports on Forms 10-Q filed with the Commission on September 16, 2002 and December 16, 2002 also misrepresented restructuring reserve amounts as "paid," when in fact a portion of them had been deemed as excess and re-designated to other accounts to be used for

unrelated items. In his role as CAO, Davis signed Dell's Form 10-Q filed with the Commission on December 16, 2002.

**d. Accounting Manipulations of Reserves at EMEA**

38. Dell improperly created and released reserves to offset certain restructuring actions in its Europe, Middle East and Africa ("EMEA") segment in FY03 and FY04 in contravention of GAAP.

39. EMEA was an important part of Dell's business and Dell highlighted EMEA as a significant component of its operations. In FY03, EMEA generated 19.5% of Dell's revenues and 13.6% of the company's operating income. In FY04, EMEA grew to 20.5% of Dell's revenues and 18% of the company's operating income.

40. During the period relevant to this complaint, Dell treated EMEA as a reportable segment. In its Forms 10-K and Forms 10-Q, Dell therefore incorporated EMEA's operating income in the company's consolidated operating income and separately reported EMEA's operating income as a segment. As Dell reported in its 2003 Form 10-K, it "allocate[d] resources to and evaluate[d] the performance of its segments based on operating income."

41. From Q3FY03 through Q1FY04, Dell's EMEA segment improperly accrued $26 million in reserves to offset the expenses to be incurred for a future regional "restructuring." Dell sought to avoid taking the expense in a single period, and instead spread it out over several periods. Building the reserve piecemeal caused Dell to understate EMEA's operating income from Q3FY03 through Q1FY04, and enabled the region to overstate operating income by $23.5 million in Q2FY04, when EMEA released most of the improper reserve. In Q3FY04, Dell used the remainder of the improper reserve to avoid having to increase EMEA's accruals, and thereby overstated operating income by $2.5 million. Throughout the period from Q3FY03 to Q3FY04,

the reserves held for restructuring in Dell's EMEA segment were improperly classified in Dell's books as reserves for factory invoices and other expenses completely unrelated to restructuring.

42. The creation of the improper reserves began in Q3FY03 when EMEA's finance team first assessed a restructuring plan that included laying off managers and transferring certain operations to less expensive countries. In September 2002, one of the two EMEA Finance Directors sought authorization from Dell's CFO to record a reserve to pay for these anticipated restructuring expenses. The CFO refused the request.

43. On October 15, 2002, the CFO wrote the Finance Director, with copies to Davis and the Assistant Controller, that "There will be no specially called out charge so how do we cover?? You guys need to get a plan in place ASAP that we can discuss and keep this confidential. . it gives us three quarters in essence to cover . . ."

44. On October 17, 2002, the EMEA Finance Director wrote the CFO back with a proposal for finding money to "cover off these restructuring costs." After asking for additional information, the CFO wrote "do not know where you are on P/L this qtr but if we could overachieve all should be earmarked to this." The CFO thereby directed his subordinate to "earmark" income earned in excess of financial targets to restructuring expenses rather than recording it as income in Dell's general ledger.

45. The EMEA Finance Director promptly followed the CFO's direction, even though it was inconsistent with GAAP. Although EMEA had neither committed to a formal restructuring plan nor communicated any plan to employees, the region began accruing for EMEA's restructuring. On or about November 6, 2002, the last day before its books closed for Q3FY03, EMEA accrued and maintained excess reserves totaling $13 million for its restructuring.

46. Dell reported EMEA's operating income as a segment in its Form 10-Q for the quarter ended November 1, 2002 as $104 million. This amount did not reflect the $13 million that was reserved for EMEA's restructuring expenses

47. In November 2002, the EMEA Finance Director informed the CFO and Davis of EMEA's misstatement, telling them that he had "tucked away" $13 million for EMEA's expected restructuring. The Finance Director also advised the CFO that if Dell were "short" of its consolidated targets in the following quarter, it could "take [the $13 million] to the bottom line and I will find it again in Q1."

48. Early in Q4FY03, the EMEA Finance Director informed Davis and the Assistant Controller that he expected EMEA would be incurring $22.8 million in restructuring costs in future quarters. EMEA subsequently increased its improper reserves by $9.8 million to $22.8 million by failing to release accruals identified as excess in the quarter and to record a vendor credit in accordance with GAAP.

49. In a slide presented in its February 13, 2003 earnings call and subsequently posted on its website, Dell disclosed that the EMEA segment had earned $134 million in Q4FY03. This amount did not include the $9.8 million by which the restructuring reserve was increased in the quarter.

50. Davis signed a management representation letter in February 2003 confirming to PWC that, among other things, (a) Dell's FY2003 consolidated financial statements conformed with GAAP; (b) that "[t]here are no material . . . accounts that have not been properly recorded in the accounting records underlying the consolidated financial statements;" and (c) that "[t]here are

no significant deficiencies . . . in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data." These representations were false.

51. After again exceeding its internal operating income projections, EMEA again improperly increased its reserves in Q1FY04. A series of improper entries led to a net transfer of $3.2 million to the reserves, increasing their balances to $26 million. After EMEA's books closed for the quarter, but a month before Dell filed its Form 10-Q, the EMEA Finance Director informed the CFO and Davis of the balance of EMEA's improper reserves. Dell reported EMEA's operating income as $141 million in its Form 10-Q for the quarter ended May 2, 2003.

52. In Q2FY04, EMEA incurred most of the restructuring expenses it had been expecting since Q3FY03. A Finance Director in EMEA informed Davis that the expense for EMEA's de-layering and restructuring was about to hit. The Finance Director wrote "I know this is messy but it was always going to be when you try and hide $25M to off-set future restructuring costs and you are not allowed to call it re-structuring." Through releases from the improper reserves, EMEA offset restructuring and other costs in the quarter, and overstated its operating income by $23.5 million in the quarter. Dell reported the EMEA segment's operating income as $145 million in its Form 10-Q for the quarter ended August 1, 2003.

**e. Dell's Cookie Jar Reserves in its Bonus and Profit Sharing Accounts**

53. In addition to the above reserves, Dell manipulated its bonus and profit sharing reserve accounts in multiple quarters in FY02 and FY03 to manage its operating results.

54. Throughout the relevant period, Dell's Compensation Committee established a bonus and profit sharing target each year. Dell accrued throughout each fiscal year for the anticipated bonus and profit sharing payout. The bonus target was calculated using a grid based on

revenue growth and operating margin targets. In March following the close of each fiscal year, the Compensation Committee met to determine whether the company's bonus payout would adhere to or depart from the amounts indicated on the bonus grid.

55. Davis was aware by the beginning of FY02 that Dell was still carrying bonus over-accruals from FY00. After conducting a thorough analysis of the over-accruals for Davis, a subordinate emailed Davis on February 6, 2001, while Dell was closing its FY01 books, asking Davis for approval to manage entries so that Dell could carry a $6M bonus over-accrual into FY02. The Assistant Controller emailed Davis that the proposed entries "would have the effect of drawing down the $10M accrual from PYs [prior years] down to the $6M you see on [the] analysis. There is a possibility that we won't [pay as large a bonus as estimated,] which obviously would then add back to the cushion." The $10M accrual the Assistant Controller referred to, which the analysis indicated was from FY00, was listed on a Q4FY01 Risks and Opportunities Schedule in a row labeled, "Bonus/Prof Sh.- accruals from PYs [prior years]." The R&O Schedule showed Davis as the "owner" of the opportunity.

56. In March 2001 (Q1FY02), Dell's Compensation Committee decided on a bonus/profit sharing payout for FY01 that was less than the accrual the company had created to fund the payout. Dell had over-accrued for the FY01 bonus/profit sharing payout before it filed its FY01 Form 10-K in May 2001. Rather than releasing the entire excess reserve in Dell's Q4FY01 or Q1FY02 income statement in accordance with GAAP, however, Dell instead released only about $20 million of the over-accrual in Q1FY02, and then bled down the excess bonus reserves in Q2FY02 ($0.5 million), Q3FY02 ($10 million), Q4FY02 ($4.5 million), and Q1FY03 ($3.6 million).

57. On May 4, 2001, a bonus analyst sent an email to Davis and the Assistant Controller regarding the over-accrual for the FY01 bonus/profit sharing payout: "Below is the result of the 'Bonus & Profit Sharing Clean Up' effort: FY01 Overaccrual - Amer/Corp/[Product Group] has $25M to bleed, [Worldwide] = ~$32M".

58. In an email exchange on August 14, 2001 about bonus scenarios with Dell's CFO, Davis stated: "I have assumed that the prior year over accrual will be fully bled out by the end of this year. (As discussed this morning, a lot of these bleeds have been built into the Corp Gen budget for Q2 - Q4.)"

59. In March 2002 (Q1FY03), Dell's Compensation Committee decided on a bonus/profit sharing payout for FY02 that was again less than what the company had accrued. Before Dell filed its FY02 Form 10-K on May 1, 2002, Davis and the Assistant Controller knew that Dell was over-accrued for the FY02 payout. On March 28, 2002, Davis received an estimate that the over-accrual would be about $30 million.

60. Under GAAP, Dell should have released the bonus over-accrual no later than Q1FY03. Dell, however, only released $6.1 million of the over-accrual in Q1FY03. Dell bled down the balance of the excess bonus reserves in FY03 to smooth Dell's reported operating expenses.

61. In a note Davis drafted to himself on April 5, 2002 — which was recovered from his draft email folder, and which had "bonus status questions" in the subject line — Davis wrote:

1. What is the current status of the [bonus] accrual carryover?
2. How does that compare with the Q1/Q2 forecast amounts for Corp Gen
3. What [sic] me thru the ESOIP portion (including how it was handled last year)
4. If we have a shortfall in 2, synch up with [the Assistant Controller] to cover from the charge accrual

5. **Ensure that the amount in 1 is held and used only at Corp**

(emphasis in original)

62. On May 2, 2002, the Assistant Controller stated in an email to Davis: "I've summarized below where we are regarding funding the FY03 Corp Gen shortfall. My current sense is that we'll exit Q1 with $38M in restructuring accrual goodness . . . . Together with bonus/profit sharing overaccruals, we'll be able to cover Corp Gen and still have ~$19M left to cover [other known matters], and other matters that may arise."

63. On May 8, 2002, the Assistant Controller sent Davis a spreadsheet that showed restructuring reserve cushion and bonus over-accrual being used to cover the FY03 Corp General shortfall. That same day, Davis drafted the following reminder to himself: "Note to [CFO] on the Bonus et al cushion".

64. Instead of releasing the entire $18.6 million bonus over-accrual in Q4FY02 or Q1FY03, Dell bled down the over-accrual throughout the year, releasing $3.6 million from its FY01 bonus over-accrual and an additional $2.5 million from its FY02 bonus over-accrual in Q1FY03, $7.4 million in Q2FY03, and $5 million in Q3FY03. As he had done the prior year, Davis periodically tracked the bleed down in the bonus and profit sharing reserves.

65. Under GAAP, over-accruals relating to the FY01 bonus/profit sharing payout should have been released by the end of Q1FY02, and over-accruals relating to the FY02 bonus/profit sharing payout should have been released by the end of Q1FY03, rather than retained and released gradually over time. Contrary to GAAP, Dell bled its FY01 and FY02 over-accruals in multiple quarters in FY02 and FY03 to smooth operating expenses.

**f. Dell's Improper Failure to Increase Reserves for Las Cimas Liabilities**

66. Dell included a provision in the FY02 restructuring reserve to cover the costs of closing its Las Cimas facility in Texas. On May 31, 2002, the Assistant Controller received an update presentation dated May 14, 2002 regarding the FY02 restructuring reserve, which included a statement that the Dell facilities group had expressed concerns over the adequacy of the facilities reserve. On July 17, 2002, the Assistant Controller sent this presentation to Davis. Under GAAP, Davis should have undertaken steps to quantify the additional reserves needed for Las Cimas at that time. Davis failed to do so.

67. On February 24, 2003 (Q1FY04), the Assistant Controller provided Davis with an analysis showing that the cost of exiting the Las Cimas facility would likely be $53 million more than Dell had reserved. Under GAAP, Dell should have increased its Las Cimas reserves by approximately $33 million (the net present value of $53 million).

68. Davis failed to take any steps to adjust Dell's restructuring reserves to account for this new information. It was not until October 2005 (Q3FY06) that Dell increased its reserves for closing the Las Cimas facility.

**ENGAGEMENT LETTERS**

69. Davis, as Vice President, Corporate Planning & Reporting, signed Dell's engagement letter, dated June 6, 2002, with Dell's auditor, PWC, for the financial statements for FY03. On behalf of Dell, Davis signed the agreement stating that: "The services and terms as set forth in this letter are agreed to." Among the terms in the letter were "Management's responsibilities." The terms in the "Management's responsibilities" to which Davis agreed on behalf of Dell included, among others:

> The financial statements and information referred to above are the responsibility of the management of the Company. In this regard,

> management is responsible for properly recording transactions in the accounting records and for establishing and maintaining internal control sufficient to permit the preparation of financial statements and information in conformity with generally accepted accounting principles. Management is responsible for adjusting the financial statements to correct material misstatements . . . . Management also is responsible for identifying and ensuring that the Company complies with the laws and regulations applicable to its activities.

70. Davis, as Vice President, Worldwide Planning and Reporting, signed Dell's engagement letter, dated September 4, 2003, with Dell's auditor, PWC, for the financial statements for FY04. Davis signed the letter, stating: "By signing below I acknowledge and agree to my obligation to ensure that the responsibilities of the Company and its management as set forth herein are properly discharged." The terms in the "Management's responsibilities" to which Davis agreed on behalf of Dell were substantially the same as those in Dell's June 6, 2002 engagement letter, quoted above. The September 4, 2003 letter contained the following additional terms, which Davis acknowledged and to which he agreed:

> Management also is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us [PWC] (i) about all known or suspected fraud affecting the entity involving (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements; and (ii) of its knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, short sellers, or others.

71. Davis, as Vice President, Corporate Finance/Chief Accounting Officer, signed Dell's engagement letter, dated June 3, 2004, with Dell's auditor, PWC, for the financial statements for FY05. Davis signed the letter, stating: "By signing below I acknowledge and agree to my obligation to ensure that the responsibilities of the Company and its management as set forth herein are properly discharged." The terms in the "Management's responsibilities" to which Davis agreed on behalf of Dell were substantially similar to those in Dell's June 6, 2003 and September 4,

2003 engagement letters, quoted above. In addition, the June 3, 2004 letter contained the following additional terms, which Davis acknowledged and to which he agreed:

> Management is responsible for . . . notifying us of all deficiencies in the design or operation of internal control over financial reporting identified as part of management's assessment, including separately disclosing to us all such deficiencies that it believes to be significant deficiencies or material weaknesses in internal control over financial reporting.. . . Furthermore, management of the Company is responsible for:
>
> - Accepting responsibility for the effectiveness of the Company's internal control over financial reporting.
> - Evaluating the effectiveness of the Company's internal control over financial reporting using suitable control criteria,
> - Supporting its evaluation with sufficient evidence, including documentation, and
> - Presenting a written assessment of the effectiveness of the Company's internal control over financial reporting as of the end of the Company's most recent fiscal year.

## INTERNAL CONTROLS

72. As evidenced by the misconduct described above, at least for the periods FY02 through FY05, Dell did not have a system of internal controls that was sufficient to assure compliance with GAAP. Davis had direct responsibility for overseeing some or all aspects of Dell's internal controls. Davis also signed engagement letters with Dell's auditors. Based on his conduct described above, he knowingly circumvented those internal controls.

## DELL'S RESTATEMENT

73. On or about August 17, 2006, Dell issued a press release, and filed a Form 8-K with the Commission, announcing that its audit committee had begun conducting an independent investigation into certain of Dell's accounting and financial reporting practices.

74. On or about August 16, 2007, Dell filed with the Commission a Form 8-K announcing that the investigation had been completed, and the results reported to the audit committee. In the August 16 Form 8-K, Dell announced that its audit committee had concluded that Dell's previously issued financial statements for FY03, FY04, FY05, and FY06, including the interim periods within those years, and Q1FY07 ("Restatement Period") "should no longer be relied upon because of certain errors and irregularities in the financial statements."

75. In the August 16 Form 8-K, Dell also announced that it would restate the previously issued financial statements for the Restatement Period. Under GAAP, a restatement is required if there is a material error in the financial statements. Dell stated that: "The accounting errors and irregularities that will be corrected are significant because of the combination of the number of issues identified, the qualitative nature of many of the issues, and in some cases, the dollar amounts involved."

76. On or about October 30, 2007, Dell filed its Form 10-K with the Commission for the fiscal year ended February 2, 2007. The 2007 Form 10-K contained the restated financial statements for the Restatement Period.

77. The Form 10-K, in both the MD&A and notes to the financial statements, summarized the findings of the audit committee investigation ("Summary of Investigation Findings"). Dell stated in its 2007 Form 10-K:

> The investigation raised questions relating to numerous accounting issues, most of which involved adjustments to various reserve and accrued liability accounts, and identified evidence that certain adjustments appear to have been motivated by the objective of attaining financial targets. According to the investigation, these activities typically occurred in the days immediately following the end of a quarter, when the accounting books were being closed and the results of the quarter were being compiled. The investigation found evidence that, in that timeframe, account balances were reviewed, sometimes at the request or with the knowledge of senior

> executives, with the goal of seeking adjustments so that quarterly performance objectives could be met. The investigation concluded that a number of these adjustments were improper, including the creation and release of accruals and reserves that appear to have been made for the purpose of enhancing internal performance measures or reported results, as well as the transfer of excess accruals from one liability account to another and the use of the excess balances to offset unrelated expenses in later periods. . . . The investigation identified evidence that accounting adjustments were viewed at times as an acceptable device to compensate for earnings shortfalls that could not be closed through operational means.

78. Dell's 2007 Form 10-K further stated in the Summary of Investigation Findings: "[I]n a number of instances, purposefully incorrect or incomplete information about these activities was provided to internal or external auditors." Dell also stated in the Summary that: "The errors and irregularities identified in the course of the investigation revealed deficiencies in [Dell's] accounting and financial control environment, some of which were determined to be material weaknesses, that require corrective and remedial actions."

79. Dell's Form 10-K described the "Restatement Adjustments" in the MD&A and more fully in the notes to the financial statements. Dell reiterated that the financial statements for the Restatement Period "should no longer be relied upon." Among the Restatement Adjustments were "Unsubstantiated Accruals and Inadequately Reconciled Accounts." In its 2007 Form 10-K, Dell stated that

> In some instances accrual and reserve accounts lacked justification or supporting documentation. In certain cases these accounts were used to accumulate excess amounts from other reserve and accrual accounts. However, these excess reserves were not released to the income statement in the appropriate reporting period or were released for other purposes. . . .

80. Dell's 2007 Form 10-K, in Item 9A, contained "Management's Report on Internal Control Over Financial Reporting." The Report stated that internal control includes, among other things, those policies and procedures . . . which "provide reasonable assurance that transactions are

recorded as necessary to permit preparation of financial statements in accordance with GAAP." As stated in the report: "A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting that there is more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected."

81. The Report concluded that there were material weaknesses in Dell's internal control over financial reporting as of February 2, 2007. With respect to the control environment, management concluded:

> We did not maintain a tone and control consciousness that consistently emphasized strict adherence to GAAP. This control deficiency resulted in an environment in which accounting adjustments were viewed at times as an acceptable device to compensate for operational shortfalls, which in certain instances led to inappropriate accounting decisions and entries that appear to have been largely motivated to achieve desired accounting results and, in some instances, involved management override of controls. In a number of instances, information critical to an effective review of transactions and accounting entries was not disclosed to internal and external auditors.

82. With respect to the period-end financial reporting process, management concluded that there was also a material weakness:

> We did not maintain effective controls over period-end reporting process, including controls with respect to the review, supervision, and monitoring of accounting operations. Specifically: . . .
>
> We did not design and maintain effective controls to ensure the completeness, accuracy, and timeliness of the recording of accrued liabilities, reserves, and operating expenses . . .

83. Management concluded that: "These material weaknesses resulted in the restatement of our annual and interim financial statements for Fiscal 2003, 2004, 2005, and 2006 and the first quarter of Fiscal 2007. . . ."

84. Dell's Form 10-K contained the Report of Independent Registered Public Accounting Firm, dated October 29, 2007, by PWC, Dell's independent auditors. PWC audited

management's assessment of internal controls, included in Management's Report on Internal Control. PWC rendered its opinion that "management's assessment that the Company did not maintain effective internal control over financial reporting as of February 2, 2007, is fairly stated, in all material respects. . . ." PWC also rendered its opinion that "because of the effects of the material weaknesses . . . on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of February 2, 2007. . . ."

## INCENTIVE COMPENSATION

85. During the relevant period, Dell had various compensation programs for its employees. Under Dell's Incentive Bonus Plan, in which Davis participated, there were numerous factors that determined whether a Dell employee would receive a bonus in a given year. These factors included, but were not limited to, operating margin, revenue growth, customer experience, globalization, and individual performance reviews. The accounting manipulations discussed above influenced Dell's operating margin and inflated the calculations of Davis's bonuses in FY03 and FY04 under the matrix.

## DELL'S SECURITIES OFFERINGS

86. Dell filed with the SEC registration statements on Forms S-8 on September 20, 2001, October 4, 2002, and December 16, 2003. The Forms S-8 filed in September 2001 and October 2002 were signed by Dell's CEO and CFO. The two Forms S-8 that Dell filed in December 2003 were signed by Dell's CEO, CFO, and Davis. The Forms S-8 mentioned above each specifically incorporated by reference the Form 10-K for the fiscal year preceding the Form S-8 and the Forms 10-Q for the fiscal year in which the Form S-8 was filed. For example, the two Forms S-8 filed in December 2003 (Q4FY04) incorporated Dell's FY03 Form 10-K and Dell's Forms 10-Q for Q1FY04, Q2FY04, and Q3FY04. The Forms S-8 also each incorporate all subsequently filed Forms 10-K and Forms 10-Q "prior to the filing of a post-effective

amendment." Except for one Form S-8 filed on September 20, 2001, none of the Forms S-8 mentioned above were subject to the filing of a post-effective amendment during the period relevant to the allegations set forth above.

87. Dell offered and sold securities continuously from FY02 through FY07 through various means. Dell operated an "Employee Stock Ownership Program," pursuant to which it offered and sold common stock to its employees. Dell also offered and sold securities to the public through a "Direct Stock Purchase Program" (DSPP). In addition, Dell granted options and restricted stock to its employees.

## FIRST CLAIM

### Violations of Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §77q(a)(2) and (3)]

88. By reason of the conduct alleged in paragraphs 1 through 87 above, which are realleged and incorporated by reference as if set forth fully herein, Davis, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, (a) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (b) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities. By reason of the conduct alleged above, Davis violated Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) & (3)].

## SECOND CLAIM

### Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]

89. Paragraphs 1 through 88 above are realleged and incorporated by reference as if fully set forth herein.

90. By reason of the conduct alleged above, Dell filed with the Commission materially false and misleading annual reports on its Forms 10-K, and materially false and misleading quarterly reports on its Forms 10-Q, during the relevant time period.

91. By reason of the conduct alleged above, Dell failed to file with the Commission such financial reports in accordance with such rules and regulations as the Commission has prescribed, and failed to include, in addition to the information expressly required to be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

92. By reason of the foregoing, Davis aided and abetted Dell's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a13], promulgated thereunder, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

## THIRD CLAIM

### Aiding and Abetting Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]

93. Paragraphs 1 through 92 above are realleged and incorporated by reference as if fully set forth herein.

94. By reason of the conduct alleged above, Dell failed to make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflected the transactions and disposition of its assets.

95. By reason of the conduct alleged above, Dell failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, or any other applicable criteria, and to maintain accountability for assets.

96. By reason of the conduct alleged above, Dell violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

97. By reason of the foregoing, Davis aided and abetted Dell's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)], pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

## FOURTH CLAIM

### Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)]

98. Paragraphs 1 through 97 above are realleged and incorporated by reference as if fully set forth herein.

99. By reason of the conduct alleged above, Davis knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified, directly or indirectly, or caused to be falsified books, records and accounts of Dell that were subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

100. By reason of the foregoing, Davis violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 13(b)(5)].

## FIFTH CLAIM

**Violations of Rule 13b2-1 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-1]**

101. Paragraphs 1 through 100 above are realleged and incorporated by reference as if fully set forth herein.

102. By reason of the conduct alleged above, Davis, directly or indirectly, falsified or caused to be falsified, books, records, or accounts described in Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

103. By reason of the foregoing, Davis violated Rule 13b2-1, promulgated under the Exchange Act [17 C.F.R. §240.13b2-1].

## SIXTH CLAIM

**Violations of Rule 13b2-2 promulgated under the Exchange Act [17 C.F.R. §240.13b2-2]**

104. Paragraphs 1 through 103 above are realleged and incorporated by reference as if fully set forth herein.

105. By reason of the conduct alleged above, Davis, directly or indirectly: (a) made or caused to be made a materially false or misleading statement to an accountant in connection with; or (b) omitted to state, or caused another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstance under which such statements were made, not misleading, to an accountant in connection with: (1) any audit, review or examination of the financial statements of Dell required to be made pursuant to Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)]; or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] or otherwise.

106. By reason of the foregoing, Davis violated Rule 13b2-2, promulgated under the Exchange Act [17 C.F.R. § 240.13b2-2].

## PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a judgment:

**I.**

Permanently restraining and enjoining defendant Davis, his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the Final Judgment by personal service or otherwise, and each of them from, directly or indirectly, violating Section 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)] and Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.13b2-1, and 240.13b2-2], promulgated thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13], promulgated thereunder, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

**II.**

Ordering defendant to disgorge ill-gotten gains from the conduct alleged herein and to pay prejudgment interest thereon.

**III.**

Ordering defendant to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

**IV.**

Retaining jurisdiction of this action to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**V.**

Granting such other and further relief as the Court may deem appropriate.

Dated: August 27, 2010

Respectfully submitted,

s/ John D. Worland, Jr.

John D. Worland, Jr. (Bar #427797)
Richard B. Skaff
Attorney for Plaintiff
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Tele: (202) 551-4438
Fax: (202) 772-9245
e-mail: worlandj@sec.gov

Of Counsel:

Christopher R. Conte
Timothy N. England
Rami Sibay
James C. Blenko
Shelby H. Hunt
Jonathan M. Jacobs
Ian D. Rupell