

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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PEOPLE OF THE STATE OF NEW YORK by :  
ANDREW M. CUOMO, Attorney General of the :  
State of New York, :

Petitioner, :

**NOTICE OF PETITION**

-against- :

Index No.

RJI No.

DELL, INC. and DELL FINANCIAL SERVICES, L.P. :

Date filed:

Respondents.

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PLEASE TAKE NOTICE that upon the Verified Petition, verified April 9, 2007, and the supporting Affirmation of Assistant Attorney General Amy Schallop, dated April 10, 2007 with exhibits, petitioner, People of the State of New York, by Attorney General Andrew M. Cuomo, will move this Court at an All Purpose Term, to be held at the Albany County Courthouse, Eagle Street, Albany, New York on the 15th day of June, 2007, for an order and judgment:

1. Permanently enjoining respondents and any other entity through which they may act, from violating Executive Law §63(12) and General Business Law (“GBL”) Article 22-A, and from engaging in the fraudulent, deceptive and illegal practices alleged herein;

2. Directing respondents to adopt such measures as are necessary to ensue that they will not engage in the fraudulent, deceptive and illegal practices alleged herein;

3. Directing respondents to make full monetary restitution and pay damages to aggrieved consumers, known and unknown;

4. Directing respondents to pay a civil penalty in the sum of \$500.00 to the State of New York for each instance of violation of GBL Article 22-A, pursuant to GBL § 350-d;

5. Awarding petitioner the costs and disbursements of this action, including additional costs in the amount of \$2,000.00 pursuant to CPLR § 8303(a)(6);

6. Directing respondents to provide an accounting to identify those consumers who are entitled to restitution and the amount of such restitution; and

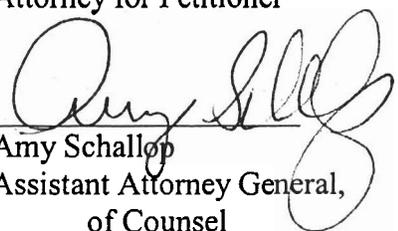
7. Granting petitioner such other and further relief as this Court deems just and proper, including but not limited to, disgorgement of any monies respondents received as a result of the illegal, deceptive and fraudulent acts described herein.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, shall be served on petitioner at the address below seven (7) days prior to the return date pursuant to CPLR 403(b).

DATED: May 14, 2007  
Albany, New York

ANDREW M. CUOMO  
Attorney General of the  
State of New York  
Attorney for Petitioner

By: \_\_\_\_\_

  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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PEOPLE OF THE STATE OF NEW YORK by  
ANDREW M. CUOMO, Attorney General of the  
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Petitioner, : **VERIFIED PETITION**

-against- : Index No.:

RJI No.:

DELL, INC. and DELL FINANCIAL SERVICES, L.P., :

Respondents.

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The People of the State of New York, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York, respectfully allege upon information and belief:

**JURISDICTION AND PARTIES**

1. Petitioner is the People of the State of New York, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York. The Court has jurisdiction pursuant to (a) Executive Law §63(12), which empowers petitioner to seek injunctive relief, restitution, damages, and costs against any person or business that engages in persistent fraud or illegality in the conduct of business, and (b) General Business Law (“GBL”) Article 22-A, which empowers the Attorney General to seek injunctive relief, restitution, civil penalties and costs against any person or business that engages in deceptive acts and practices and false advertising in the conduct of business.

2. Respondent Dell, Inc. (“Dell”), a Delaware corporation headquartered in Round Rock, Texas, is the world’s second largest manufacturer of personal computers, with approximately 16% share of the worldwide personal computer market, slightly less than that of

Hewlett Packard.

3. Respondent Dell Financial Services, LP (“DFS”) is a limited partnership organized under the laws of Delaware and authorized to do business in the State of New York. DFS is a joint venture between Dell and CIT Bank, of which Dell currently maintains a 70% interest. DFS provides financing to Dell’s customers through a Dell Preferred Account (“DPA”), an open line of credit, which Dell offers directly to consumers through the Dell website and by phone through Dell’s sales associates.

### INTRODUCTION

4. Dell engages in extensive advertising in a variety of media designed to induce consumers to purchase its products and finance them through DFS by offering one or more of the following benefits: attractively priced computer packages, promotional financing that typically features a no interest and/or no payment period, large rebates, and free or upgraded accessories.

5. However, consumers who purchase Dell’s products often find that many of the benefits and inducements featured in Dell’s advertisements are illusory. Although Dell often heavily advertises the availability of “no interest” financing, in reality, DFS uses ultra-restrictive underwriting guidelines, under which the vast majority of consumers— even those with excellent credit histories— do not qualify for promotional financing. Dell uses these “no interest” promotions to induce consumers to apply for financing, and then offers many of those who are denied promotional financing DFS’s “regular plan” under which consumers are extended an open line of credit at interest rates that often exceed 20%. In many cases, respondents fail to clearly advise consumers that they have been denied promotional financing and further mislead them by calling these consumers’ accounts “Dell Preferred” accounts (emphasis added), even though

these consumers have not been offered any promotional financing terms. As a consequence, many consumers unwittingly finance their purchase through DFS's expensive "regular plan."

6. In a variety of circumstances, DFS bills consumers incorrectly on a Dell Preferred Account for goods and/or services. In some cases, DFS charges consumers for orders that consumers cancelled in whole or part, or for merchandise that they returned or never received. In other cases, DFS bills consumers for merchandise on a Dell Preferred Account that the consumer did not authorize Dell or DFS to open. Many of these consumers subsequently find that, although Dell is able to process consumers' credit applications in a matter of minutes, Dell and DFS operate at an inexplicably slow pace when it comes to crediting consumer's accounts for returned merchandise or cancelled orders, or otherwise correcting billing errors. As a result, DFS and/or third party collection agents improperly bill and harass consumers for months on end for debts they do not owe, despite consumers' persistent efforts to get their accounts straightened out. In many cases, DFS has harmed these consumers' credit ratings by incorrectly reporting their account as delinquent to the credit reporting agencies after they refuse to make payment on a non-existent debt.

7. Further, although Dell induces consumers to purchase equipment by offering rebates, many consumers who timely submit their rebate paperwork do not receive their promised rebate and get a "runaround" when they subsequently contact Dell to inquire about it.

8. In addition, although many of Dell's television advertisements represent, directly or by implication, that Dell maintains an award winning technical support department with an eager staff of technicians available to assist consumers with computer problems 24 hours a day, 7 days a week, many consumers who seek technical support after experiencing problems with computer

or other electronic equipment while it is covered by a warranty or service contract, face a nightmarish array of obstacles in their quest for service. Dell employs a variety of tactics that discourage and prevent consumers, including those who have purchased expensive warranty upgrades that promise “‘next day’ or ‘next business day’ ‘On-Site’” repair, from obtaining technical support. For example, consumers are often repeatedly left on hold for unreasonable lengths of time, shuttled from one department to another, and disconnected after spending hours on the phone awaiting assistance. When consumers do succeed in reaching a technician, they are often forced to engage in grueling troubleshooting sessions that do not resolve the problem, and are repeatedly rebuffed when they request that a technician be dispatched to their home to repair their computer, even when they have paid for an upgraded service contract that promises expedited “on site” repair. As a result, consumers are often left for weeks, and sometimes months, with inoperable or impaired computer equipment that, in many cases, is vital to their personal, professional, educational or business interests. In many cases, consumers become so frustrated and exasperated with Dell’s technical support department that they either pay a third party to repair their equipment or simply stop using it altogether.

#### **Deceptive Financing Practices**

9. Dell advertises its products through a variety of media, including newspaper magazines, television, catalogues and the Dell website.

10. Many of Dell’s advertisements prominently feature a promotional financing offer, such as “90-days same as cash”, “no interest until 2005”, or “six month interest free financing,” creating the impression that promotional financing is widely available to consumers.

Representative print advertisements are annexed as Exhibit A-1.

11. These enticing offers succeed at drawing consumers to Dell.

12. However, Dell does not clearly and conspicuously disclose the limitations, restrictions and conditions on its financing offers. Dell simply states in fine print, without any explanation or amplification, that its promotional financing offers are available to “well-qualified customers.” In fact, because Dell, through its affiliate DFS, uses ultra-restrictive underwriting criteria, close to 85% of applicants, many of whom have excellent credit histories, are turned down for promotional financing.

13. Many consumers who seek promotional financing are, instead, approved for DFS’s expensive “regular” financing plan that does not include any of the attractive features, such as “no interest,” which prompted them to apply for financing in the first place.

14. Further, Dell does not clearly advise consumers who are approved only for DFS’s “regular” high interest plan that their account does not include any of the features that Dell had so prominently promoted and further misleads them by calling these consumers’ accounts “Dell Preferred” accounts, even though they do not include any promotional terms.

#### **Dell’s misleading application process**

15. In response to Dell’s attractive, “no interest” financing advertisements, consumers often call Dell’s toll free sales phone number to order equipment and discuss the possibility of financing their purchase with a Dell sales associate.

16. Dell’s sales associates, who earn extra commission when consumers finance their purchases through DFS, encourage consumers, even those who intend to pay for their purchase through other means, to apply for financing by touting the availability of these promotional financing offers.

17. Dell's sales associates repeatedly represent directly or by implication that they can simply check to see whether the consumer qualifies for the specific promotional offer.

18. In fact, sales associates repeatedly request the consumer's personal information and use it to submit a formal application to DFS on the consumer's behalf, in many cases without his or her consent, for an open line of credit that, depending on the outcome of DFS's underwriting model, may or may not include promotional financing features.

19. Further, when sales associates receive the credit decision from DFS within minutes, they repeatedly mislead those consumers who have only qualified for DFS's expensive "regular" plan to believe that they have qualified for promotional financing by either falsely advising them that they qualified for the promotion, or by representing that they have been approved for a "Dell Preferred Account" or simply "approved." (emphasis supplied).

20. Many of these consumers assume that their approval for a Dell Preferred Account means that they have qualified for promotional financing because the sales associate gave them the impression that they were applying for a specific promotional financing offer.

21. Dell's sales associates repeatedly reinforce consumers' misconceptions by failing to disclose the interest rate on the account when they advise consumers of the outcome of their application.

### **Online sales**

22. Dell similarly misleads consumers who apply for financing online through Dell's website, where Dell advertises many of the same promotions that it advertises in its catalogues, on television, and in newspapers and magazines.

23. For example, in one typical advertisement featured on Dell's website on April 10,

2006, Dell advertised a promotion for “No Interest until 2007!” for “well qualified customers.” Consumers who clicked on the “Offer Details” link directly below the advertised promotion were then directed to another webpage that featured a large colored banner boldly advertising in large print: “No Interest until 2007!” Lower down the page, directly under the heading entitled “Details” and set out in a separate paragraph, Dell reinforced the impression that consumers who qualify for a Dell Preferred Account would qualify for the no interest promotion by representing that “No interest until 2007 is a feature of the Dell Preferred Account and is available to well qualified customers.” In the middle of the page, a bright green box beckons consumers to “Apply Online Now!” The fact that consumers who were not eligible for “No Interest” financing might be offered standard financing was buried further down the page in the middle of a second paragraph. See, Dell website ad, Exh. A-3.

24. Although this webpage creates the impression that consumers can apply for the advertised financing promotion by clicking on the “Apply Online Now!” hyperlink, consumers who clicked on this hyperlink were redirected to a general application for an open line of credit, and were most likely to be approved for DFS’s expensive “regular” financing plan. The two small print paragraphs at the top of Dell’s online application informing consumers that they are applying for a line of credit and may be offered an account without any promotional features do not offset the impression that consumers who click on the “Apply Online Now!” link, are in fact, applying for the no-interest promotion.

25. Further, at least until sometime in 2006, Dell’s online credit decision notification for those consumers who are not being offered promotional financing, but instead, are offered only DFS’s “regular plan” was additionally misleading. When consumers did not qualify for the

attractive financing terms that Dell promoted in its advertisements and that had led the consumers to apply for financing, and were instead, offered credit at exorbitant interest rates that often exceed 20%, Dell couched the actual credit decision in a bold, but misleading, congratulatory message (color and bolding in original):

**Congratulations, Jonathan Consumer!**  
You've been **approved** for a Dell Preferred Account!

Read in connection with the unmistakable impression created by the web advertisements, which invites consumers to apply for promotional financing, this congratulatory message could mean only one thing— that the consumer had been approved for the promotion for which they applied.

26. In this context, neither the text advising “Please note that your account **does not qualify** for or include any promotional financing features” (emphasis in original), nor the account details, which appear further below the misleading eye-catching orange congratulatory message, are sufficiently conspicuous to alert consumers that they have been denied the attractive terms that they sought. See, copy of online credit notification, Exhibit A-5.

27. As a consequence of Dell’s deceptive practices, many consumers have unwittingly financed their purchase through a “regular” Dell Preferred Account carrying a high interest rate and no extended free ride period.

#### **Post-financing notification deception**

28. Further, until at least sometime in 2006, DFS trapped consumers in its high interest “regular plan” by continuing to mislead them about their financing terms beyond Dell’s 21-day return period. DFS would send consumers an initial billing statement that included a rectangular box with the following misleading information in bold print:

**“Effective ANNUAL PERCENTAGE RATE: .00%”.**

29. Many consumers did not learn of the true terms under which DFS had extended them credit until after they received their second statement, which included finance charges and indicated an APR that typically exceeded 16% and was often well over 20%.

30. When consumers called DFS after receiving the second statement, they learned for the first time that they did not qualify for promotional financing, and instead, only qualified for a line of credit carrying an interest rate that typically exceeds 16%.

31. Further, notwithstanding consumers' protests that they were misled by Dell and DFS about the outcome of their credit application, DFS consistently refuses to alter the terms of their account.

32. As a result, those consumers who lack the funds to pay off the account are trapped in DFS's high interest regular plan because DFS refuses to allow them to pay off the balance on their account with a credit card and Dell refuses to allow them to return the equipment because it is beyond the twenty-one day return period.

#### **Improper Billing and Collection Activity**

33. Dell's sales associates repeatedly fail to advise consumers who apply for financing that the financing is being offered, not by Dell, but by its affiliate, DFS.

34. As a result, Dell creates the impression that consumers are financing their purchase directly through Dell, an impression that is reinforced by the fact that Dell's financing agent uses the name "***Dell Financial Services***" (emphasis added) and includes the distinctive Dell trademark on its billing statements, letterhead and other written materials.

35. On many occasions, DFS incorrectly bills these consumers for merchandise that they returned or cancelled shortly after ordering or never received, or on a Dell Preferred

Account that the consumer never authorized Dell or DFS to open.

36. When consumers who receive these incorrect bills attempt to contact Dell and/or DFS to correct the matter, they find that Dell and DFS make it extraordinarily difficult for them to obtain a credit that is due them, or to otherwise correct billing errors.

37. Consumers are repeatedly left waiting on hold for long periods of time before being connected to a representative and/or are transferred from one department to the next.

38. When consumers do succeed in reaching a representative, Dell representatives repeatedly give false assurances that the consumer's account will be corrected shortly or that a Dell representative will "get back to them." When consumers leave messages, respondents repeatedly fails to return their calls.

39. Further, although Dell's sales associates give consumers the impression that they are financing their purchase directly through Dell, when consumers subsequently contact DFS to get their account corrected, they are advised that DFS is a separate entity from Dell, and that consumers must contact Dell directly concerning any missing credits.

40. Despite consumers' efforts to correct these errors, DFS continues to send erroneous bills and/or harass consumers with collection calls, even after Dell representatives have confirmed that the merchandise was received or that the order was cancelled and have assured consumers that their account will be credited shortly.

41. Respondents repeatedly fail to credit consumers' accounts fully until several months, and in some cases, years after Dell has received returned merchandise, acknowledged a cancelled order, or has otherwise been advised of a billing error.

42. In many cases, Dell does not inform DFS in the interim that the consumers have

returned the merchandise or cancelled the order, or advise DFS to suspend its billing and collection activity, even though Dell is well aware that DFS will continue to bill these consumers and subject them to collection activity when the consumer fails to make payment on the non-existent debt.

43. DFS is equally indifferent to consumers' plight. Although DFS is well aware that it often takes months for Dell to issue credits for returned or cancelled merchandise, in many cases, when DFS is advised by consumers that they are being improperly billed for merchandise they returned, cancelled, never ordered, or did not finance through DFS, DFS neither contacts Dell to verify the consumer's claim nor suspends its billing and collection activity, and instead, refers these accounts to third party collection agencies when consumers fail to make payment.

44. As a result of Dell's and DFS's complacency and indifference, many consumers are forced to endure weeks or months of harassing collection calls from either DFS or third party collection agencies, despite their repeated attempts to contact Dell and/or DFS to straighten out the matter, even in cases where the consumer never authorized Dell or DFS to open an account.

45. Further, DFS or its third party collection agents have harmed many of these consumers' credit ratings by reporting their account as delinquent to the credit reporting agencies.

46. In many cases, DFS has also failed to correct this negative information after learning that the debt was not valid.

### **Failure to honor warranties and service contracts**

47. Many of Dell's advertisements represent, directly or by implication, that Dell maintains an "award winning" technical support department with a staff of technicians available to assist consumers with computer problems 24 hours a day, 7 days a week.

48. For example, one television advertisement, entitled "Working Late," depicts a pair of Dell interns turning off the lights on their way out of the office after working late, only to discover that members of Dell's technical support "night shift" are still hard at work. Various unseen technicians call out from the dark:

"Everyone thinks just because Dell makes such reliable P.C.s that we just punch out at five."

"But, when someone does have a question, we are here 24/7/365."

"Yea, that's what award winning service is all about."

"That's right, someone's always around to help out."

See, "Working Late" television ad, Exhibit A-2.

49. Dell computers typically come with a 90 day or one year warranty that covers "defects in materials and workmanship" in "Dell-branded hardware products, including Dell-branded peripheral products." Dell warrants that, during the warranty period, Dell will either repair defective hardware or replace it with "comparable product that is new or refurbished" and represents that refurbished parts and systems "are inspected and tested for quality."

50. Dell also routinely offers consumers a variety of extended and/or allegedly upgraded service contracts at the time of purchase that promise expedited "On-Site" repair. Dell contracts with third party vendors, such as BancTec, to provide service to Dell customers who

purchase these service contracts.

51. Dell often identifies these contracts with names such as “Next Business Day Parts & Labor On-Site Response” that create the impression that consumers who purchase them can expect Dell to send a technician to their home as quickly as the day after they report a problem.

52. Although these service contracts require consumers to “troubleshoot” with a technician by phone before Dell will dispatch a technician, Dell’s website and advertisements give consumers the impression that consumers will have ready access to a technician for this purpose twenty-four hours a day, seven days a week.

53. Dell sales representatives also extol the benefits of Dell’s on-site repair contracts and repeatedly represent that these contracts cover “everything” when, in fact, they cover only hardware problems.

54. As a result, many consumers (especially those with limited computer skills and knowledge and those for whom a working computer is essential), lured by the promise of prompt, on-site repair, pay as much as \$300 or more to upgrade and/or extend their warranty coverage for a period between one and four years.

55. However, many consumers who seek technical support for equipment that is covered by a warranty or service contract find that, contrary to the impression created by Dell’s advertisements, Dell’s service is anything but prompt and efficient.

56. In reality, consumers face a daunting array of obstacles in their quest to obtain technical support.

57. Dell repeatedly places consumers who call Dell’s automated call center on hold for unreasonable lengths of time, or in some cases, simply abandons them altogether.

58. After consumers have endured long wait times for a representative to come to the phone, respondents repeatedly tell them that they have reached the wrong department. In many cases, respondents then subject consumers to a telephonic version of “hot potato”, wherein they repeatedly transfer consumers from one representative to the next, with each representative advising them that they have reached the wrong department or that the representative cannot help them. Often, each transfer is punctuated with yet, another interminable “hold” period.

59. On many occasions, consumers are disconnected before they reach the elusive representative who presumably is able or willing to help them. Although Dell’s automated telephone system often allows consumers to leave a message, respondents repeatedly fail to return consumers’ calls. Many consumers who attempt to contact the technical support department by e-mail similarly find their pleas for assistance ignored.

60. Even when consumers are lucky enough to reach a technician, technicians repeatedly place additional obstacles in the way of consumers’ quest for assistance. In some cases, technicians falsely claim that the consumer’s warranty has expired, even though the consumer reported the problem to Dell during the warranty period and it is only because of Dell’s dilatory tactics that it was not resolved before the expiration of the warranty.

61. In other cases, Dell falsely advises consumers that their problem is not covered by their warranty because it is “software related.” In many of these latter cases, at the advice of Dell’s technicians, consumers spend additional money for a software service contract, only to subsequently find that the problem was not, in fact, caused by a software defect.

62. On those occasions when a technician actually agrees to “troubleshoot” the problem, consumers are often held hostage for hours on end as they follow a seemingly endless

array of “troubleshooting” instructions that, in many cases, do not resolve the problem.

63. Technicians also repeatedly pressure consumers to engage in dangerous technical procedures that clearly exceed the bounds of “troubleshooting.” For example, technicians direct consumers to remove the external covering of their hardware and then remove, reinstall and manipulate hardware components located inside the computer in an effort to repair or diagnose the problem.<sup>1</sup>

64. When technicians conclude that a major component such as a hard drive or motherboard needs to be replaced, Dell repeatedly advises consumers that, although Dell will ship the part, consumers must install it themselves with the aid of a technician over the phone.

65. In some cases, when technicians are unable to resolve the problem, they abandon consumers in midstream and/or falsely promise that either they or another technician will contact them shortly, or at an appointed hour to address the problem.

66. Many consumers are then inconvenienced when they re-arrange their schedules to wait by the phone for a call that never comes, and in addition, are left stranded with their computers inoperable and/or disassembled. These consumers are then forced to start the frustrating process of navigating Dell’s technical support system all over again. Consumers who contact Dell’s technical support department by e-mail receive similar advice and treatment.

67. Many of the consumers subjected to this treatment have paid hundreds of dollars

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<sup>1</sup>Indeed, Dell’s own website cautions consumers regarding the potential danger of inspecting internal components with a “Caution” statement that advises “Before you perform any of the procedures in this document, read the following caution for your personal safety and to prevent damage to the system from electro static discharge (ESD).” See, website support instructions, Exh. A-12.

extra for expedited “On-Site” service and find Dell’s promise of expedited on-site repair illusory, as they face the same array of obstacles as other consumers when they try to access Dell’s technical support department to “troubleshoot”, a pre-requisite before Dell will authorize onsite repair.

68. Further, even after consumers follow technicians’ troubleshooting exercises, Dell repeatedly rebuffs consumers’ requests that a technician be dispensed to their home on the grounds that technicians have not yet identified the source of the problem. As a result, these consumers are forced to repeatedly navigate Dell’s technical support department to troubleshoot, and are often left stranded for weeks or months with inoperable or impaired equipment.

69. Even when Dell finally agrees to replace defective equipment or schedule an on-site service call, Dell repeatedly fails to keep its commitment with regard to ship dates for replacement equipment and service appointments and ignores consumers’ ensuing phone calls, e-mails and letters.

70. Further, Dell repeatedly attempts to repair or replace defective equipment using refurbished parts and equipment that are defective or do not resolve the problem.

71. In many cases, Dell either does not disclose that it is providing consumers with refurbished parts or equipment or falsely represents that they are “new.”

72. In addition, Dell has repeatedly used “refurbished” parts and equipment to repair equipment that is defective “right out of the box.”

73. In many cases, exasperated consumers, fed up with the endless runaround and ineffective technical support, resort to paying a third party to fix their equipment or simply stop using it, even though it is covered by a Dell warranty or service contract.

### **Failure to Honor Rebates**

74. Dell also offers substantial rebates on many of its products to induce consumers to make a purchase. In many cases, the rebate offered on a Dell computer is as high as \$250. For example, in a March 2005 advertisement appearing in American Profile Magazine, Dell advertised an Inspiron 6000 Notebook for \$799, after a \$250 rebate.

75. In fact, in many cases, these rebate offers prove to be illusory. Dell repeatedly fails to send rebates to consumers who meticulously fill out the rebate forms and submit all the necessary paperwork within the specified time frame.

76. Dell uses a variety of excuses to deny consumers their rebates, including that: the consumer did not submit the required packing slip with the rebate form; Dell could not read the packing slip; the packing slip does not make reference to the rebate; and Dell has no record of receiving the consumer's paperwork. However, even after resubmitting their paperwork as instructed by Dell and patiently waiting the 8 to 10 week processing period, consumers often still do not receive a check.

77. When consumers contact Dell in their quest to obtain their elusive rebate, Dell repeatedly makes empty promises that the consumer will receive the rebate check shortly, and/or gives them "the runaround" and fails to respond to their phone messages, letters and e-mails.

78. Dell's evasive tactics ensure that, in many cases, only the most determined and persistent consumers actually receive the promised rebates. Ultimately, many consumers obtained their rebate only after complaining to the Attorney General's Office, after spending months getting a runaround from Dell.

**FIRST CAUSE OF ACTION PURSUANT TO  
EXECUTIVE LAW § 63(12) – FRAUD (DELL)**

79. Pursuant to Executive Law §63(12), it is illegal for a business to engage in repeated fraudulent business conduct.

80. As set forth more fully above, in the course of advertising and selling a variety of goods and services, including but not limited to electronic equipment, computers and computer-related products and service contracts, and servicing those goods, respondent Dell has engaged in repeated fraudulent conduct in violation of Executive Law §63(12).

81. Respondent Dell's repeated fraudulent business conduct includes the following:

- (a) repeatedly misrepresenting the nature, availability and terms of financing;
- (b) repeatedly misrepresenting, directly and by implication, the nature and terms of financing for which consumers had applied or been approved;
- (c) repeatedly submitting applications for credit and opening accounts and charging merchandise without consumers' permission;
- (d) repeatedly misrepresenting the nature, availability and terms of its customer service and technical support;
- (e) repeatedly failing to provide consumers with adequate customer service and technical support;
- (f) repeatedly improperly billing consumers and failing to correct billing errors after learning of them;
- (g) repeatedly misrepresenting the actions it will take to address and resolve consumer complaints and inquiries; and

- (h) repeatedly failing to provide consumers with advertised rebates in a timely manner.

**SECOND CAUSE OF ACTION PURSUANT TO  
EXECUTIVE LAW § 63(12) – FRAUD (DFS)**

82. Pursuant to Executive Law §63(12), it is illegal for a business to engage in repeated fraudulent business conduct.

83. As set forth more fully above, in the course of offering financing to Dell's customers through its Dell Preferred Account, and servicing those accounts, respondent DFS has engaged in repeated fraudulent conduct in violation of Executive Law §63(12).

84. Respondent DFS's repeated fraudulent business conduct includes:

- (a) repeatedly misrepresenting the nature, availability and terms of financing;
- (b) repeatedly misrepresenting, directly and by implication, the nature and terms of financing for which consumers had applied or been approved;
- (c) repeatedly opening accounts and charging merchandise without consumers' permission;
- (d) repeatedly failing to provide consumers with adequate customer service;
- (e) repeatedly misrepresenting that consumers are obligated for debts they do not owe;
- (f) repeatedly misrepresenting the actions it will take to address and resolve consumer complaints and inquiries; and
- (g) repeatedly attempting to collect on debts that it has reason to know are not valid and reporting or failing to correct negative information regarding those debts to

credit reporting bureaus.

**THIRD CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12)--  
VIOLATION OF GENERAL BUSINESS LAW § 349  
DECEPTIVE BUSINESS PRACTICES (DELL)**

85. GBL § 349 declares it unlawful to engage in deceptive acts or practices in the conduct of any business, trade or commerce in this state.

86. As set forth more fully above, respondent Dell engages in deceptive business practices in violation of GBL §349.

87. Dell engaged in the following deceptive acts and practices:

- (a) repeatedly misrepresenting the nature, availability and terms of financing;
- (b) repeatedly misrepresenting, directly and by implication, the nature and terms of financing for which consumers had applied or been approved;
- (c) repeatedly submitting applications for credit and opening accounts and charging merchandise without consumers' permission;
- (d) repeatedly misrepresenting the nature, availability and terms of its customer service and technical support;
- (e) repeatedly failing to provide consumers with adequate customer service and technical support;
- (f) repeatedly improperly billing consumers and failing to correct billing errors after learning of them;
- (g) repeatedly misrepresenting the actions it will take to address and resolve consumer complaints and inquiries; and
- (h) repeatedly failing to provide consumers with advertised rebates in a timely

manner.

**FOURTH CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12)--  
VIOLATION OF GENERAL BUSINESS LAW § 349  
DECEPTIVE BUSINESS PRACTICES (DFS)**

88. GBL § 349 declares it unlawful to engage in deceptive acts or practices in the conduct of any business, trade or commerce in this state.

89. As set forth more fully above, respondent DFS engages in deceptive business practices in violation of GBL §349.

90. DFS engaged in the following deceptive acts and practices:

- (a) repeatedly misrepresenting the nature, availability and terms of financing;
- (b) repeatedly misrepresenting, directly and by implication, the nature and terms of financing for which consumers had applied or been approved;
- (c) repeatedly opening accounts and charging merchandise without consumers' permission;
- (d) repeatedly failing to provide consumers with adequate customer service;
- (e) repeatedly misrepresenting that consumers are obligated for debts they do not owe;
- (f) repeatedly misrepresenting the actions it will take to address and resolve consumer complaints and inquiries; and
- (g) repeatedly attempting to collect on debts that it has reason to know are not valid and reporting or failing to correct negative information regarding those debts to credit reporting bureaus.

**FIFTH CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12)-  
VIOLATION OF EQUAL CREDIT OPPORTUNITY ACT (DELL AND DFS)**

91. The Equal Credit Opportunity Act (“ECOA”), 15 USC §1691 et seq., requires creditors to provide applicants for credit “against whom an adverse action is taken” a statement of the reasons for such action. 15 USC §1691(d). Further, the regulations promulgated by the Federal Reserve Board pursuant to ECOA, known as “Regulation B” and found at 12 CFR §§202.1-202.15, require that the statement be in writing, and when a counteroffer is made, the statement must be given “within 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept.” 12 CFR §202.9(a)(iv).

92. Both Dell and DFS are “creditors” within the meaning of ECOA and therefore, are required to comply with ECOA’s adverse action notice requirements.

93. As set forth more fully above, respondents have, at various times, heavily advertised various “no interest” and/or “no payments” financing promotions. Consumers who applied for financing during these periods sought to obtain financing under these promotional terms.

94. Many of these consumers, however, were denied these promotional terms, and instead, offered financing under DFS’s “regular” plan, which did not include any “no interest” or “no payment” period.

95. Respondents’ decisions denying credit applicants promotional financing and instead, approving them only for DFS’s regular plan constitute adverse actions within the meaning 15 USC §1691.

96. Respondents repeatedly and persistently violated ECOA and Regulation B by

failing to provide consumers who failed to qualify for promotional financing, and instead were offered, but declined DFS's regular plan, with a written statement of the reasons for such adverse action as required by 15 USC §1691.

97. As a consequence, Dell and DFS have engaged in repeated and persistent illegality in violation of Executive Law § 63 (12).

**SIXTH CAUSE OF ACTION PURSUANT TO  
EXECUTIVE LAW § 63(12)--  
VIOLATION OF FAIR CREDIT REPORTING ACT (DELL AND DFS)**

98. The Fair Credit Reporting Act ("FCRA"), (15 USC §1681 et seq.) imposes various duties on users of information contained in a consumer report who take adverse action with respect to any consumer that is based in whole or in part on any information contained in that report.

99. Pursuant to 15 USC §1681m, any person who takes any adverse action with respect to any consumer that is based in whole or part on any information contained in a consumer report is required to provide the consumer with oral, written or electronic notice of the adverse action as well as the name, address and telephone number of the consumer reporting agency that furnished the report to the person. Such adverse action notice must also advise the consumer of various rights that they have under the FCRA to obtain their credit report and dispute the accuracy and completeness of the information contained therein.

100. In processing consumers' applications for credit, respondents consider information reflected in consumers' credit reports.

101. Respondents' decisions denying credit applicants promotional financing and instead, approving them only for DFS's regular plan constitute adverse actions within the

meaning of 15 USC §1681.

102. Respondents repeatedly and persistently violated the FCRA by failing to provide consumers who failed to qualify for promotional financing, and instead were offered, but declined DFS's regular plan, with an adverse action notice as required by 15 USC §1681.

**SEVENTH CAUSE OF ACTION PURSUANT TO  
GENERAL BUSINESS LAW §350 FALSE ADVERTISING (DELL)**

103. Pursuant to GBL §350, it is unlawful to engage in false advertising in the conduct of any business, trade, or commerce in this State.

104. As set forth more fully above, Dell repeatedly and persistently engages in false advertising in violation of GBL §350 by disseminating advertisements in a variety of media including, but not limited to: newspapers, magazines, television, catalogues and the Dell website that:

- (a) misrepresent the nature and availability of customer and technical support services;
- (b) misrepresent the nature, availability and terms of financing;
- (c) offer products for sale with substantial rebates that Dell subsequently fails to honor.

**EIGHTH CAUSE OF ACTION PURSUANT TO  
EXECUTIVE LAW § 63(12)--  
VIOLATION OF GENERAL BUSINESS LAW ARTICLE 29-H (DFS)**

105. GBL Article 29-H (GBL §600 et seq.) prohibits principal creditors from, among other things, claiming, or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist or disclosing or threatening to disclose information affecting

the debtor's reputation for creditworthiness with knowledge or reason to know that the information is false. GBL §601.

106. DFS is a "principal creditor" within the meaning of GBL §600.

107. As set forth more fully above, DFS repeatedly and persistently violates GBL §601

by:

(a) repeatedly claiming, attempting, or threatening to collect on alleged debts with knowledge or reason to know that the debts are not valid;

(b) repeatedly threatening to report consumers' accounts as delinquent to the credit reporting agencies with knowledge or reason to know that the debt was not valid.

108. As a consequence, DFS has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

**NINTH CAUSE OF ACTION PURSUANT TO  
EXECUTIVE LAW § 63(12)--  
VIOLATION OF FAIR CREDIT REPORTING ACT (DFS)**

109. The Fair Credit Reporting Act ("FCRA"), (15 USC §1681 et seq.) imposes various duties on those who regularly and in the ordinary course of business furnish information to one or more consumer reporting agencies about their transactions or experiences with any consumer.

110. Where such a furnisher has furnished information to a consumer reporting agency that the furnisher determines is not completely accurate, §1681s-2 of the FCRA requires the furnisher to promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information necessary to make the information provided to the agency complete and accurate.

111. DFS regularly and in the ordinary course of business furnishes information to credit reporting agencies regarding their transactions with consumers to whom it has extended credit through a Dell Preferred Account, and therefore, is required to comply with the requirements of the FCRA set forth in paragraph 110.

112. As set forth more fully above, DFS repeatedly and persistently violates the FCRA by repeatedly failing to correct information sent to credit reporting agencies that is subsequently determined was not complete or accurate.

113. As a consequence, DFS has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

**TENTH CAUSE OF ACTION PURSUANT TO  
EXECUTIVE LAW § 63(12)–  
VIOLATION OF GENERAL BUSINESS LAW ARTICLE 26 (DELL)**

114. GBL Article 26, §391-p requires any company that offers rebates to consumers who purchase specified products or services to, among other things, mail the rebate check or transmit the rebate funds to the consumer within sixty days of receipt of a request for redemption meeting the terms and conditions of the rebate offer.

115. As set forth more fully above, respondent Dell repeatedly and persistently violates GBL §391-p by failing to provide consumers with a rebate check within sixty days of receipt of consumers' requests for redemption that meet the terms and conditions of the rebate offer.

WHEREFORE, petitioner requests that the Court grant relief pursuant to Executive Law §63(12) and GBL Article 22-A by issuing an order and judgment as follows:

1. Permanently enjoining respondents and any other entity through which they may act, from engaging in the fraudulent, deceptive and illegal practices alleged herein;
2. Directing respondents to adopt such measures as are necessary to ensure that they will not engage in the fraudulent, deceptive and illegal practices alleged herein;
3. Directing respondents to make full monetary restitution and pay damages to aggrieved consumers, known and unknown;
4. Directing respondents to pay a civil penalty in the sum of \$500.00 to the State of New York for each instance of violation of GBL Article 22-A, pursuant to GBL § 350-d;
5. Awarding petitioner the costs and disbursements of this action, including additional costs in the amount of \$2,000.00 pursuant to CPLR § 8303(a)(6);
6. Directing respondents to provide an accounting to identify those consumers who are entitled to restitution and the amount of such restitution; and

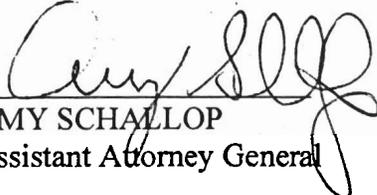
7. Granting petitioner such other and further relief as this Court deems just and proper, including but not limited to, disgorgement of any monies respondents received as a result of the illegal, deceptive and fraudulent acts described herein.

Dated: Albany, New York  
May 14, 2007

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BUREAU OF CONSUMER  
FRAUDS AND PROTECTION

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

-----X

PEOPLE OF THE STATE OF NEW YORK by  
ANDREW M. CUOMO, Attorney General of the  
State of New York,

Petitioner, : **AFFIRMATION**

-against- :

DELL, INC. and DELL FINANCIAL SERVICES, L.P., :  
Respondents.

-----X

AMY SCHALLOP, an attorney duly admitted to practice in the courts of the State of New York, affirms the truth of the following under penalty of perjury.

1. I am an Assistant Attorney General in the office of Andrew M. Cuomo, Attorney General of the State of New York, the petitioner in this proceeding. I am familiar with the facts and circumstances of this proceeding, which are based on investigative materials contained in the files of the Attorney General's Bureau of Consumer Frauds and Protection.

2. I make this affirmation in support of petitioner's application for an Order and Judgment, inter alia, permanently enjoining respondents from engaging in deceptive, fraudulent and illegal business practices, and awarding restitution and damages to injured consumers, and penalties and costs to the State of New York.

**RESPONDENTS**

3. Respondent Dell, Incorporated (hereinafter referred to as "Dell") is a Delaware corporation headquartered in Round Rock, Texas and is one of the world's largest manufacturer of personal computers. Dell employs a direct market business strategy, selling its products

directly to consumers through its website and toll free sales operation. In 2006, Dell had a 16.1% share of the worldwide personal computer market.

4. Respondent Dell Financial Services, L.P. (hereinafter referred to as “DFS”) is a Delaware limited partnership and a joint venture between Dell and CIT Bank, of which Dell maintains a 70% interest. DFS provides financing to Dell’s customers through a Dell Preferred Account (“DPA”), an open line of credit, which Dell offers directly to consumers through the Dell website and by phone through Dell’s sales associates.

#### **FACTS**

5. Dell engages in extensive advertising in a variety of media designed to induce consumers to purchase its products and finance them through DFS by offering one or more of the following benefits: attractively priced computer packages, promotional financing offers that feature a “no interest” and/or “no payment” period, large rebates, and free or upgraded accessories. (See, representative copies of Dell’s print advertisements, attached hereto as Exhibit A-1). Many of Dell’s advertisements also create the impression that Dell maintains an award winning technical support department with an eager staff of technicians available to assist consumers with computer problems 24 hours a day, 7 days a week. (See, e.g., Dell television commercial entitled “Working Late”, attached hereto as Exhibit A-2).

6. However, many consumers who purchase Dell products find that many of the benefits and inducements featured in Dell’s advertisements are illusory. Although Dell heavily advertises the availability of no interest financing, in reality, DFS uses ultra-restrictive underwriting guidelines, under which the vast majority of consumers— even those with excellent credit histories— do not qualify for promotional financing. Dell uses these no interest promotions

to induce consumers to apply for financing, and then offers many of those who are denied promotional financing DFS's "regular plan" under which consumers are extended an open line of credit at interest rates that often exceed 20%. Further, in many cases, respondents fail to clearly advise consumers that they have been denied promotional financing and further misleads them by calling their accounts "Dell Preferred" accounts (emphasis added), even though they do not include any promotional financing terms. As a consequence, many consumers unwittingly finance their purchase through DFS's expensive "regular plan."

7. In a variety of circumstances, DFS bills consumers incorrectly on a Dell Preferred Account for goods and/or services. In some cases, DFS charges consumers for orders that consumers cancelled in whole or part, or for merchandise that they returned or never received. In other cases, DFS bills consumers for merchandise on a Dell Preferred Account that the consumer did not authorize Dell or DFS to open. Many of the consumers who receive such bills subsequently find that, although Dell is able to process consumers' credit applications in a matter of minutes, Dell and DFS operate at an inexplicably slow pace when it comes to crediting consumers' accounts for returned merchandise or cancelled orders, or otherwise correcting billing errors. As a result, DFS and/or third party collection agents improperly bill and harass consumers for months on end for debts they do not owe, despite consumers' persistent efforts to get their accounts straightened out. In many cases, DFS has harmed these consumers' credit ratings by incorrectly reporting their account as delinquent to the credit reporting agencies after they refuse to make payment on a non-existent debt.

8. Further, although Dell induces consumers to purchase and finance equipment by offering rebates, many consumers who timely submit their rebate paperwork do not receive the

promised rebate and get a “runaround” when they subsequently contact Dell to inquire about it.

9. In addition, many consumers who seek technical support after experiencing problems with computer or other electronic equipment while it is under warranty or covered by a Dell service contract find that, instead of the prompt and efficient service they are led to believe they will receive, they face a nightmarish array of obstacles in their quest for service. Dell employs a variety of tactics that discourage and prevent consumers, including those who have purchased expensive warranty upgrades that promise “‘next day’ or ‘next business day’ ‘on-site’” repair, from obtaining technical support. For example, consumers are often repeatedly left on hold for unreasonable lengths of time, shuttled from one department to another, and often disconnected after spending hours on the phone awaiting assistance. In many cases, when consumers do succeed in reaching a technician, they are forced to endure grueling troubleshooting sessions that do not resolve the problem, and are repeatedly rebuffed when they request that a technician be dispatched to their home to repair their computer, even when they have paid for an upgraded service contract that promises expedited on-site repair. As a result, many consumers are left for weeks or months with inoperable or impaired computer equipment that, in many cases, is vital to their personal, professional, educational or business interests. In many cases, consumers become so frustrated and exasperated with Dell’s technical support department that they either pay a third party to repair equipment or simply stop using it altogether.

### **Deceptive Financing Practices**

10. Dell advertises its products through a variety of media, including newspaper

magazines, television, catalogues and Dell's internet website. Many of Dell's advertisements prominently feature a promotional financing offer, such as "90-days same as cash", "no interest until 2005", or "six month interest free financing." (See, representative copies of Dell's print advertisements, attached hereto as Exhibit A-1). These advertisements create the impression that promotional financing is widely available to consumers and succeed at drawing consumers to Dell (see, e.g., Fruscio affidavit, Exhibit B-4; Arnold affidavit, Exhibit B-1; Kroft affidavit, Exhibit B-8; Harris affidavit, Exhibit B-20; Maye affidavit, Exhibit B-10; Wagoner affidavit, Exhibit B-7; Tweedy affidavit, Exhibit B-19; Nizhberg affidavit, Exhibit B-12).

11. Although the ads typically indicate in fine print that these offers are limited to "well-qualified" customers, the ads do not otherwise define or amplify the term "well-qualified" and do not adequately apprise consumers of the exclusivity of DFS's underwriting standards. In reality, Dell and DFS do not offer these promotions to the vast majority of consumers who apply for them. Instead, DFS employs ultra-restrictive underwriting requirements under which approximately 85% of applicants, including many with excellent credit histories, are turned down for promotional financing. Many of these applicants are instead, approved for DFS's "regular" high interest financing plan, which does not include the attractive no interest feature so prominently promoted by Dell. Further, neither Dell nor DFS adequately advises consumers who are approved only for DFS's "regular" high interest plan that they have not been approved for the promotional features that prompted them to apply for financing in the first place.

**Dell's misleading application process**

12. Dell's compensation policy rewards sales associates with additional compensation if the consumer finances his or her purchase with a Dell Preferred Account. As a result, Dell's

sales associates push DFS's promotional financing offers and mislead consumers during the application process in order to induce them both to apply for and accept DFS financing.

13. When consumers who call Dell's toll free sales phone number express interest in obtaining promotional financing, the sales associate typically offers to "check" to see whether the consumer qualifies for the promotion. The sales associate then requests the consumer's personal information and uses it to submit a general application to DFS on the consumer's behalf for an open line of credit, rather than the specific promotion discussed. Often, the sales associate fails to explain either that financing is being offered through DFS, which is a separate entity from Dell, that the credit application is for an open/revolving line of credit, or that the consumer may be offered a credit line that does not include the "no interest" feature. As a result, consumers are often under the mistaken belief that the sales associate is simply checking to see whether the consumer is eligible to financing their purchase under the specific financing promotion they discussed with the sales associate.

In December 2004, I received a catalogue in the mail from Dell that advertised a 0% financing deal from Dell if I opened a Dell Preferred Account . . . When I spoke to the sales associate, I specifically asked about the 0% financing promotion and was told that she needed to check my credit to see if I qualified for it. I explicitly told the associate that I did not want to open an account unless I qualified for the promotion . . . Based on my conversation with the sales associate, I was under the impression that I was specifically applying for the 0% financing promotion. Fruscio affidavit, Exh. B-4.

I feel I was misled by the sales associate when I ordered the computer and would not have placed the order if I had been told that I did not qualify for the 0% financing promotion. Because I specifically asked the sales associate about the no interest promotion, I was under the impression that the sales associate was checking to see if I qualified for the promotion. At no point did the sales associate ask my permission to submit a general application

for an open line of credit that did not include a no-interest promotion. Wagoner affidavit, Exh. B-7.

On August 20, 2003, I called Dell to purchase a computer after seeing a Dell television advertisement offering interest free financing for six months. When I asked the sales associate about the no interest promotion, he advised me that he needed to check to see if I qualified and asked me for my social security number. The sales associate did not advise me that he was submitting a general application for an open line of credit with Dell Financial Services (DFS), but instead, led me to believe that he was checking to see whether I qualified for the specific promotional financing offer that I questioned him about. Hayes affidavit, Exh. B-6.

On December 22, 2004, I ordered a computer from a Dell Sales Associate over the phone. At the time, I did not intend to finance my purchase, but the sales associate advised me that Dell was offering a financing promotion that she described as allowing me one year interest free financing with no payments and offered to check to see if I qualified for it . . . I agreed and gave her my social security number . . . At no time did the sales associate advise me that she was submitting an application to Dell Financial Services ("DFS") for an open line of credit nor did she explain that DFS was a separate company from Dell. I was under the impression that Dell was offering the financing and that the sales associate was simply checking to see whether I qualified for the promotional financing offer. Savini affidavit, Exhibit B-15.

When I told the sales associate that I was planning to use my credit card, she informed me that Dell was offering a six-month free financing promotion and asked me if I was interested in the offer. When I told her that I was interested, she advised me that she would need to check to see whether I qualified and proceeded to take some personal information from me. She then placed me on hold while she checked to see whether I qualified for the promotion. Based on our conversation, I was under the impression that she was checking to see whether I qualified for the specific no-interest promotion we had discussed. At no time did she ask me whether I was interested in applying for an open line of credit that did not include a no-interest promotion, nor did she advise me that she was submitting an application on my behalf for an open line of credit. Lester affidavit, Exh. B-9 .

On November 3, 2003, I purchased a laptop from Dell over the

telephone through a sales associate. I was prompted to call Dell to purchase the computer because I received a brochure from Dell in the mail that advertised a no interest financing promotion.

When I spoke to the sales associate, I inquired about the no interest financing promotion and was told by the sales associate that he could check to see if I qualified and asked me for my social security number. Based on the sales associate's representations, I was under the impression that I was specifically applying to finance my computer with Dell's no interest promotion. The sales associate did not inform me either that he was using my personal information to submit a general application for an open line of credit or that I might be approved for a line of credit that did not include promotional financing. Tweedy affidavit, Exh. B-19.

See, also, Fergus complaint, Exh. B-21.

14. After submitting the consumer's application, the sales associate typically receives a response in a matter of minutes while the consumer remains on the phone line. Sales associates often lead consumers who are approved only for DFS's "regular" plan to believe that they have been approved for promotional financing. In some cases, the sales associate falsely advises the consumer that he or she has qualified for the promotion. In other cases, the sales associate misleads the consumer by representing that he or she has been approved for a "Dell Preferred Account" or simply "approved."

15. Because sales associates give consumers the impression that they are submitting an application on the consumer's behalf for a specific promotional financing offer, many consumers assume that their approval for a Dell Preferred Account means that they have qualified for promotional financing. Sales associates repeatedly reinforce that impression by failing to disclose the interest rate on the account when they advise consumers that they have been approved.

When I spoke to the sales associate, I specifically asked about the 0% financing promotion and was told that she needed to check my credit to see if I qualified for it . . . After checking my credit record, the sales associate advised me that I had been approved for the account. Based on the sales associate's representations, I thought I had been approved for the interest free financing promotion so I ordered my computer and financed it through Dell Financial Services. Fruscio affidavit, Exhibit B-4.

When I called Dell, I asked the sales associate about the "90 days same as cash" financing promotion. The sales associate advised me that she would need to check to see if I was qualified and asked me for some personal information. After checking my credit, she told me that I qualified for \$3,000 of credit, and explicitly told me that I had qualified for the no interest promotion. In fact, I specifically asked her if I had qualified for the promotion, because I wanted to make sure that I was getting the no interest feature. Wagoner affidavit, Exh. B-7.

On August 20, 2003, I called Dell to purchase a computer after seeing a Dell television advertisement offering interest free financing for six months . . . When I asked the sales associate about the no interest promotion, he advised me that he needed to check to see if I qualified and asked me for my social security number . . . After taking my personal information and placing me on hold for a couple of minutes, he came back on the line and, although I do not recall his exact words, said something to the effect that I had been accepted. Based on the sales associate's representations, I thought I had qualified for the promotion. Hayes affidavit, Exh. B-6.

On December 22, 2004, I ordered a computer from a Dell Sales Associate . . . At the time, I did not intend to finance my purchase, but the sales associate advised me that Dell was offering a financing promotion . . . and offered to check to see if I qualified for it. I agreed and gave her my social security number. After taking the information, the sales associate placed me on hold, returned to the phone shortly and advised me that I "qualified." Based on her representation, I was under the impression that I had qualified for the no interest promotion . . . Savini affidavit, Exh. B15.

When I told the sales associate that I was planning to use my credit card, she informed me that Dell was offering a six-month free financing promotion and asked me if I was interested in the offer.

When I told her I was interested, she advised me that she would need to check to see whether I qualified and proceeded to take some personal information from me. She then placed me on hold while she checked to see whether I qualified for the promotion . . . Although I do not recall the exact words used by the sales associate when she returned to the phone, the essence of her response was that I had been “approved.” As a consequence, I thought that I had been approved for the no interest promotion that we had discussed, and therefore, placed my order and paid for it through Dell’s credit program. Lester affidavit, Exh. B-9.

The sales associate advised me that Dell was offering interest free financing for 90 days and, after I expressed interest in this offer, I was transferred to an associate with Dell Financial Services (DFS) to apply. After obtaining some personal information from me, the DFS associate advised me that I had been “approved” for a Dell Preferred Account. Because I thought that I was specifically applying for a 90-day interest free financing promotion, when the associate advised me that I was “approved,” I thought that meant that I was approved for the interest free finance offer. The associate did not provide me with any information about the interest rate that I would be charged, and I did not ask, as I had every intention of paying for the computer before the expiration of the 90 day interest free period. I then ordered my computer and financed it using my Dell Preferred Account. Reisner affidavit, Exh. B-13.

After placing me on hold for a few minutes, the sales associate came back on the line and told me that I had been approved for the no interest promotion. Based on that representation, I ordered a laptop computer and financed it through Dell Financial Services. Tweedy affidavit, Exh. B-19

When I purchased the computer the sales representative indicated that [a twelve month interest free financing] offer was available on my purchase, and, after taking my application information over the phone, approved my financing under this offer before taking my order. It most certainly was the primary reason I made my decision to purchase the computer through Dell. Warhol complaint, Exh. B-24. .

At no time did the sales associate inform me of the interest rate that would be charged on the account. Harris affidavit, Exh. B-20.

See also, Fergus complaint, Exh. B-21; Lempel affidavit, Exh. C-10; Tirado affidavit, Exh. B-17

16. Dell's online application process is also misleading. Dell advertises many of the same promotions on its website that it advertises in its catalogues, on television, and in newspapers and magazines.

17. For example, in one typical advertisement featured on Dell's website on April 10, 2006, Dell advertised a promotion for "No Interest until 2007!" for "well qualified customers." Consumers who clicked on the "Offer Details" link directly below the advertised promotion were then directed to another webpage that featured a large colored banner boldly advertising in large print: "No Interest until 2007!" Lower down the page, directly under the heading entitled "Details," and set out in a separate paragraph, Dell reinforced the impression that consumers who qualified for a Dell Preferred Account would qualify for the no interest promotion by representing that "No interest until 2007 is a feature of the Dell Preferred Account and is available to well qualified customers." In the middle of the page, a bright green box beckons consumers to "Apply Online Now!" (see, webpage attached hereto as Exhibit A- 3). The fact that consumers who were not eligible for "No Interest" financing might be offered "standard" financing was buried further down the page in the middle of a second paragraph.

18. Although this webpage creates the impression that consumers can apply for the advertised financing promotion by clicking on the "Apply Online Now!" hyperlink, consumers who clicked on the this hyperlink were redirected to a general application for an open line of credit and were most likely to be approved for DFS's expensive "regular" financing plan. The two small print paragraphs at the top of Dell's online application informing consumers that they

are applying for a line of credit and may be offered an account without any promotional features do not offset the impression that consumers who click on the “Apply Online Now!” link are, in fact, applying for the no-interest promotion. (See, Dell’s online credit application, attached hereto as Exhibit A-4)

After using Dell’s website to put together a computer package for myself, I clicked on the prompt that directed me to Dell’s online credit application so that I could apply for the no interest financing promotion advertised on the website. I understood from Dell’s advertisements that the promotional financing was for “well-qualified” borrowers and that there was no guarantee that I would qualify for the promotion. However, because the advertisements on Dell’s website state the “no interest” promotion “is a feature of the Dell Preferred Account and is available to well-qualified customers,” I was under the impression that if I was approved for the Dell Preferred Account, it meant that I qualified for the promotional financing offer. Arnold affidavit, Exh. B-1.

While on the website, I saw that Dell was advertising a no interest, no payments for six months financing promotion and accepted Dell’s invitation to apply for the promotion. When I submitted the application, I was under the impression that I was specifically applying for the no interest and no payment promotion that Dell was advertising on its website. Kroft affidavit, Exh. B-8.

See also, Rolle affidavit, Exh. B-14.

19. Further, at least until sometime in 2006, Dell’s online credit decision notification for those consumers who are not being offered promotional financing, but instead, are offered only DFS’s “regular plan” was additionally misleading. When consumers did not qualify for the attractive promotional terms that Dell offered to lure consumers to apply for financing, but instead, were offered credit at exorbitant interest rates that often exceed 20%, Dell couched the actual credit decision in a bold, but misleading, congratulatory message (color and bolding in original):

**Congratulations, Jonathan Consumer!**  
You've been **approved** for a Dell Preferred Account!

Read in connection with the unmistakable impression created by Dell's web ads that invite consumers to apply for promotional financing, this congratulatory message could mean only one thing— that the consumer had been approved for the promotion for which they applied.

20. In this context, neither the black-print text advising “Please note that your account **does not qualify** for or include any promotional financing features” (emphasis in original) nor the account details, which appear further below the misleading eye-catching orange congratulatory message, are sufficiently conspicuous to alert consumers that they have been denied the attractive terms that they sought.

21. Indeed, Dell's online congratulatory message has, in fact, misled consumers:

Shortly after submitting my application, I got a message on my screen saying that I had been approved as a Preferred Account holder. Based on this message, I assumed that I had qualified for the promotional financing offer so I then called Dell by phone to place my order using my Dell Preferred Account. Arnold affidavit, Exh. B-1.

Shortly after I submitted the application online, a message popped up advising me in large print that I had been approved. Because I believed that this message meant that I had been approved for the no interest, no payment promotion for which I was applying, I clicked the “continue” prompt and subsequently purchased the computer through Dell's financing plan. Kroft affidavit, Exh.B-8.

See also, Ashline affidavit, September 13, 2005 letter, Exh. B-2.; Boggio affidavit, Exh. B-3; Rolle affidavit, Exh. B-14.

22. As a consequence of Dell's deceptive practices, many consumers have unwittingly financed their purchase through a “regular” Dell Preferred Account carrying a high interest rate and no extended free ride period. (see, e.g., Tuckruskye (Exh. B-18): 19.99%; Savini (Exh. B-15):

21.49%; Hayes (Exh. B-6): 27.99%; Wagoner (Exh.B-7): 19.99%; Reisner (Exh.B-13): 16.49%; Fruscio (Exh. B-4): 18.24%; Lester (Exh. B-9):16.99%; Tirado (Exh. B-17): 29.24%; Fergus (Exh. B-21): 19.99; Warhol (Exh. B-24): 17.24%; Myers (Exh. B-11): 20.49%; Ashline (Exh. B-2): 21.24%; Tweedy (Exh. B-19): 27.99%).

23. Dell is aware that both its online and phone-based application process misleads or has the capacity to mislead consumers, as it has received countless complaints from New York consumers who have complained they were led to believe they had qualified for promotional financing (see, copy of Dell's complaint log, attached hereto as Exhibit A-6). In addition, Dell's training materials include a number of scripted responses for employees to use when confronted with phone calls from consumers who thought they had qualified for a no interest promotion, but subsequently learned that they did not. The script includes responses to the following anticipated assertions by consumers:

**But your sales representative confirmed that I had been approved for the no interest/90 day [same as cash] plan. I would never have bought this computer otherwise.**

**But while I was completing the application online, I was never informed that I did not qualify for the promotional plan.**

**But I received confirmation on your website that I was approved for the no-interest plan.**  
(See, excerpt from Dell's training materials, attached hereto as Exhibit A- 7)(Bold in original).

#### **Post-financing notification deception**

24. Further, Dell traps consumers in its high interest "regular plan" by continuing to mislead them about the terms of their credit line until well beyond Dell's so-called "21 day" return period, when consumers are no longer able to return their purchase without obligation.

25. Although some consumers who were only approved for DFS's "regular" financing plan report receiving a "welcome" packet in the mail shortly after their purchase that contained additional information about their Dell Preferred Account (see, e.g., Arnold affidavit, Exh. B-1; Lester affidavit, Exhibit B-9), the welcome packet does not advise these consumers that they have failed to qualify for promotional financing. To the contrary, the opening sentence in the letter states: "Congratulations on becoming a Dell **Preferred** Account member" (emphasis added), driving home the impression that they have qualified for promotional financing. (See, Welcome Letter, attached to Arnold affidavit, Exh. B-1).

26. Although in some cases, the first page of the welcome packet includes a box that lists various interest rates applicable to the account, this information does not alert consumers to the fact that they have been denied promotional financing and is consistent with consumers' understanding that they will be charged interest once the applicable no-interest period expires.

I subsequently received some information in the mail from DFS pertaining to the account that DFS opened in my name. The document included numerous lengthy provisions that apparently contained the terms that applied to the account. I did not read through the entire document. I believe the document did include information about the interest rate that would apply to the account. However, I did not see any statement that advised me that I had not been approved for the no interest promotion. I knew that I would accrue interest on any balance that remained after the no interest period ended, so the fact that the document included an interest rate did not suggest to me that I had not been approved for the no interest promotion. Lester affidavit, Exh. B-9.

27. In addition, until at least sometime in 2006, the initial billing statement sent by DFS to consumers further reinforced the impression that they had qualified for the no interest promotion by including a rectangular box with the following information in bold letters:

**“Effective ANNUAL PERCENTAGE RATE: .00%”**. (See, representative first billing statement from DFS, attached hereto as Exhibit A-8)

In January 2004, I received my first statement from DFS. Consistent with my understanding that I had been approved for Dell’s 6 month interest free financing promotion, the statement did not include any finance charges and indicated that the effective annual percentage rate on the account was .00%. Lester affidavit, Exh. B-9

In September 2003, I received a statement from DFS that reflected that I had not been charged any finance charges and that my effective annual percentage rate was .00%. This statement confirmed in my mind that I had received the no interest promotion. Hayes affidavit, Exh. B-6.

A few weeks after I ordered the computer, I received my first statement from Dell Financial Services. Consistent with my understanding that I had qualified for the no interest promotion, the statement did not include any finance charges and indicated that the effective annual percentage rate on my account was “.00%.” Wagoner affidavit, Exh. B-7.

Shortly after I placed my order, I received my first statement from Dell Financial Services. Consistent with my understanding that I had qualified for Dell’s promotional financing, the statement did not include any finance charges and reflected an effective Annual Percentage Rate of .00%. Fruscio affidavit, Exh. B-4.

Shortly after placing my order, I received my first statement from Dell Financial Services, which did not contain any information that was inconsistent with my belief that I had qualified for the no interest promotion. The statement did not include any finance charges. Arnold affidavit, Exh. B-1.

Not long after we ordered the computer, we received a bill from Dell Financial Services. At the bottom of the bill, there was a box with a statement advising “Effective ANNUAL PERCENTAGE RATE: 00.00%”, which confirmed to me that my daughter had received the 0% financing promotion. Tirado affidavit, Exh. B-17.

See also, Gabelman affidavit, Exh. B-5; Tuckruskye affidavit, Exh. B-18; Boggio affidavit, B-3; Rolle affidavit, Exh. B-14.

28. Many consumers do not learn of the true terms under which DFS has extended them financing until well beyond Dell's alleged "21 day" return period, when they receive DFS's second billing statement. On the second statement, the effective APR listed in the rectangular box at the bottom of the page is no longer 0%, but instead, is typically more than 16% and, in many cases, is well over 20%. In addition, the column headed "Finance Charges" reflects that the consumer has been assessed finance charges. (See, e.g., second billing statement attached to Lester affidavit, B-9).

29. After receiving the second statement, many consumers contact DFS only to be told for the first time that they did not qualify for promotional financing, and instead, only qualified for a line of credit carrying an interest rate that typically exceeds 16%.

[W]hen I received my second statement from DFS in February, I discovered that I had been charged \$20.73 in finance charges. In addition, this statement indicated that the effective annual percentage rate was 17.26%. At this point, I knew that something was wrong, so I immediately called Dell's sales office. However, I was advised that this matter was not Dell's responsibility and that I needed to contact DFS. When I contacted DFS, I was essentially told that I had never qualified for the promotion, which was contrary to what I had been told by the sales associate when I placed my order. Lester affidavit, Exh. B-9

In October 2003, I received my second statement from Dell Financial Services, but this statement included \$62.96 in finance charges and reflected an effective annual percentage rate of 27.99%. Upset that I had been assessed finance charges, I immediately tried to call Dell for an explanation. Although it took two or three phone calls before I was able to reach someone who would talk to me about the situation, eventually I was told that I had not qualified for the promotion. Hayes affidavit, Exh. B-6

[W]hen I received the second statement the following month, I noticed that I was now being assessed finance charges and the

statement reflected an effective annual percentage rate of 19.99%. I then called Dell Financial Services for an explanation. Ultimately, I spoke to an employee who tried to tell me that Dell was not offering a 90 day same as cash promotion at the time I ordered my computer. This is contrary to what I was told by the sales associate on the phone. Wagoner affidavit, Exh. B-7

[T]he following month, I received a statement that included a \$55.00 interest charge and immediately called Dell to inquire about the charge. Although I had some difficulty reaching someone who could explain the situation to me, ultimately I was told, much to my surprise, that I had not qualified for the no interest promotion. Fruscio affidavit, Exh.B-4

On March 11, 2004, I received my second statement from Dell Financial Services and, much to my alarm, noticed that I had been assessed finance charges. I immediately called the toll free phone number and learned for the first time that only certain "Preferred" account holders qualify for the deferred 12 month financing and I was not one of them. Arnold affidavit, Exh. B-1

I purchased a computer from DELL on November 14, 2005 with their NO-INTEREST PLAN (FOR 6 MONTHS). DELL changed the plan to a regular plan without my knowledge and without my authorization. I found out about the change on the plan on Friday, 1/20 when I received the second statement. I contacted DELL to request honoring of the original plan and the only option they give is to pay off the entire bill of over \$800; which I planned to pay in 6 months. Fergus complaint, Exh. B-21

In February 2004, I received a second statement from DFS that showed that I was being charged interest at a rate of 20.33%. After receiving this statement, I called DFS to inquire about what I considered a mistake on my statement. I called both DFS and Dell Customer Care over a dozen times in an effort to get my account corrected. However, I had great difficulty getting through to someone who would speak with me. I spent many hours on hold, and was repeatedly transferred from one department to another. Ultimately, I was told that I had not qualified for the promotional financing. Tuckruskye affidavit, Exh. B-18

However, the following month, I received a second bill which included finance charges for that month as well as deferred charges from the previous month. I then e-mailed Customer Service for an

explanation and was told explicitly for the first time that I did not qualify for the promotional financing. Gabelman affidavit, Exh. B-5

The following month I received a statement that included not only a minimum monthly payment, but also, \$21.10 in finance charges. In addition, the statement reflected that the effective Annual Percentage Rate on the account was 24.37% . . . I called DFS for an explanation, but this time was told that I had never qualified for promotional financing. Rolle affidavit, Exh. B-14

30. Although these consumers typically protest and try to get DFS to honor the no interest promotion for which Dell and DFS led them to believe they had qualified, DFS consistently refuses to alter the terms of the account. As a result, consumers who lack the funds to pay off the account are trapped in DFS's high interest regular plan because DFS refuses to allow them to pay off the balance on their account with a credit card and Dell refuses to allow them to return the equipment because it is beyond the twenty-one day return period.

Feeling that we had been misled by Dell, my daughter filed a complaint with the Attorney General's Office in May 2005. Subsequently, Dell Financial Services agreed to waive \$180 in interest charges but refused to honor the 0% financing offer for which the sales associate had advised me that my daughter had qualified. Neither my daughter, a full time college student, nor I, a disabled veteran on a fixed income, have the funds available to pay off the Dell Preferred Account. Consequently, although my daughter has been making a payment of at least \$45 each month, after making 19 payments, she had only paid \$439.08 toward the purchase price of the computer and had paid \$602.92 in finance charges. Tirado affidavit, Exh. B-17

Ultimately, Dell was unwilling to honor the interest free financing promotion that the sales associate led me to believe I would receive . . . Hayes affidavit, Exh. B-6

I made several subsequent attempts to get Dell and DFS to honor the no interest promotion that I was told I was getting, but I was not able to get any satisfaction. Lester affidavit, Exh. B-9.

Because DFS was unwilling to give me the promotional financing that I was led to believe I had gotten when I ordered the computer, I requested that DFS close my account, and . . . sent DFS a check for the full purchase price of the computer equipment. Despite this payment, about a month later I received a statement from DFS that included finance and late charges. I then contacted Dell or DFS on more than a dozen occasions to advise them that I wanted to return the equipment for a full refund, but was ultimately advised that it was too late to do so. Rolle affidavit, B-14

I contacted DELL to request honoring of the original plan and the only option they give is to pay off the entire bill . . . Fergus complaint, Exh. B-21

At that point, I told a representative that I wanted to pay off the balance on my Dell Preferred Account using my credit card, which had an interest rate of 9%, but was told that I could not use a credit card to pay off the balance on the account. As a result, I was forced to take out a loan that had a lower interest rate than the Dell Preferred Account and borrow money from friends to pay off the balance within the first month. Seifert complaint, Exh. B-16

I offered to return the computer but was told it was too late. Fruscio affidavit, Exh. B-4

When I stated that I wanted to return the equipment if Dell was not honoring the terms of the finance offer, I was told that it was too late. Kroft affidavit, Exh. B-8

See also, Tweedy affidavit, Exh. B-19; Gabelman affidavit, Exh. B-5; Arnold affidavit, Exh. B-1

31. Many of these consumers would not have agreed to finance their purchase through DFS if they had been apprised of these credit terms at the time of purchase, and instead, would have either paid for their purchase through other means, such as a credit card with a lower interest rate, or forgone making a purchase.

I would never have agreed to 19.99% interest rate, nor agreed to a regular plan. Fergus complaint, Exh. B-21.

I never would have placed the order for the laptop if I had been informed by the sales associate that Dell Financial Services was offering my daughter a credit line carrying an interest rate exceeding 29%. Tirado affidavit, Exh. B-17.

If I knew when I applied for the promotional financing that I had not qualified for it, I would not have purchased the equipment from Dell. I had no interest in an open line of credit from Dell with an interest rate exceeding 20%, as I had credit cards that I could have used to purchase the equipment that carry a lower interest rate. Arnold affidavit, Exh. B-1.

Had I known at the time I applied for financing that I didn't qualify for the interest free financing offer, I would have paid for the computer using one of my major credit cards that carried less than the 16.99% interest I was charged by DFS. Boggio affidavit, Exh. B-3.

If, when I called to order the computer, I had been advised by the sales associate that Dell was only willing to extend me credit at an interest rate exceeding 18%, I never would have financed my computer through Dell. Fruscio affidavit, Exh. B-4.

If I knew when I was ordering the computer that I would not receive interest free financing and that, instead, would be extended credit at a rate of 27.99%, I would have used other means to pay for the computer. Hayes affidavit, Exh. B-6.

If I had known at the time I applied for the no interest promotion that Dell would only extend me credit with an interest rate exceeding 20%, I never would have agreed to such a loan, nor would I have purchased a computer from Dell. Before purchasing my computer, I explored offers from other computer companies. At the time I purchased the computer, other companies were offering better deals than I ultimately received from Dell. Kroft affidavit, Exh. B-8.

I feel that I was taken advantage of by Dell. The experience made me frustrated and angry. It was the offer of interest free financing that prompted me to purchase the equipment from Dell. I would not have purchased from Dell if I knew I did not qualify for the promotion. I had the funds available to pay for the computer in full and certainly was not interested in getting an open line of credit from DFS at an interest rate of 23.99%, since I have a Mastercard

with a 6.9% interest rate. Rolle affidavit, Exh. B-14.

I would have purchased this computer anyway and would have put it with my credit card at an interest rate of 6.9%. There is no way that I would have paid 21% interest fees for a computer that I could pay 6.9% for had I been notified in advance that I did not qualify for the promotion. Ashline complaint, Exh. B-2.(emphasis in original)

See also, Savini affidavit, Exh. B-15; Harris affidavit, Exh. B-20; Warhol complaint, Exh. B-24; Myers affidavit, Exh. B-11; Tuckruskye affidavit, Exh. B-18; Nizhberg affidavit Ex. B-12; Gabelman affidavit, Exh. B-5.

32. Many consumers who are offered only DFS's "regular plan" have excellent credit and are turned down for promotional financing simply because DFS intentionally uses ultra-restrictive qualifying criteria that disqualify all but a fraction of consumers from receiving the heavily advertised promotional terms that lure them to apply for financing and purchase Dell products. Based on information provided by Dell to the New York State Attorney General's Office, of the 1,037,938 New York consumers who submitted a credit application during the period of January 1, 2003 through March 2005, 48% were approved for a Dell Preferred Account, but only 16.35 % of these applicants were approved for promotional financing. Of the 48% who qualified for a Dell Preferred Account, only 34% were approved for the promotional financing advertised, while the remaining 66% were offered DFS's "regular plan."

33. Further, for some of Dell's most attractive promotional financing offers, the percentage of consumers who actually qualified for the promotion are significantly lower than 16.35%. For example, Dell advertised a financing promotion in April 2003 for "No Interest Until September," but only 7% of New York applicants were actually approved for the offer. See, DPA application data, Exhibit A-13.

34. During the period of May 1, 2002 through June 30, 2005, DFS turned down more than 65,000 New York consumers with FICO scores exceeding 700 for promotional financing, and instead, approved them for Dell's "regular" plan with a high interest rate (usually between 16.99% and 27.99%) and no extended free ride period.

I have an excellent credit record and do not think that Dell had any legitimate reason to deny me promotional financing. I have owned my home outright for several years after paying off my fifteen year mortgage in approximately seven years. I have several credit cards and always pay my balances in full every month and do not have any other debt or liability. Additionally, I earn a six figure salary as a computer programmer for one of the largest companies in the country and have substantial savings in the bank and investment accounts. Nizhberg affidavit, Exh. B-12.

As far as I know, I have excellent credit. I pay my credit card bills in full and on time every month. I currently have a fixed rate mortgage with a 4.75% interest rate and I recently got a new credit card offering 0% financing for one year. Gabelman affidavit, Exh. B-5.

I firmly believe that Dell did not have a legitimate reason for denying me the promotional financing offer they advertised on television. At the time I inquired about the promotion, I was fifty-six years old and collecting a pension from Niagara Mohawk, after retiring as a supervisor with 32 years of service, and was also working full time for the Saratoga Police Department. I owned my home outright, after paying off my mortgage in 2001. Further, during the period from 1969 through 2001 when I had a mortgage on my home, I made every single payment on time. I also had two major credit cards that carried interest rates of approximately 9.99% and 12%, and always paid my credit card bills, as well as all my other bills, on time. As far as I know, there is absolutely no negative information on my credit report. In addition, last Fall I was able to obtain a \$297,000 home equity loan at an interest rate of 6.27%. [DFS turned consumer down for "no interest until 2006" and instead, offered him "no payments for 90 days."] Maye affidavit, Exh. B-10.

To the best of my knowledge, I have an excellent credit rating. At the time I purchased the computer, I continuously had a mortgage

loan that was paid on time every single month, I had approximately three major credit cards and had never been late paying on any of those debts. To my knowledge, I have never been late paying any debt. Currently, the major credit card that I use carries a 9% interest rate. My current mortgage from March 2003 carries a 5.8% interest rate. I have been employed in my current job at General Electric as an Electrical Engineer for approximately 8 years, and have been working as an electrical engineer for 25 years. Lester affidavit, Exh. B-9.

My long debated decision to buy our first computer from Dell for my family in early 2004 was triggered by their printed catalog offer of 1 year no interest featured in January . . . I applied on line . . . they extended a no interest offer for only 90 days . . . When weighing substantial purchases, my decision often hinges upon similar low or no interest offers. I monitor my credit rating (most recently 780 on a scale of 850), have never been denied such an offer and consistently pay as agreed on all accounts to maintain it . . . Dell routinely features similar credit offers in their catalogs and advertisements in national publications such as Parade magazine. The one year offer is less frequently featured than most but is presently advertised for August 2004. Based on my experience, I suspect they have little intention of honoring it, or only to such a select group that it doesn't warrant featuring it in advertising. Giardine affidavit, Exh. B-22.

### Improper Billing and Collection Activities

35. Dell's sales associates repeatedly fail to advise consumers who apply for financing that the financing is being offered, not by Dell, but by Dell's affiliate, DFS. As a result, Dell's sales associates, who process consumers' credit applications by phone, create the impression that consumers are financing their purchase directly through Dell, an impression that is reinforced by the fact that Dell's financing agent uses the name "***Dell Financial Services***" (emphasis added) and includes the distinctive Dell trademark on its billing statements, letterhead and other written materials.

36. On many occasions, DFS incorrectly bills consumers for merchandise that they

returned or cancelled shortly after ordering, or never received. In many cases, the returns and cancellations stem from Dell's own mistakes and incompetence. For example, Dell repeatedly ships computer equipment that is defective, does not match the specifications ordered by consumers, or was never ordered by them. See, Ossont complaint, Exh. C-43 (consumer returned defective computer); W. Carey complaint, Exh. C-24 (consumer sent wrong monitor); Schwasnick complaint, Exh. C-39 (Dell shipped items from an order that consumer had cancelled); Ewing affidavit, Exh. C-6 (consumer ordered a \$12.95 part from Dell, but was also sent and billed \$105.49 for a pair of RAM chips that he did not order); Hecky affidavit, Exh. C-7 (consumer ordered scanner, but cancelled the order after Dell informed her it was out of stock, Dell billed consumer for it anyway).

37. On other occasions, DFS opens a Dell Preferred Account in a consumer's name without the consumer's authorization and bills merchandise to it. See, e.g., Ochterski affidavit, Exh. C-13 (consumer ordered a computer, Dell shipped consumer a duplicate order and charged the second one to a DPA opened in consumer's name without his authorization); Rea affidavit, Exh. C-16 (consumer ordered a computer and gave the sales associate credit card information, instead, Dell charged the merchandise to a DPA that consumer never authorized Dell to open); Mascaro complaint, Exh. C-35 (although consumer contacted a Dell sales associate to discuss purchasing a computer, he never ordered one, Dell nevertheless shipped him a computer and charged it to consumer on a DPA without his authorization); Burgio complaint, Exh. C-3 (consumer ordered computer and although he was subsequently advised by Dell that Dell had cancelled the order, Dell subsequently shipped consumer a computer and charged him for it on a DPA that he did not authorize).

38. When consumers who receive these incorrect bills attempt to contact Dell and/or DFS to correct the matter, Dell and DFS make it extraordinarily difficult for consumers to obtain a credit that is due them, or to otherwise correct billing errors. Consumers are often left waiting on hold for long periods of time before being connected to a representative and/or are repeatedly transferred from one department to the next. When consumers do succeed in reaching a representative, Dell representatives repeatedly give them false assurances that their account will be corrected shortly or that a Dell representative will “get back to them.” When consumers leave messages, Dell repeatedly fails to return their calls.

I attempted to contact Dell and DFS to get DFS to correct their records and close the account. However, after twenty to thirty phone calls and multiple letters, I continued to receive bills from DFS. Each time I called, I was transferred from one person to another and put on hold for extended periods of time. It was very difficult to get anyone to address the situation. Burgio affidavit, Exh. C-3.

I called Dell to explain that the equipment had been returned and was advised that I would be issued a credit. However, I continued to receive bills from DFS. I subsequently called Dell on multiple occasions in an effort to get Dell to credit my account. Invariably, the Dell representatives would tell me that they would issue the credit, but I continued to received (sic) bills from DFS. When I asked to speak with a supervisor, the representatives consistently told me that no supervisor was available and that they could answer any questions that I had. If I expressed frustration, the representatives would hang up, and I would have to spend another half an hour waiting on hold and being transferred between representatives before I could speak with another representative about the matter. Cimilluca affidavit, Exh. C-4

Subsequently, I began to receive bills from Dell Financial Services (DFS) that charged me for the accessories I never ordered as well as the laptop. I subsequently called Dell to request that DFS stop billing me for the accessories, but after spending more than an hour on hold, I was advised by a Dell representative that I needed to

Speak with DFS. However, when I contacted DFS, I was transferred several times over the course of an hour and then told that I needed to contact Dell. I spent over thirty hours on the phone over the following several months attempting without success to get DFS to stop billing me for the accessories. The calls were all similar to my first phone call, involving long hold times and multiple transfers between representatives. I would speak to one representative, and when I would call back and ask for the representative by name, another representative would tell me that no one by that name worked there. This occurred on multiple occasions. Pollien affidavit, Exh. C-15.

I continued to receive bills from DFS. Although I called Dell each time I received a statement to explain that I had returned all the merchandise I ordered, representatives repeatedly refused to correct their records and demanded payment from me in an unprofessional, but predictable, manner. Although I repeatedly attempted to resolve the situation, I grew tired of being transferred from one representative to another and disconnected without getting to speak with someone who could understand that my account had not been credited for the printer that I had returned. Rencher affidavit, Exh. C-17

I called and wrote to DFS on multiple occasions in an effort to get my account fully credited, but was unable to get DFS to stop billing me. It was extremely frustrating trying to get through to DFS. On several occasions, I was placed on hold, but no one ever returned to the line to assist me. On six different occasions, I was promised by DFS representatives that someone would get back to me, but no one ever did. Ruopp affidavit, Exh. C-18.

See also, Barrett complaint, Exh. C-22; Fredsell complaint, Exh. C-25; Hewson complaint, Exh. C-30; Lacivita complaint, Exh. C-32; Yates-Voss complaint, Exh. C-42; Parzych affidavit, Exh. C-14; Beagen affidavit, Exh. C-1; Gray affidavit, Exh. D-14

39. Further, although Dell's sales associates give consumers the impression that they are financing their purchase directly through Dell, when consumers subsequently contact DFS (which they often mistakenly believe is Dell's financing department) to get their account corrected, DFS advises them that DFS is a separate entity from Dell, and that consumers must

contact Dell directly concerning any missing credits.

I called DFS approximately four times to explain that I was being billed for items I never received, but was unable to get DFS to stop billing me. On more than one occasion, I was advised that DFS could not credit my account and that I would have to contact Dell to obtain the credit. Although the representatives with whom I spoke all maintained that Dell and DFS were separate companies, their assertions were inconsistent with my experiences, because the Dell sales associate had established the Dell Preferred Account for me, and when I spoke with Dell representatives, they were able to transfer me directly to a DFS representative. Berman affidavit, Exh. C-44

I continued to get repeated phone calls from Dell Financial Services . . . I kept insisting that I never opened a financial account and would not pay interest on an unauthorized account. I asked every one of them to research the sales record and determine if they could see the error on their end. They refused and told me that that was my responsibility. I would ask them how I could be in a position to perform an internal investigation of their company and they would say that they had nothing to do with Dell Corporation which obviously is not true. Rea affidavit, Exh. C-16

Italiano affidavit, Exh. C-9 (By letter, DFS advised consumer “[w]e regret that we cannot assist you with your issue. For information regarding credits, you will need to contact Dell, Inc.”).

DeMeo affidavit, Exh. C-5 (By letter dated August 26, 2004, DFS advised consumer “[w]e regret that we cannot assist you with your issue. For information regarding your missing credits you will need to contact Dell Inc. . . .”).

Lacivita complaint, C-32 (by e-mail dated April 1, 2003, DFS advised consumer “[f]or assistance with any Dell credits issued to you, please contact Dell Customer Service . . . as your financing company we do not have access to credits issued by your equipment vendor . . .”).

Ewing affidavit, Exh. C-6 (by letter dated August 9, 2005, DFS advised consumer that “[w]e regret that we cannot assist you with your issue regarding returned merchandise. For information concerning missing credits from returns, you will need to contact Dell Inc. at 1-800-624-9896, options 4,1,4,4 and 4. . .”).

See also, R. Higgins affidavit, Exh. C-8; Hewson complaint, Exh. C-30; Ossont complaint, Exh. C-43; Randall complaint, Exh. C-38.

40. In many cases, consumers continue to receive erroneous bills and/or harassing collection calls, even after Dell representatives have confirmed that the merchandise was received or that the order was cancelled and have assured consumers that their account will be credited shortly. See, e.g., Healy complaint, Exh. C-45 (consumer told she would receive credit in ten to fifteen days); Hecky affidavit, Exh. C-7 (consumer repeatedly assured the problem would be fixed in five to seven days); Ossont complaint, Exh. C-43 (consumer told it normally takes about ten days to process credit); Hewson complaint, Exh. C-30 (consumer told account would be credited in seven to ten days); Fredsell complaint, Exh. C-25 (consumer told account would be credited in seven to ten days); Morusty complaint, Exh. C-37 (consumer advised by five account representatives that his account balance would be reduced to zero); Schwasnick complaint, Exh. C-39 (consumer told account would be credited in ten days).

41. As a result, many consumers subsequently find themselves in a seemingly endless cycle, spending hours on the phone trying to get through to a Dell or DFS representative to get their account straightened out, only to continue being harassed by DFS or a third party debt collector for payment, even after they have been repeatedly assured that the matter will be corrected.

Now please note that all these times I have called Dell to settle this, I was on the phone with them for hours at a time. First you hold for at least an hour before you can even get a real live person listening to music with constant voice messages every minute, hearing the same message over and over again. Then after you finally get through, they take off for about 5-10 minutes at least 3-4 times, and even worse keep transferring you back and forth between departments where you hold again for 20 or more minutes,

listening to the same repeated interrupted messages, and sometimes even cut you off when you think you are so close to getting a manager to finally settle this once & for all, but you get a dial tone instead & have to start the process all over again . . . Yates-Voss complaint, Exh. C-42

I attempted to contact Dell and DFS to get DFS to correct their records and close the account. However, after twenty to thirty phone calls and multiple letters, I continued to receive bills from DFS. Each time I called, I was transferred from one person to another and put on hold for extended periods of time. It was very difficult to get anyone to address the situation. I also spoke with the representatives' supervisors, but even they failed to get my account credited. Burgio affidavit, Exh. C-3.

I have called so many 1-800 # over and over and listened to so many prompts only to be connected to someone in India that tells me "there is nothing they can do and I have to pay this account!" Therrien complaint, Exh. C-40.

I called Dell customer service. . . I tried to explain that I had refused the computer and cancelled my order. He just couldn't grasp this notion. I would need to speak to someone in the finance department. I called the financial department and told another person the same story and they were just as confused as ever. I was referred back and forth from financial to customer service stating that without a confirmation number for the cancellation they couldn't help me . . . McGinty affidavit, Exh. C-11

I have spoken to Dell Customer Care and Dell Financial Services on more than one occasion . . . regarding this issue and I have never received any resolution! All I get every time I call is the run around and rude customer service representation. They transfer me here and there; give me reference numbers - which indicate that Dell has received the web camera back and that my account will be credited within 1-10 business days. To date, I still have not received my full credit . . . for this item and I am currently still being billed for the camera, charged finance charges and late fee charges! I've also communicated with Dell through e-mail . . . Each time I have spoken with Dell they tell me the issue will be taken care of and it hasn't been! Now, Dell has compromised my credit history . . . Merritt complaint, Exh. C-12

I have attempted on numerous occasions to speak with someone to

clear up this matter but have been put on hold several times and no one ever returned to take care of me. I have called & spoken with several people in Panama and India (cannot understand them) who claim they were going to clear my account and have not received any service. I have requested to speak with their supervisors at the facility and have been promised on six different occasions that "someone would get back to me" . . . no one has ever done that! Ruopp complaint, Exh. C-18.

I immediately called Dell Financial and informed them of the situation . . . I requested to speak with a manager, was told none were available, but one would call back. No manager called back. I left more messages for Doug (sales) and on the customer service line. No one returned my calls . . . Beagen affidavit, Exh. C-1

I ordered the merchandise on 1/04/04 and cancelled it on 1/14/04 after receiving information that you were out of stock and didn't know when you would get the merchandise . . . I have gotten 3 cancellation number confirmations, and still it can't be resolved . . . I have been told a manager would get back to me within one hour and that was on 3/10/04, and I still have not heard from that person . . . I have spent over 7 hours on the phone through out this mess to resolve this issue and each time I am assured the problem will be fixed in 5 to 7 days, and then I get a call from collections asking where my payment is . . . Hecky affidavit, March 25, 2004 letter Exh. C-7

I spoke to five different people on five different occasions and told them I do not have the items, never had the items and never will have the items I am being charged finance charges for. All of them said "yes, we see you are correct, we will change the record. It will take ten days for them to re-stock the shelf where your items were, but once they are re-shelved you will get a credit on your account . . . NO ONE ever corrected it. I am still getting bills. I am still getting the harassing phone calls. My credit rating is now reflecting this delinquency. . . Maisano complaint, Exh. C-34

See also, Fredsell complaint, Exh. C-25; Ochterski affidavit, Exh. C-13; W. Carey complaint, Exh. C-24; Cimilluca affidavit, Exh. C-

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42. In reality, in many cases, consumers' accounts are not fully credited until several

months, and in some cases, years after Dell has received returned merchandise, acknowledged a cancelled order, or has otherwise been advised of a billing error. See, e.g., W. Carey complaint, Exh. C-24; Barrett complaint, Exh. C-22; Fredsell complaint, Exh. C-25; Furgeson complaint, Exh. C-26; Hewson complaint, Exh. C-30; Lacivita complaint, Exh. C-32; Suzanne L. complaint, Exh. C-33; Maisano complaint, Exh. C-34; Morusty complaint, Exh. C-37; Randall complaint, Exh. C-38; Therrien complaint, Exh. C-40; Ward complaint, Exh. C-41; Yates-Voss complaint, Exh. C-42; Beagen affidavit, Exh. C-1.

43. In many cases, Dell does not inform DFS in the interim that the consumer has returned the merchandise or cancelled the order, or advise DFS to suspend its billing and collection activity, even though Dell is well aware that DFS will continue to bill the consumer and subject him or her to collection activity when the consumer fails to make payment on the non-existent debt. See, e.g., Ossont complaint, Exh. C-43; Therrien complaint, Exh. C-40; Healy complaint, Exh. C-45; R. Higgins affidavit, Exh. C-8.

44. DFS is equally indifferent to consumers' plight. DFS is well aware that it often takes months for Dell to issue credits for returned or cancelled merchandise. Indeed, in response to consumer complaints filed with our office, DFS has repeatedly acknowledged Dell's "delay" or "serious delay" in issuing credits to consumers' accounts. (see, DFS's response to: Perry complaint, Exh. C-47; DeMeo complaint, Exh. C-5; Rencher complaint, Exh. C-17; Therrien complaint, Exh. C-40; King complaint, Exh. C-31; W. Carey complaint, Exh. C-24; Bledsoe complaint, C-23; Fredsell complaint, Exh. C-25; Ewing complaint, Exh. C-6). Yet, when consumers advise DFS that they are being improperly billed for merchandise they returned, cancelled, never ordered, or did not finance through DFS, DFS repeatedly fails to either contact

Dell to verify the consumer's claim or suspend its billing and collection activity, and instead, repeatedly refers these accounts to third party collection agencies when consumers fail to make payment.

I saw a commercial on television advertising a Dell computer for \$400. However, when I called Dell to order the computer on March 17, 2005, the sales associate quoted me a price of more than \$1,000. I reluctantly placed the order, which I financed with a Dell Preferred Account, because the sales associate advised me that I could cancel it if I called within 24 hours to do so. At about 8:00 a.m. the following day, I called Dell and left a message on the sales associate's voice-mail advising that I wished to cancel my order. Notwithstanding my message, Dell subsequently shipped me the computer by UPS. Although I refused delivery of the computer, I subsequently received a bill for it from Dell Financial Services (DFS). I then contacted DFS to request that DFS stop billing me for the cancelled order. Dell subsequently issued only a partial credit to my account, and as a result, I received a bill from DFS in April 2005 reflecting an outstanding balance of \$219.04 . . . In May 2005, I received a letter from a collection agency advising that my account had a balance of \$256.31. I also began receiving calls two to seven times a day from a collection agency . . . Italiano affidavit, Exh. C-9.

Back in the year 2002 I bought a computer from Dell Corporation. At the time of purchase I gave them my credit card information and was satisfied that I had fulfilled my financial obligations . . . Dell Corporation, subsequently, ignored my instructions and opened a financial account on my behalf that accrued interest . . . Six months later I started getting statements from Dell Financial Services that showed a balance owed. I contacted Dell Financial Services . . . and explained that my instructions had been ignored and an unauthorized account had been opened in my name. I advised that I was going to pay the original balance in full by check and that this should finalize the transaction. She agreed with me that it would and instructed me how to reference their information on my check. I followed her instructions accordingly. I continued to get repeated phone calls from Dell Financial Services. I explained the situation over thirty times to people in that organization. Most time they would listen to me and assure me that they would do what was necessary to make the necessary corrections. It never happened. Invariably, I would get another phone call a few days

later and it was always back to square one . . . I was eventually contacted by three different collection companies. Some of them would make ominous and threatening comments . . . Rea affidavit, Exh. C-16

I purchased a Dell laptop computer on or about October 23, 2002 but, after setting it up, I was dissatisfied with the operating system. As per a Dell representative's instructions I returned the computer on or about November 21, 2002. Subsequently, I began receiving statements from Dell Financial Services (DFS) for a Dell Preferred Account that included charges for the laptop, even though I had never applied for financing or authorized Dell to open an account or charge the computer to it. Although I wrote DFS at least six times to advise DFS that the computer had been returned, DFS referred the account to a collection agency, which harassed me for nearly two years with dunning letters and annoying phone calls demanding payment. Wishner affidavit, C-20

Perry complaint, Exh. C-47 (although Dell confirmed on November 11, 2004 that it had received the returned merchandise and assured consumer on December 5, 2004 that she would receive a credit and consumer advised DFS on December 22, 2004 that the merchandise had been returned and provided DFS with the credit and reference numbers, consumer subsequently received a call from a collection agency).

Merritt complaint, Exh. C-12 (Although Dell advised consumer by e-mail on December 30, 2003 that it had issued a credit for a camera that was shipped erroneously and DFS advised consumer by e-mail on December 31, 2003 that Dell would issue a credit for the camera and that the adjustment would "appear on a future statement," consumer received a letter from a collection agency dated February 3, 2004 that advised that: "We have notified you several times of your outstanding balance. You can no longer ignore your obligation. We are a debt collector attempting to collect a debt . . .")

Lacivita complaint, Exh. C-32 (consumer advised DFS by letters dated September 30, 2002 and October 26, 2002 that he had returned the item that Dell had incorrectly shipped; consumer advised DFS by e-mail dated March 31, 2003 that there might be a "problem with the credit for the returned drive" and was advised by DFS in a dated April 1, 2003 e-mail that he should contact Dell customer service for "assistance with any Dell credits"; consumer

received a May 8, 2003 letter from a collection agency advising “The above referenced account has been referred to our office for collection. Previous attempts have been made by our client to resolve this debt voluntarily. As of this date, those attempts have been ignored . . .”)

See also, Randall complaint, Exh. C-38; Yates-Voss complaint, Exh. C-42

45. As a result of Dell’s and DFS’s complacency and indifference, consumers are often forced to endure weeks or months of harassing collection calls from either DFS or third party collection agencies, despite their repeated attempts to contact Dell and/or DFS to straighten out the matter. This is the case even where the consumer never authorized Dell or DFS to open an account. See, e.g., Schwasnick, Exh. C-39 (contacted Dell/DFS “at least 50 times); Furgeson complaint, Exh. C-26 (spoke to DFS on twenty-two occasions and faxed information on four occasions); Randall complaint, Exh. C-38 (made two dozen attempts to resolve the matter); Rea complaint, Exh. C-16 (explained the situation over thirty times to representatives from DFS, wrote to Dell and DFS); Bianca complaint, Exh. C-2 (called Dell or DFS over twenty times with no resolution); Burgio complaint, Exh. C-3 (called twenty to thirty times); Hecky complaint, Exh. C-7 (called DFS approximately ten times, spent more than seven hours on the phone trying to straighten out account); R. Higgins complaint, Exh. C-8 (wrote to Dell, called Dell/DFS at least twenty times to resolve the matter); Ward complaint, Exh. C-41 (wrote Dell three times and had numerous conversations).

By the third week of February the lack of concern on the part of Dell customer service, management, sales, and financial services became overwhelming (sic) evident. Dell collections was very concerned, calling my house incessantly (over 50 calls in a week). For example on February 25 the calls started 8:12am and continued every 15 to 60 minutes through 6:59pm. We stopped answering

the phone. The calls continued the following morning. On February 26, 2005 Dell collectors started calling at 8:02am, and again at 8:24 and again at 8:53 and again at 9:28, and again at 10:15, and again at 10:43, and again at 11:07, and again at 12:47, and again at 4:52. Some Dell collectors were Mike, Anna, Christine, Mia, Kim, Pat, Carlos, Jade. None were helpful; some were actually aggressive, ill mannered and unprofessional. Beagen affidavit, Exh. C-1

AGAIN TO BE CLEAR: The order was cancelled. The items refused. I do not have the items. Every person I spoke with at Dell sees from the record that I DO NOT HAVE THE ITEMS, THE ITEMS WERE CANCELLED AND THEY WERE REFUSED. And yet, you are still charging me, calling me and have reported this to the credit bureaus. I demand that you correct this and correct the credit reports immediately . . . I will try once more to be civil, it is hard after five months of harassment however. Please stop billing me for items I did not purchase and items that ARE NOT and have NEVER BEEN in my possession. Please stop calling me ten times a day and either yelling at me or hanging up on me or simply laughing at me when I answer . . . Maisano complaint, Exh. C-34 (emphasis in original)

These people have contacted me many times throughout the day every day, at home and at work. Most of them are very rude and were threatening . . . Randall complaint, Exh. C-38

From that time on, I kept receiving constant calls from Dell – Saturdays and Sundays as early as 6:00 – 7:00 AM, weekdays – morning, noon, and night, and at 2:00 AM – 3:00 AM at night/morning waking up and scaring my entire family! Yates-Voss complaint, C-42

On May 3<sup>rd</sup>, 2004 I purchased a small electronic component for my dell desktop. On May 13<sup>th</sup> I received authorization to return these items for a credit of \$259.45 . . . Since that time I have been receiving harassing calls at all hrs. of the day and night stating that I owe them a balance of \$312.43 including late charges and penalties for items that I had already returned. I had spoken to at least twenty people from the dell corp. who promised to resolve this matter. The harassing calls continued in (sic) even though I repeatedly spoke to their service people. On Sept 2 I received a call from an employee named Donna . . . requesting a payment of \$98.04 or else I would be reported to a credit agency for non

payment. I am completely frustrated that whenever I speak with Dell customer service, they all agree to help resolve this and then a few days later come more harassing calls . . . De Meo complaint, Exh. C-5

. . . The two items were returned, as directed by Dell Corporation, and the returned receipts were signed on 21 May 2001 . . . Since early 2002 I have received over thirty threatening phone calls from four different collection agencies . . . I have furnished the necessary information to clear this matter up to Dell Financial Services, each collection agency, and finally out of total frustration I wrote to the CEO of Dell Corporation for assistance . . . Furgeson complaint, Exh. C-26

See also, Morusty complaint, Exh. C-37; Therrien complaint, Exh. C-40.

46. These improper collection activities have also resulted in significant emotional harm to consumers who have been forced to endure the stress of repeated harassment from DFS and/or collection agents.

I am in Dell hell and have been here for 3 months. My family and I have been harassed to the point of exasperation; the peace and sanctity of my household interrupted hundreds of times by your employees. Those employees who attempted to help were never effective. Now you have informed me that you have taken steps to destroy my excellent credit rating . . . Beagen complaint, Exh. C-1

[T]he problem has not been resolved and I am now getting harassing calls at all hours of the day and night about the bill I will not pay . . . Bianca complaint, Exh. C-2

As of this late date I am still being called as many as 8 times a day by a collection agency from Dell . . . Please help me or refer me to someone that can help me, or refer me to an attorney that may press charges for harassment & verbal abuse. I am afraid they will ruin my good credit. I am totally disgusted with this whole situation. I am disgusted that I have to defend myself against this corporation's negligence. Schwasnick complaint, Exh. C-39

I would appreciate a legitimate response Mr. Dell. I don't want to be passed along to a Customer Service Coordinator who doesn't

even give his last name. Your company responded with a form letter. A FORM LETTER MR. DELL!!!! You screw up, you harass [and] intimidate me, you wreak havoc with my credit rating, and you think a form letter referring me back to a company that has already told you that I don't owe this money is going to resolve this situation. Rea complaint, Exh. C-16

Then the nightmare really started. Dell started calling me three times a day for payment although your company had arranged for the pick-up of the computer, your representatives were asking me to prove that you had picked it up!?!?!? WHAT'S WRONG WITH THIS PICTURE? They called as early as 8:00 AM in the morning when I was sleeping and as late as 10:00 PM at night when I was sleeping since I'm still recovering from 9/11. Let me mention that the computer is an essential part of my life at this time as I am presently on disability as a result of 9/11. The last thing I need now is this additional stress!!!! I tell you this not for your sympathy but rather for you to understand that this ordeal would have been difficult for a healthy person never mind me. NO PERSON, HEALTHY OR OTHERWISE, SHOULD HAVE HAD TO ENDURE THIS KIND OF CUSTOMER SERVICE OR LACK THEREOF. Suzanne L. complaint, Exh. C-33 (emphasis in original)

I have begged and pleaded with them to clear my account and each time I just hang up and sit there and cry in frustration . . . Therrien complaint, Exh. C-40

This experience has been an absolute nightmare. Due to the sheer laziness and negligence on the part of Dell employees to track down this return of merchandise, I have been subjected to unjust harassment . . . Fredsell complaint, Exh. C-25

Dell customer service and the financial department have been calling my home, cell phone non stop and then hanging up. I have little children; this activity is alarming them because they can see clearly the calls are more frequent and upsetting to me . . . I have cried on the phone out of frustration, they have given me anxiety induced chest pain, they simply do not care . . . McGinty complaint, Exh. C-11

See also, e.g., Merritt affidavit, Exh. C-12

47. In many, if not all, of the cases cited herein, the consumer's account was not closed

or fully credited until after the consumer complained to our office, months after Dell received the returned merchandise, cancelled the consumer's order, or was notified of the billing error. See, e.g., Therrien complaint, Exh. C-40; Suzanne L. complaint, Exh. C-33; Barrett complaint, Exh. C-22; Goudie complaint, Exh. C-28; McVey complaint, Exh. C-36; Ossont complaint, Exh. C-43; Hecky complaint, Exh. C-7; R. Higgins affidavit, Exh. C-8; Ruopp affidavit, Exh. C-18; Perry complaint, Exh. C-47; Randall complaint, Exh. C-38; Ewing affidavit, Exh. C-6; Hewson complaint, Exh. C-30; King complaint, C-31; Cimilluca affidavit, Exh. C-4; Italiano complaint, Exh. C-9; Ward complaint, Exh. C-41; Lacivita complaint, Exh. C-32; Parzych affidavit, Exh. C-14; Beagen complaint, Exh. C-1; Villegas affidavit, Exh. C-19; Fergeson complaint, Exh. C-26; Morusty complaint, Exh. C-37, Bianca complaint, Exh. C-2; Wishner affidavit, Exh. C-20; W. Carey complaint, Exh. C-24; Fredsell complaint, Exh. C-25; DeMeo complaint, Exh. C-5.

48. Further, DFS or its third party collection agents have damaged many consumers' credit ratings by falsely reporting their account as delinquent to the credit reporting agencies. In addition, DFS has repeatedly failed to correct this negative information after learning that the debt was not valid. See, e.g., Furgeson complaint, Exh. C-26; Maisano complaint, Exh. C-34; Fredsell complaint, Exh. C-25; Rea complaint, Exh. C-16; DeMeo complaint, Exh. C-5; Burgio complaint, Exh. C-3; McGinty complaint, Exh. C-11; Merritt affidavit, Exh. C-12; Beagen complaint, Exh. C-1.

In time I spoke to several collection agencies. My credit rating was always threatened but I was not going to succumb to such threats when I was in the right. By the way, at no time did any of these collection agencies seem interested in resolving the situation, unless you consider threats and strong arm tactics to be the way your company resolves messy situations that resulted from your companies' errors. I have since learned that my credit rating has suffered as a result of this situation. That, Mr. Dell, is just about as

wrong as wrong gets. Rea affidavit, Exh. C-16

**Failure to honor warranties and service contracts**

49. In its advertisements, Dell touts its “award winning” technical support department with a staff of technicians available to assist consumers with computer problems 24 hours a day, 7 days a week. For example, one television advertisement, entitled “Working Late,” depicts a pair of Dell interns turning off the lights on their way out of the office after working late, only to discover that members of Dell’s technical support “night shift” are still hard at work. Various unseen technicians call out from the dark:

“Everyone thinks just because Dell makes such reliable P.C.s that we just punch out at five.”

“But, when someone does have a question, we are here 24/7/365.”

“Yea, that’s what award winning service is all about.”

“That’s right, someone’s always around to help out.”

See, Dell television commercial, Exh. A-2

50. Dell computers typically come with a 90 day or one year warranty that covers “defects in materials and workmanship” in “Dell-branded hardware products, including Dell-branded peripheral products.” Dell warrants that, during the warranty period, Dell will either repair defective hardware or replace it with “comparable product that is new or refurbished” and represents that refurbished parts and systems “are inspected and tested for quality.” See, Dell’s Online Warranty Policy, attached hereto as Exhibit A-9.

51. Dell also routinely offers consumers a variety of extended and/or allegedly upgraded service contracts at the time of purchase that promise expedited “On-Site” repair. Dell

contracts with third party vendors, such as BancTec, to provide service to Dell customers who purchase these service contracts. Dell's sales associates repeatedly represent that these contracts cover "everything" when, in fact, they cover only hardware problems. Dell often identifies these contracts with names such as "Next Business Day Parts & Labor On-Site Response" that lead consumers to expect that Dell will send a technician to their home as quickly as the day after they report a problem. See, invoices attached hereto as Exhibit A-10. This impression is further reinforced by the plain language of these contracts, which state, for example:

Type 3 Service Agreement. Next-Business-Day/Next-Business-Day Replacement Service. If you follow these procedures a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service on the next business day . . . See, e.g., "Next Business Day" onsite repair service contract, attached hereto as Exhibit A-11.

52. Although the "procedures" that consumers must follow before Dell will dispatch a technician include troubleshooting with a technician by phone, Dell's website and advertisements give consumers the impression that consumers will have ready access to a technician for this purpose twenty-four hours a day, seven days a week. See, warranty information from Dell's Service & Support website, attached hereto as Exhibit A-9 ("If you experience a part failure, we'll first troubleshoot the system with you over the phone, via e-mail or through online chat [24/7, 365 days a year]"); Dell's "Working Late" television advertisement, Exhibit A-2.

53. Dell sales representatives also extol the benefits of Dell's on-site repair contracts. As a result, many consumers (especially those with limited computer skills and knowledge and those for whom a working computer is essential), lured by the promise of prompt, onsite repair, pay as much as \$300 or more to upgrade and/or extend their warranty coverage for a period

between one and four years. See, e.g., Orfan complaint, Exh. D-71 (\$330); Connery affidavit, Exh. D-10 (\$300); Kyriacou affidavit, Exh. D-18 (\$290.62); C. Smith affidavit, Exh. C-32 (\$171); Jordan complaint, Exh. D-57 (\$340); Kunze complaint, Exh. D-58 (\$160); Fuhrman affidavit, Exh. D-13 (\$99); Scofield affidavit, Exh. D-31 (\$119); Price affidavit, Exh. C-27 (more than \$200); Kowalski affidavit, Exh. D-17 (approximately \$150).

During our telephone conversations, the Dell warranty was touted, particularly the onsite service. No statement was made that if there were a mechanical problem, that I would be required to disassemble the computer and find or repair the problem myself. In fact, the salesman, in attempting to sell us an extension of their warranty, was insistent that the on site repair and replacement of a malfunctioning product made ownership so safe that it was well worth the extended warranty price. Donovan complaint, Exh. D-50

In February 2006, my wife and I purchased a Dell computer and paid an additional \$171 for a three year "At-Home" service contract and extended warranty. When I ordered the computer, the sales associate told me it came with a one year warranty. I asked about an extended warranty, and the sales associate said I could purchase one, and it would cover "everything". We decided to purchase the warranty and service contract because we had encountered problems with computers in the past and thought the service contract would provide us with peace of mind and a solution to any problems we might experience. C. Smith affidavit, Exh. C-32

In February 2005 I purchased a Dell Dimension 8400 Desktop. This purchase included item #900-3963 Type 15 Third Party at Home Service w/nights & weekends, 24x7 Technical Support, 3 year extended for \$209.00 and item #902-5560 type 15 Third Party at home Service w/nights & weekends, 24x7 Technical Support, initial year \$121.00 totalling \$330.00 . . . the C.S. Rep. who took my order sold me this w/assurance that problems could be dealt with at my Home-supervisor told me it was "for Hardware issues only", something not told to me upon my order and is NOT on my invoice . . . Orfan complaint, Exh. C-71

On August 11, 2003, my husband and I purchased an Inspiron 1100 from Dell for our son. We also purchased a service contract

because the sales associate assured us that our son could receive on-site service for any computer problems he experienced while he was at boarding school. Trotta affidavit, Exh. D-34

See also, Jordan complaint, Exh. D-57

54. However, consumers who seek technical support or customer service assistance for equipment that is covered by a warranty or service contract find that, contrary to Dell's representations, Dell's service is anything but prompt and efficient. In reality, consumers face a daunting array of obstacles in their quest for assistance with their equipment. Dell repeatedly places consumers who call Dell's automated call center on hold for unreasonable lengths of time, or in some cases, simply abandons them altogether, as consumers wait for assistance, in some cases for hours, before finally hanging up in disgust. See, e.g., Boulanger affidavit, Exh. D-4 (12 hours on hold); Kunze complaint, D-58 (three to four hours on hold); Markham complaint, Exh. C-46 (60 minutes on hold); Saburro complaint, Exh. D-81 (60 minute hold time); Jordan complaint, Exh. D-57 (one hour hold time); Johnson affidavit, Exh. D-16 (as long as 45 minutes on hold); Correll complaint, Exh. D-46 (45 minute on hold); Bottoni affidavit, Exh. D-3 (55 minutes on hold); Cohn affidavit, Exh. D-9 (multiple hold times in excess of 30 minutes).

55. In many cases, after consumers have endured long wait times for a representative to come to the phone, Dell representatives tell them that they have reached the wrong department and then subject consumers to a telephonic version of "hot potato," wherein they repeatedly transfer consumers from one representative to the next, with each representative advising them that they have reached the wrong department or that representative cannot help them. Often, each transfer is punctuated with yet, another interminable "hold" period.

56. On many occasions, consumers are disconnected before they reach the elusive

representative who presumably is able or willing to help them. Although Dell's automated telephone system often allows consumers to leave a message, Dell repeatedly fails to return consumers' calls. Consumers who attempt to contact the technical support department by e-mail similarly find their pleas for assistance repeatedly ignored.

Every time I made another call I had to explain the situation from September up to the present [January 27, 2003]. It was like the first time I called every time. They all had the same response that it wasn't their department, or they didn't have the authority, or there was no record. After several days of being on hold, and transferred and getting absolutely nowhere, I want my money back. I literally was on the phone for five hours being transferred when they told me the ultimate person I should speak to would be Customer Care. By now it was 4:30 and I had been on the phone since 11:00 am. When I asked to speak to the supervisor in this department she came on yelling . . . Among her yelling I was trying to explain that there was a problem since the day I received the laptop, and it should be noted in the high volume of calls that I have placed to the technical support. She said she had to place me on hold and when I asked how long, she said she would be right back. The call was terminated and she never called me. By now I was in tears. My daughter was just released from the hospital and I'm fighting to get something due and owing to me in order to make my living. I am self-employed so no work, no pay . . .  
Wagner complaint, Exh. D-93

On October 7, I called customer service and spoke with Ebony who then transferred me to Migel in technical support who then transferred me to Lindsey in home and small business, who then transferred me to James, floor manager, who then transferred me to April in customer care then to Michael in troubleshooting. All for nothing the problem remains! . . . All of this took one and a half hours. We are exasperated!! Stephans complaint, Exh. D-87

This last Friday I phoned again. I was shifted between a (sic) numerous different phone numbers, no one able to help – sorry wrong department. During these transfers I was disconnected five (5) times. I persisted. I kept calling back. When the voice thanked me for my patience, I insisted on speaking to his supervisor. When the supervisor, "Den", came on the line, he informed me that he could check no farther. Everyone had "gone home" and I would

have to wait. I've been waiting a very long time. I requested to speak to Den's supervisor and was informed that Den was the only supervisor on duty. He promised that he would phone me on Monday, November 17<sup>th</sup> at 8 am EST in my office . . . This last promise was made on Friday November 14<sup>th</sup> at 6:30 pm. The call never came. Carlo affidavit, Exh. D-7

During the following ten days . . . I spent more than ten hours on the telephone talking to at least thirty different people from Dell technical support and customer service with no result . . . Most spoke poor English and could not, or would not, comprehend the problem . . . I was continually shifted from employee to supervisor and on at least four occasions was disconnected. Each time I called back I talked to a new person who could not reconnect me to the person with whom I had just spoken. This required me to re-explain the problem over and over and over again. No human should have been put through the frustration and obfuscation I was put through during this period. I was exasperated. Ciotuszynski complaint, Exh. D-98

At the end of February, Dell Technical Service was contacted by my son with regard to a problem he was having with his laptop. Both he and I have lost count of the times we telephoned [Dell's technical support] number . . . On separate occasions, we were both assured by so many different "customer service managers" that the problem would be rectified . . . Most recently, a Dell Sales Representative completed an Incident Report assuring me that there will be follow-up within four hours. It is now four days ago. In addition, when I telephoned the sales person I left a message and even he has not returned my telephone call . . . I was on the telephone tonight over 2-1/2 hours with a manager that eventually told me to "hold on". We then got disconnected. I cannot telephone again. She did not attempt to contact me, even though I had provided my telephone number and e-mail at the beginning of our conversation . . . I also attempted to reach assistance by using the "reply" button to the e-mail sent by your technical department. No one responds. Mann complaint, Exh. D-104.

I was put on hold after waiting for as long as ½ hour before someone took the call. After I explained what was happening I was told I would be put on hold and that was the end of it. I was disconnected. This happened so many times, I went through this ordeal, holding the phone to my ear for so long and many times disconnected . . . Lange complaint (80 year old woman), Exh. D-

A series of technicians took me through corrective procedures for 3 to 5 hours per day for about 12 days. I would be transferred by phone from one tech to another. With each transfer, I would have to wait approximately one-half hour to get [sic] talk with each time I was transferred. A number of times I was cut off several times before getting to talk with a technician after waiting. When I was cut off, I would have to go through that re-dialing/waiting process. Tolliver complaint, Exh. D-92

I began calling Dell Customer Service to advise them of the faulty combo disc in my tower. Each phone number I called, at Dell, I had to navigate the automated system, giving my customer number, name, address, phone #, and product I was calling in reference to. I have dialed the following numbers: 800-242-0957- 30 minutes wait time, then I was given the phone # 800-624-9893- 30 minutes wait time. Next phone # 800-324-9896 45 minutes wait time before I spoke to a live human being! Correll complaint, Exh. D-46

I immediately placed a call to Dell and asked for a new laptop to be sent to me immediately. I was passed from person to person to person and actually ended up speaking to Ashima, Ashish Saxena, Rajesh Gaba, and Sameer Siag all in one day. I was on the phone for 4 hours and nothing was accomplished other than the phone going dead numerous times . . . Believe it or not, when you wanted to place an order for a new computer...the line was answered immediately but when you needed a problem resolved...it took forever. I was hung up on at least 5 times..put on hold for hours and no one did nothing to resolve the situation . . . Bertrone complaint, Exh. D-38

See also, Sutherland complaint, Exh. D-91; Richardson complaint, Exh. D-77; Rotondo complaint, Exh. D-79; Larkin/Kittle complaint, Exh. D-61; Redmond complaint, Exh. D-76; Lord affidavit, Exh. D-19; Delosa affidavit, D-12; Heather Johnson affidavit, Exh. D-16; Armon complaint, Exh. D-37; Sbarbo affidavit, Exh. D-29; Scofield affidavit, Exh. D-31; Jordan complaint, Exh. D-57; Alvarado complaint, Exh. D-36; L.Smith complaint, Exh. D-89; Miller complaint, Exh. D-66; Saburro complaint, Exh. D-81; Whitehead complaint, Exh. D-95; Snyder complaint, Exh. D-90; Fraticelli complaint, Exh. D-53; Montaperto

complaint, Exh. D-68; Abrahamer complaint, Exh. D-35; Caterino complaint, Exh. D-44; Crowley complaint, Exh. D-47; Maczko complaint, Exh. D-65; Markham complaint, Exh. C-46; Peryer complaint, Exh. D-74; St. Clair complaint, Exh. D-82; Scott complaint, Exh. D-85; Baroody complaint, Exh. D-1; Boulanger affidavit, Exh. D-4; Connery affidavit, Exh. D-10; Corbett complaint, Exh. D-45; Horn affidavit, Exh. D-15; Lochner complaint, Exh. D-100; Scavotto affidavit, Exh. D-30; Bielawski complaint, Exh. D-39; Lehman complaint, Exh. D-60; Sinden complaint, Exh. D-86; Nolan complaint, Exh. D-24; Cohn; Stephans complaint, Exh. D-87 affidavit, Exh. D-9; P. Higgins complaint, Exh. D-56; Peckham complaint, Exh. D-73; Lesperance complaint, Exh. D-62; Orcutt complaint, Exh. D-99; Ossont complaint, Exh. C-43; Correll complaint, Exh. D-46; Rose complaint, Exh. D-78; West affidavit, Exh. D-80; Carter affidavit, Exh. D-8.

57. Even when consumers are lucky enough to reach a technician, in many cases, the technicians place additional obstacles in the way of consumers' quest for assistance. In some cases, technicians falsely claim that the consumer's warranty has expired, even though the consumer reported the problem to Dell during warranty period and it is only because of Dell's dilatory tactics that it was not resolved before the expiration of the warranty.

My computer broke June 28, I have a 2 year extended warranty which expired July 2, 2005. The parts which were sent to fix the computer did not repair it. I have been on the phone for over 15 hours with Customer Care/Technical Support/Dell Computers/Priority Customer Service . . . Basically, Technical Support doesn't know what is wrong with it and they can't or will not do anything because my warranty has expired. This problem happened and was reported before my warranty expired.  
Sutherland complaint, Exh. D-91

Our CD burner (purchased with our DELL system) never worked properly. We had it replaced prior to the expiration of our warranty. However, the replacement CD burner doesn't work, either, and our warranty has now expired. My husband spent hours on the phone with your reps and supervisors. . . trying to correct the problem. Finally, he was assured that our warranty would be

extended without charge and a tech. would come to replace our non-functioning CD Burner. However, we subsequently received a CD Burner in the mail with instructions to remove and return on (sic) non-working CD Burner. We then received an INVOICE for the new Burner. So, not only do we not have anyone replacing the Burner for us, but we are being charged for it !!! Santry complaint, Exh. D-84

See also:

Rotondo complaint, Exh. D-79 (consumer's computer malfunctioned while it was under warranty, Dell advised that he needed a new memory card; while the part was on back order, consumer's warranty expired, consumer was then advised that he had to purchase an extended warranty to obtain service; consumer spent close to \$200 to extend his warranty);

Horn affidavit, Exh. D-15 (consumer told warranty had expired, even though problem reported while warranty was in effect);

Lochner complaint, Exh. D-100 (consumer reported problem while warranty was in effect, Dell failed to fix it and then claimed warranty had expired)

Morelli complaint, Exh. D-103 (refurbished computer was defective from the start, Dell refused to resolve the problems without charge, claiming that the warranty had now expired);

Nachef complaint, Exh. D-70

58. In other cases, Dell falsely advises consumers that their problems (even those that exist right out of the box) are not covered by their warranty because they are virus or software related. At the advice of Dell's technicians, some consumers spend additional money for a software service contract, only to subsequently find that the problem was not, in fact, caused by a software defect.

A few months later, while the computer was still under warranty, I began to have a problem transferring music from the computer to my MP3 player. I called the Dell helpline and explained the problem to a representative who told me that I would have to pay

\$59 for a service plan in order to receive assistance for the problem. Because the computer was practically new and still under warranty, I did not think I should have to pay to speak with a technician, but when I expressed this to the representative, she insisted that I could only get assistance if I paid the \$59 fee and assured me that I would speak with a highly qualified technician. I reluctantly agreed to pay to speak with a technician, but repeatedly told the representative that I would only pay for the assistance if the technician succeeded in fixing the problem. I was then transferred to a technician, who walked me through various troubleshooting procedures. However, the technician failed to fix the problem. Gray affidavit, Exh. D-14

On or about Sept. 6<sup>th</sup> 2005 I ordered a computer from DELL Computer. On 9-30-05 after my computer was set up and a letter was typed using the program Windows Word Perfect, the printer when requested to print, failed to do so. I called DELL tech. assistance, as I had purchased a 3 yr. extended warranty, after being walked through all the sets to reprogram the computer, by the tech. people the printer still refused to print the letter. I was told my problem was a software problem and I would be required to purchase an additional software warranty, even though DELL had advertised that the computer would work with this software and DELL sold the software already loaded in the computer when I received the computer . . . So I consented to the purchase of a one yr. software warranty, and after I once again was walked through the steps to fix the problem the printer still would not print! Redmond complaint, Exh. D-76

Contacted Dell Technical Support as my computer was freezing up and I was unable to run my Norton 2005 program . . . Spokesman said software problem not covered under warranty. Will cost \$99 plus tax if problem is resolved within 72 hours . . . Will put me through to Help Desk . . . Edward at the Help Desk . . . after instructing me to do different tasks on my computer stated I did not have a virus-spyware problem and that he would transfer me to the hardware department . . . I got to talk to Rose in the hardware department who after having me do more diagnostics on my computer, stated it was a software configuration problem and transferred me back to the software department . . . The software department stated I needed a new motherboard and transferred me back to hardware department . . . Richardson complaint, Exh. D-77

[H]ardware support states it's a software problem. Dell Software

support states it's a hardware problem. Neither dept. has been able to fix the problem. L. Smith complaint, Exh. 89

McTague affidavit, Exh. D-22 (consumer spent \$89.97 for software advice that did not resolve his computer problems);

Fuhrman affidavit, Exh. D-13 (consumer told bad virus, consumer ultimately took computer to repair shop and learned it was a bad video card);

See also, Charles Smith complaint; Exh. D-32

59. Even when consumers reach a technician who agrees to troubleshoot the problem, in many cases, these "troubleshooting" sessions fail to resolve the problem, even after consumers are held hostage for hours on end, as they follow a seemingly endless array of instructions. As a result, consumers are often forced to call back repeatedly to engage in further troubleshooting exercises that, in many cases, prove to be fruitless.

[O]n Sunday 8 /15/2004 I was on the phone for 4 hours with both a Justin, #73607, who hung up on me and a Andrea, #63952, who told me that the sound card would need to be replaced. I feel that 4 hours of "Trouble Shooting" should more than prove to them that the sound card needs to be replaced . . . Lord affidavit, Exh. D-19

I am dismayed at the length of time (months), the efforts I have undertaken and the number of attempts I have employed for the purposes of remedying an issue with my Dell equipment. This is extremely disconcerting. DELL's customer support personnel and technicians have been polite. Regrettably, however, they have all been inadequate at identifying and, subsequently, correcting the issues with the equipment, which, to date, still exist. Every avenue recommended has been explored and exhausted. I have diligently complied with the instructions provided . . . Sbarbo affidavit, November 30, 2002 letter, attached to Exh. D-29

The first technician I spoke with was ANDREA. I followed ALL of ANDREA's technical advice. ANDREA's technical advice did not solve the ONE SMALL problem I had. Instead, she made

matters MUCH worse. Instead of one small problem, I ended up with MULTIPLE problems. The end result was Andrea could not figure out how to UNDO what she had done to my computer. She kept putting me on hold over and over again, but could not find out how to fix what SHE had done to my computer. I finally had to go to work and ANDREA told me she would call me back that afternoon. ANDREA NEVER called back. I tried to call ANDREA back, but that was impossible. Fuhrmann affidavit, Exh. D-13

Heather Johnson affirmation, Exh. D-16 (consumer spent “upwards of 40 hours on the phone either waiting or talking to technicians” and “complied with ever so many procedures including taking the side off [her] computer and taken (sic) memory boards out and replaced them at the suggestion of techs.”)

Santry complaint, Exh. D-84 (husband spent approximately 12 hours over several days on the phone with Dell’s technical support team, running diagnostics on the computer and re-installing software with no results.)

Rose complaint, Exh. D-78 (consumer spent over 10 hours, including 3 and a half hours one day, and two the next, over the course of several days trying to resolve computer problem without success).

Tolliver complaint, Exh. D-92 (consumer spent 3 to 5 hours per day for 12 days working with a series of technicians by phone to fix problem without success).

Rotondo complaint, Exh. D-79 (consumer initially told he needed a new memory card, two weeks later a different technician tested the computer and advised him that he needed a new motherboard as well as a memory card).

D. Carey affidavit, Exh. D-6

60. In many cases, technicians also pressure consumers to engage in dangerous technical procedures that exceed any reasonable expectation of “troubleshooting.” For example, technicians direct consumers to remove the external covering of their hardware and then remove,

reinstall and manipulate hardware components located inside the computer in an effort to repair or diagnose the problem.<sup>1</sup> When technicians conclude that a major component such as a hard drive or motherboard needs to be replaced, Dell often advises consumers that, although Dell will ship the part, consumers must install it themselves with the aid of a technician over the phone.

My husband [and] I were both told that we had to DISMANTLE the entire hard drive and fix it ourselves with the aide of a technician from dell . . . so for THREE HOURS we pulled the entire hard drive apart . . . WE PAID almost two hundred dollars on the contract for a service repair person. My husband was so irate.. And I was sobbing. Our bed was covered with parts of our hard drive..not even a full year old. . . . Nolan complaint, Exh. D-24

I called your Technical Department and they are trying to direct me over the phone regarding what should be done to trouble shoot. I told them that I am 66 years old man I am not be (sic) able to lift the machine and lay it on the side to open it. I also told them I have no knowledge about the computer, never opened one it would not help me even if you go line by line over the phone. Your technicians are adamant that unless you tell us what part you need over the phone we will not send any one. In spite of that last Saturday (10\21\06) I was with them for one hour. I did not understand what they were talking about. Mukerjee complaint, Exh. D-69

I purchased the reference (sic) machine in November of 2005. I also purchased 3 years of in home service. You see I am a 67-year old retiree in the NYS Civil Service . . . About 6 weeks ago my machine began making a peculiar nose (sic) and cutting off. I called tech support and was told to open my computer to look for the memory. Well, Mr. Dell, I am not and never have been a mechanic of any sort . . . I am under the impression that in home service means exactly that- I call for service and someone appears, and examines the machine, replaces or orders new parts and the

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<sup>1</sup>Indeed, Dell's own website cautions consumers regarding the potential danger of inspecting internal components with a "Caution" statement that advises "Before you perform any of the procedures in this document, read the following caution for your personal safety and to prevent damage to the system from electro static discharge (ESD)."

machine is fixed. Well, a Mr. Michael Roger, Supervisor, of your tech support said that he was going to go against company policy and order some (sic) to come to my house to repair my machine. This occurred after ½ hour on the telephone with a techie trying to get me to open the computer. I flatly refused. To date I have had no one come nor has anyone called me. Williams complaint, Exh. D-102

In March 2004, I spoke with a technician who instructed me to “troubleshoot” by taking apart my computer. I was told that a technician would not be sent to my home until Dell determined which parts needed to be replaced. I thought that a technician would be the one to determine which parts were necessary and then replace them. After over an hour and a half on the phone, working with the technician, I ended up with an inoperative computer with parts spilling out of it. The technician did not even tell me how to put the computer back together, leaving me to try to figure it out by myself. Kyriacou affidavit, Exh. D-18

A technician came to my home about noon the following Friday and replaced the motherboard and memory . . . when I got home . . . I immediately realized that the technician had not connected the telephone cables and my peripherals (printers, scanner, external drive). I connected all these items and then found that the computer would not boot . . . After a couple of attempts to restart, I got an error message as follows: **Previous attempts at booting failed at checkpoint [Ithr]**. I called Dell and gave the information to the technician. He had no idea or apparent understanding of the information provided by the error message. He attempted to have me go through some procedures– in essence connecting/disconnecting components and rebooting. He also researched the error code three times . . . Finally, after the third time, he requested that I open the computer. He helped me locate some pins (I think they may be jumper pins) . . . He said there were blue covers on these pins and wanted me to move one of the covers. In essence, the set up was pin # 1 uncovered, pins # 2 & 3 with a common cover, pin # 4 uncovered and pins # 5 & 6 with a common cover. At first I misunderstood and attempted to remove the cover from pins 5/6, but I thought that I was pulling out the pins – not just removing the cover – and declined to do so for fear I might not be able to get them back in. Then, when I wanted to try to remove the other cover, I didn’t feel that I could safely grip it – it was very close to the socket; the first one was clear of the socket. I was pressed, by the technician to do the procedure. I finally

adamantly refused . . . Herschberg complaint, Exh. D-55

[The technical support representative] instructed me to remove the computer cover and to further remove several components and restart the computer. I informed her that I was not comfortable and uncertain in removing these parts but she continued with her instructions, so I conceded . . . Dowling complaint, Exh. D-51

Subsequently, I received e-mail instructions from Dell telling me to “try removing all the removable components and reseal the RAM.” I had to “remove the battery, hard drive, PCMCIA cards, CD-ROM/Floppy” and then “insert each component one at a time.” Price affidavit, Exh. D-27

On January 29, 2006, the computer stopped working after a message appeared on the screen stating that it had suffered a thermal event. I called Dell for technical assistance, and, after waiting on hold for approximately one hour, spoke to a technician who instructed me to remove the back of the tower, and then walked me through a series of “troubleshooting” exercises that required me to disconnect wires, then remove and re-connect various circuit boards and components, one at a time, in an effort to pinpoint the source of the problem. In total, I spent approximately two hours on the phone with the technician disassembling and reassembling the internal components of my computer . . . I subsequently contacted Dell on several occasions in an effort to get Dell to fix the computer . . . Although a Dell technician wanted me to engage in the same “troubleshooting” exercise that involved disassembling the internal components of the computer one by one, I refused because I didn’t think I should have to take apart my computer after I had paid for a service contract that promised onsite service. Tennenbaum affidavit, Exh. D-33

See also, Scofield complaint, Exh. D-31; Bittner complaint, Exh. D-41; Donovan complaint, Exh. D-50; DeRenzo complaint, Exh. D-48; Pincus affidavit, D-25; Weitzman complaint, Exh. D-94; Crowley complaint, Exh. D-47; Caterino complaint, Exh. D-44; Blanchard affidavit, Exh. D-2; Luvera affidavit, Exh. D-20.

61. In some cases, when technicians are unable to resolve the problem, they abandon consumers in midstream and/or falsely promise that either they or another technician will contact

them shortly, or at an appointed hour to address the problem. Many consumers are then inconvenienced when they re-arrange their schedules to be home waiting by the phone for a call that never comes, and in addition, are left stranded with their computers inoperable and/or disassembled. These consumers are then forced to start the frustrating process of navigating Dell's technical support system all over again. Consumers who contact Dell's technical support department by e-mail receive similar advice and treatment.

Ed decided to trouble shoots (sic) my computer, because my computer was continuing to experience problems such as, starting up and shutting down. After, Ed trouble shot my computer it entirely stopped operating all together. Ed walked me through dismantling my computer to try to fix it. After, being on the telephone with Ed for 4 to 5 hours, Ed and I decided to take a break for lunch and resume fixing it later. When Ed tried to contact me back, I had to break for a meeting. Ed left a message saying, "If I can't help you fix your computer, call back and someone else will help you fix your computer". [The following day], after not hearing from Ed, I called technical support and left a message for Ed or someone to call me back to help me put my computer back together, no one contact me back . . . Lewis complaint, Exh. D-63

On November 1, 2001, we once again tried to troubleshoot the computer's malfunction. We spoke with Paul on Larry B's team?? I was advised to run a three to four hour test and call back with the data results. After the test was still running for over six hours I called Paul's voice mail to see if this was abnormal and received no call back at all. After letting the text (sic) run for 15 hours I called Paul and received no call back, after being assured of their 10 minute call return, I shut the computer and test down. Stephans complaint, Exh. D-87

St. Clair complaint, Exh. D-82 (consumer's daughter spent an entire day on the phone with a technician who failed to resolve the problem, promised to call back in one hour, but did not).

Montanye complaint, Exh. D-67 (consumer spent 30 minutes trying unsuccessfully to install A drive at the instruction of a technician, who then falsely promised that she would call the consumer back after speaking with a supervisor).

Hildreth complaint, Exh. D-97 (technician promised to call back the following night to finish reformatting consumers' hard drive, but did not; consumers subsequently set up two separate phone appointments, but on both occasions, they did not receive a call).

Scofield affidavit, Exh. D-31 (consumer followed technician's troubleshooting instructions, but did not succeed in resolving problem, technician then instructed consumer to pull out three plugs from behind the computer, when consumer said he wasn't sure which plugs to pull, technician said she would have someone call consumer in 30 minutes, but consumer never got a return call).

See also, Abrahamer complaint, Exh. D-35; Whitehead complaint, Exh. 95; Lehman complaint, Exh. D-60; Connery affidavit, Exh. D-10; Horn complaint, Exh. D-15; Luvera complaint, Exh. D-20; Maczko complaint, Exh. D-65; Bubacz complaint, Exh. D-43.

62. Many of the consumers subjected to this treatment have paid hundreds of dollars extra for expedited "on-site" service and find Dell's promise of expedited on-site repair illusory, as they face the same array of obstacles as other consumers when they try to access Dell's technical support department to "troubleshoot", a pre-requisite before Dell will authorize on-site repair. Further, even after consumers follow technicians' troubleshooting exercises, Dell's representatives rebuff their requests for on-site service on the grounds that technicians have not yet identified the source of the problem. As a result, these consumers are forced to repeatedly navigate Dell's technical support department to troubleshoot.

Subsequently, I received e-mail instructions from Dell telling me to "try removing all the removable components and reseal the RAM." I had to "remove the battery, hard drive, PCMCIA cards, CD-ROM/Floppy" and then "insert each component one at a time." Although I had been promised on-site service if the problems were not resolved, I was subsequently advised by a Dell technician that Dell would not provide on-site service, because, as stated by a Dell representative, "the faulty parts have not been identified." Price affidavit, Exh. D-27

Although I continued to contact Dell's technical support department for assistance and followed all the technician's troubleshooting instructions, Dell was unable to fix the problem. In total, I spent approximately forty hours on the phone with Dell. Typically, after spending between two and three hours on the phone, I would end up crying out of frustration and had to end the call . . . On multiple occasions, I asked Dell to send a technician to my home to repair the computer, but was told I could not receive a service call because the problem could be remedied over the phone . . . At one point, Dell sent me a replacement DVD drive and burner, but would not dispatch a technician to install it, so I was forced to do so myself . . . Kowalski affidavit, Exh. D-17

In the beginning of July 2003, the computer would not shut down. Between mid July 2003 and August 2003, I spoke to three members of the Technical Support staff who "walked me through" numerous operations but failed to correct the problem. On three different days during the month of September 2003, I spoke to a supervisor and three other technicians, each of whom promised to call me back the following day in order to perform a DSSR operation (removing all programs from the computer and then replacing each program back into the computer to determine the cause of the problem). None of these people ever called me back! Although I have spoken to ten Technical Support Personnel, eleven Customer Service Representatives, and sent two e-mails to Dell during the past four months, the problem persists. A type 3 Contract - "Next Business Parts & Labor, On-Site Response 2YR Extended" was included in the Purchase Order (expires 01/14/04). Although all of the Dell personnel agree that this contract is valid, the company refuses to honor its contract by sending a technician to my home to correct the problem. Abrahamer complaint, Exh. D-35

I decided to purchase a Dell computer because of the advertised outstanding at-home service. Since I am disabled, this was a deciding factor for me. For the first time I am in need of the warranty service and have received a slap in the face. In addition I spent an entire day attempting to solve my problem and still don't seem closer to any solution. According to the agreement the problem should have been solved today. I am not receiving the promised phone calls back and am still waiting for service . . . Because of this problem I can not connect to the internet or receive email, a vital service in my condition. Below please find an outline of my service nightmare and contact me . . . with question or the

urgently needed service I paid for with my extended service plan.  
Peckham complaint, Exh. D-73

Donovan complaint, Exh. D-50 (Next-Business-Day On-Site Service)(Consumer was instructed to disassemble computer to identify source noise).

Charles Smith affirmation, Exh. D-32 (paid \$171 for extended warranty with in home service; despite repeated pleas from consumer after he spent more than two to three hours per night on the phone trying to resolve the problem with Dell's technicians, Dell refused to send a technician to consumer's home to repair computer).

See also, McTague affidavit, Exh. D-22; Praver complaint, Exh. D-75; Connery complaint, Exh. D-10; DeRenzo complaint, Exh. D-48; Kyriacou affidavit, Exh. D-18; Moricette affidavit, Exh. D-23; Rosner affidavit, Exh. D-28.

63. Many consumers are left stranded for weeks or months with inoperable or impaired equipment.

McTague affidavit, Exh. D-22 (consumer had purchased a Next-Business-Day On-Site Service contract, but was left without a working computer for more than six months, during which time he called Dell more than 50 times and engaged in extensive troubleshooting; Dell finally replaced consumer's computer after he filed suit).

Bubacz complaint, Exh. D-43 (consumer purchased on site service contract, and tried unsuccessfully for approximately 10 months to get Dell to fix it, calling at least ten times. Consumer took the computer to a third party for diagnosis and was told the computer had a bad hard drive).

Tennenbaum affidavit, Exh. D-33 (Next Business Day On-Site Service)("Now fourteen days later, countless hours on the telephone with your staff overseas, a visit from the Banctec technician, the computer is still not functioning. In fact, it will not even go on.").

See also, e.g., Scofield affidavit, Exh. D-31; Stephans complaint, Exh. D-87; Trotta affidavit, Exh. D-34; Moricette affidavit, Exh. D-23; St. Clair complaint, Exh. D-82; Mann affidavit, Exh. D-104; Lochner complaint, Exh. D-100; Luvera complaint, Exh. D-20; Rosner complaint, Exh. D-28; Price affidavit, Exh. D-27; Lupo complaint, Exh. D-64; Orcutt complaint, Exh. D-99; Sutherland complaint, Exh. D-91; Lord affidavit, Exh. D-19; Rotondo complaint, Exh. D-79; Ditkowsky complaint, Exh. D-49; Johnson affidavit, Exh. D-16.

64. Even when Dell finally agrees to replace defective equipment or schedule an on-site service call, Dell often fails to keep its commitment with regard to ship dates for replacement equipment and service appointments and ignores consumers' ensuing phone calls, e-mails and letters.

We have been repeatedly lied to, given inaccurate information, and given telephone numbers and extensions that were no longer in service. We have been misinformed constantly (at every call) regarding the status of the repair and stayed at home waiting for parts and technicians that were never dispatched or received. Tennenbaum affidavit, Exh. D-33.

The technician made an appointment to come to my home and gave me a four hour window in which she would be there. I waited for over eight hours and the technician never came. I called Dell's repair department and was told that I had to call the technician directly . . . When I called the technician she told me that she had to take care of her family and could not come to my home at the allotted time. She gave me no reason why she did not call. When I asked her to reschedule an appointment she told me that she had to send the part back to Dell because she could only keep it for ten days. She assured me that she would call me back within a week to reschedule an appointment. That was over two months ago and still no call." Orcutt complaint, Exh. D-99.

Lord affidavit, Exh. D-19 (On July 31, 2004, consumer told that she would receive refurbished tower by August 15, 2004, but was told on August 11, 2004 that she would not receive it for another two to three weeks).

Kyriacou complaint, Exh. D-18 (consumer, who purchased a "Next

business day on site” service contract, was promised, but did not receive a call on March 9, 2004 between 8:00 am and noon to schedule a service call for that day).

Mann complaint, Exh. D-104 (after consumer had difficulty getting Dell to fix problems with a laptop, she spoke to a Dell Sales Representative who completed an “Incident Report” and assured her that someone would follow-up with her within four hours, but after four days consumer heard nothing).

Connery affidavit, Exh. D-10, (spoke to representative in the morning and who advised consumer that she would call back in one hour, she did not call back until 6:15, when consumer advised that he had to leave the house in five minutes, representative promised to call back the following day and noon, but did not).

Lochner complaint, Exh. D-100 (consumer was told by customer care representative on November 26, 2004 that she would receive a replacement computer between December 1 and 3, 2004, but did not; consumer called the customer care representative for five consecutive days beginning December 12, 2004, leaving a message each time, but did not receive a call back).

See also, David Brown complaint, Exh. D-42; Padolsky complaint, Exh. D-72; Dowling complaint, D-51; Rotondo complaint, Exh.D-79.

65. Further, Dell repeatedly repairs or replaces defective equipment using refurbished parts and equipment that are defective or do not resolve the problem. Further, in many cases, Dell does not disclose that it is providing consumers with refurbished parts or equipment, or falsely represents that they are “new.”

As you are aware I originally purchased a Dimension 4600 in September, 2003. I was having numerous problems with the sounds. After going thru many procedures with your technical people and their determination along with Tony Ruiz that I had a defective computer I was given authorization to return the computer and would be shipped a new Dimension 4600. Mr. Ruiz told me, and I quote, “We will either build you a new 4600 or if we have one in inventory with some upgrades that someone may have

changed their mind on and cancelled, and for all your inconvenience ship you that one to you.” I received the new computer and immediately had problems with it. I talked to a number of techs and customer care people all to no avail. The computer will not come out of standby unless you push the power button and shut it down completely! Then as I was packaging the original computer for return I noticed on the replacement computer box a large white sticker that says “Refurbished”. I cannot believe that I paid for a new computer from Dell and you shipped me a used one. Farley complaint, Exh. D-52

A technician was sent to our home on 2 occasions to replace both the motherboard and hard drive. The machine is totally dead now, filled with your refurbished “just as good as new” parts. Ditkowsky complaint, Exh. D-49

... After contacting Dell several times, Dell finally promised to ship my son a “new” replacement computer. However, when the computer arrived, I noticed that it was labeled as “refurbished.” When I called Dell to inquire why we had not received a new computer, a representative assured me that refurbished computers were functional computers that people ordered, but decided they did not want . . . Notwithstanding Dell’s assurances, two days after my son received the computer, it began to malfunction . . . my son, my husband and I again called Dell, each of us spending hours on the phone. After instructing us to perform various troubleshooting exercises, a technician cited a “bad internet card” as the cause of the problem. Trotta complaint, Exh. D-34

A. Smith complaint, Exh. D-88 (replacement computer “suffered from the same maladies as the original, but in addition would fail to start for days at a time.”).

Luvera affidavit, Exh. D-20 (Dell technician advised consumer that the refurbished replacement motherboard was defective; third replacement motherboard caused the computer to crash an hour after it was installed).

Brahm affidavit, Exh. D-5 (Dell technician replaced fan four times, but it did not resolve the problem; consumer was subsequently sent a refurbished computer which crashed 2 months later).

St. Clair complaint, Exh. D-82 (immediately after Dell replaced the hard drive, the computer began shutting down in forty seconds).

McTague affidavit, Exh. D-22 (one day after technician replaced a component in consumer's tower, the computer stopped working altogether).

See also, Herschberg complaint, Exh. D-55 (multiple replacement parts were defective); Maczko complaint, Exh. D-65 (consumer promised "new" tower, sent a refurbished one); Sutherland complaint, D-91 (replacement parts did not fix the problem); Brahm affidavit, Exh. D-5 (multiple replacement parts did not fix the problem; refurbished replacement computer crashed after two months); Boulanger affidavit, Exh. D-4 (Dell offered to send refurbished computer in exchange for computer that was defective right out of the box); Lord complaint, Exh. D-19 (after two replacement hard drives failed to remedy the problem, Dell sent consumer a refurbished tower that had defective sound card); Pincus affidavit, Exh. D-25 (consumer told Dell would send him a "new" hard drive, but consumer was sent a refurbished one); Rosner affidavit, Exh. D-28 (Dell sent consumer multiple refurbished replacement parts, including, three CPUs, two monitors, and two keyboards, all of which were defective); Morelli complaint, Exh. D-103 (consumer told she would receive new computer, but was sent a refurbished one, which was defective from the start); Hammond complaint, Exh. D-54 (computer stopped working after technician installed replacement hard drive); Price affidavit, Exh. D-27 (replacement laptop parts were defective); Cohn affidavit, Exh. D-9 (Optical and hard drives on refurbished laptop failed); Carter affidavit, Exh. D-8 (refurbished computer malfunctioned from the start).

66. In addition, Dell repeatedly uses "refurbished" parts and equipment to repair equipment that is defective "right out of the box." See, e.g., Kyea complaint, Exh. D-59; Saneski complaint, Exh. D-83; Farley complaint, Exh. D-52; C. Smith affidavit, Exh. D-32.

67. Consumers who are forced to endure the process of attempting to get technical assistance often suffer stress, anger and frustration, and in some cases, are reduced to tears.

I am a senior— 80 years; homebound and in severe pain with arthritis of the spine and right hip; other medical problems too. Dell has subjected me to unbelievable stress for 3 months and to present. Lange complaint, Exh. D-101

As my total call time had now exceeded three hours, I expressed to Treena my frustration, anger, and refusal to be placed on hold for a fifth time. McKay complaint, Exh. D-21

I am a tough "olde" bird" but I was crying by then! I feel I have been used and abused by Dell. I spent upwards of 40 hours on the phone either waiting or talking with techs . . . I have complied with ever so many procedures including taking the side off my tower and taken memory boards out and replaced them at the suggestion of techs. I have repeated my name, address, customer number, case number, service number and model number so many times I know them by heart . . . I have experienced extreme frustration and a feeling of helplessness, a feeling I don't tolerate very well. Heather Johnson affidavit, Exh. D-16

No human should have been put through the frustration and obfuscation I was put through during this period. I was exasperated. Ciotuszynski complaint, Exh. D-98

68. In many cases, exasperated consumers, fed up with the endless runaround and ineffective technical support, resort to paying a third party to fix their equipment or simply stop using it, even though it is covered by a Dell warranty or service contract.

It was very frustrating contacting Dell's Technical Support Department. Typically, I was forced to wait at least twenty minutes on hold before I was connected to a technician . . . At times, I would speak with supervisors who would promise that a representative would call me back at a certain time. I would stay home to insure I would receive the call, but invariably, no call would come at the specified time. Instead, I would receive a call two or three days later. The technicians frequently reassured me they would fix the problem, but the problems persisted and Dell continued to refuse to send a technician to our home. In April 2005, we experienced a problem with the computer where a blue screen appeared accompanied by this message: "Physical memory being dumped in \_\_ seconds." I called Dell to request at-home technical assistance with this issue. Instead, I spent three and a half hours following the technician's "troubleshooting" instructions . . . After the April 2005 blue screen incident, I was so frustrated that I hired a third party to fix the computer rather than waste more of my time and my son's time on the phone with Dell. Moricette affidavit, Exh. D-23

[A]fter going through/using the Dell technicians . . . I still could not send/receive Email nor use my FAX machine. So I paid an expert from the University of Rochester Computer Staff to come to my home and correct the problem. It took him about . . . 90 minutes to restore my computer to functionality . . . Tolliver complaint, Exh. D-92

That's when I decided ENOUGH IS ENOUGH. I decided that Dell was never going to help me resolve my problem and that Dell technicians had only made my problem worse!!! My initial problem was that my computer was freezing up; now I DID NOT HAVE A COMPUTER AT ALL. So I took my computer to the local computer store where it was rebuilt. [at a cost of \$304.84] Richardson complaint, Exh. D-77

After 6 attempts to get this resolved, I gave up. I am a teacher and use the computer for my school work. I needed it fixed immediately. I have classes to prepare for next week. I had no choice but to call a computer repair company and have someone come to my house to fix the problem. Scavotto complaint, Exh. D-30

See also, Hildreth complaint, Exh. D-97 (consumer spent \$190 to have computer repaired after technicians failed to keep phone appointments on three occasions).

Fuhrmann affidavit, Exh. D-13 (after technicians provided incorrect technical advice on two occasions and failed to correct consumer's technical problems, consumer spent \$142 to have the computer repaired by a third party, who diagnosed the problem as a bad video card).

Weitzman complaint, Exh. D-94 (after Dell failed on multiple occasions to fix the problem, consumer spent \$140 to have a third party repair the computer).

Orfan complaint, Exh. D-71; Boulanger affidavit, Exh. D-4; Horn affidavit, Exh. D-15; Rosner affidavit, Exh. D-28; Bottoni affidavit, Exh. D-3; Blanchard affidavit, Exh. D-2; Preivity affidavit, Exh. D-26; Horn complaint, Exh. D-15.

69. Dell's failure to honor its warranties and service contracts has resulted in significant harm to consumers, who are often left for weeks or months with inoperable equipment that is

vital to their personal, professional, educational or business needs.

Lindsey is a senior in high school and has had several papers, scholarship applications, and essays for college applications to write. I am also a teacher and cannot do my weekly newsletters and other online projects. Being without a computer has been a major inconvenience to our family. St. Clair complaint, Exh. D-82

I have been without a computer for 6 weeks during parent conference and report cards and that has been a hardship. Johnson affidavit, Exh. D-16

The problems we experienced as a result of purchasing the Dell computer created a great deal of difficulty for our family. Our daughter frequently called, crying, late at night because the computer froze and she had a paper due. She even missed handing papers in on time because of this problem. Although she sometimes borrowed friends' computers, she often had to come home on weekends to do work using our computer. West affidavit, Exh. D-80

Tennenbaum affidavit, Exh. D-33 (consumer, who used the computer to write a weekly newspaper column, was forced to purchase a computer from a different manufacturer after trying unsuccessfully for two weeks to get Dell to fix it, even though consumer had purchased a "Next Business Day" service contract).

Wagner complaint, Exh. D-93 (Consumer, a self-employed court reporter, was left for weeks without a working computer and, as a result, could not access court transcripts that were on her hard drive in order to fulfill transcript requests).

### **Failure to Honor Rebates**

70. Dell also offers substantial rebates to induce consumers either to purchase products, or to finance their purchase through DFS. In many cases, the rebate offered on a Dell computer is as high as \$250. For example, in a March 2005 advertisement appearing in American Profile magazine, Dell advertises an Inspiron 6000 Notebook for \$799 after a \$250 rebate. See, Exh. A-1.

71. In fact, in many cases, these rebates prove to be illusory. In some cases, Dell fails to send consumers the necessary rebate forms with their merchandise and consumers then receive a runaround when they attempt to contact Dell to obtain the forms. See, Consolo complaint, Exh. E-19, Sacchitella complaint, Exh. E-33, Steeves complaint, Exh. E-37. Further, even when consumers meticulously fill out the rebate forms and submit all the necessary paperwork within the specified time frame, Dell repeatedly fails to send them their rebates. See, e.g., Allen complaint, Exh. E-21; Barrows complaint, Exh. E-23; Bittner complaint, Exh. E-24; Boyd affidavit, Exh. E-1; Curran affidavit, Exh. E-4; Julig affidavit, Exh. E-10; Franklin affidavit, Exh. E-7; Cloughey affidavit, Exh. E-2; Sementelli complaint, Exh. E-35; Shoemaker affidavit, Exh. E-20.

Called 2x's before May 31<sup>st</sup> was told to download form. I in turn asked for a hard copy because my printer is not working. Both times I got a foreign speaking person who was difficult to understand. No response both times . . . I am 70 yrs old have very few requests but do need my rebate. Living on a fixed income. My invoice when shipped states rebate form included but it was not. Sacchitella complaint, Exh. E-33.

72. Dell uses a variety of excuses for failing to provide consumers their rebates, including that the consumer was not entitled to a rebate (Rivera affidavit, Exh. E-15; Donne complaint, Exh. E-28; Savasta complaint, Exh. E-34; Shanks complaint Exh. E-36), consumer did not submit the required packing slip with the rebate form (Schwartz affidavit, Exh. E-16; S. Perry affidavit, Exh. E-13) Dell could not read the packing slip (Grefig affidavit, Exh. E-8; Savasta complaint, Exh. E-34); the packing slip does not make reference to the rebate (Shanks complaint, Exh. E-36; La Joie complaint, Exh. E-30; Allen complaint, Exh. E-21) and Dell has no record of receiving the consumer's paperwork (Cutignola affidavit, Exh. E-5; Boyd

complaint, Exh. E-1; Franklin affidavit, Exh. E-7; Hernandez complaint, Exh. E-29; Condo complaint, Exh. E-26; Schwartz affidavit, Exh. E-16; Neufeld complaint, Exh. E-32; Barrows complaint, Exh. E-23; Consolo, Exh. E-19; Cruet complaint, Exh. E-27). However, even after resubmitting their paperwork as instructed by Dell and patiently waiting the 8 to 10 week processing period, many consumers still do not receive a check.

In October of 2003, I purchased a Dell Dimension 2400 series home computer over the phone. The person I spoke with on that day told me it came with a \$100 rebate— exactly like the rebate offered on a TV commercial I just saw this weekend. When the computer arrived, no rebate form came with it. I called Dell and was told to get the rebate form off the Dell website. I went online, found the rebate listed, printed off the necessary form, and sent everything to the appropriate address, within the proper time limit. No rebate ever came. I made at least four phone calls to various personnel at the rebate center and to Dell sales representatives, even to the department I originally purchased the computer from. Every person I spoke with said that, since the original sales representative had not listed the rebate on the invoice, I was not entitled to one— this, despite the fact that I had the invoice listing the model number and date of purchase, and I had the printout of rebates offered for that time period, which showed that the model I had purchased was included. Needless to say, this has been a very frustrating experience, and I am in amazement that, despite proof of my entitlement to a rebate, Dell representatives have refused to honor the offer. Shanks complaint, Exh. E-36.

73. When consumers contact Dell to inquire about the status of their elusive rebate, Dell repeatedly gives them a “runaround” (Badger complaint, Exh. E-22; Shanks complaint, Exh. E-36; Steeves complaint, Exh. E-37; Condo complaint, Exh. E-26; Mycek complaint, Exh. E-31; Bosworth complaint, Exh. E-18; Hill affidavit, Exh. E-9; Neufeld complaint, Exh. E-32; Donne complaint, Exh. E-28; Franklin affidavit, Exh. E-7; Cole affidavit, Exh. E-3; S. Perry affidavit, Exh. E-13; Rueter affidavit, Exh. E-14; Curran affidavit, Exh. E-4) and/or empty promises that

they will receive the rebate check shortly (Hill affidavit, Exh. E-9; Julig affidavit, Exh. E10; Shanks complaint, Exh. E-36; Morgan affidavit, Exh. E-12; Rueter, Exh. E-14; Schwartzberg affidavit, Exh. E-17; Cutignola affidavit, Exh. E-5; Rivera affidavit, Exh. E-15; Bosworth complaint, Exh. E-18; Hernandez complaint, Exh. E-29; Barrows complaint, Exh. E-23; Cloughey affidavit, Exh. E-2; Sementelli complaint, Exh. E-35; Vilella complaint, Exh. E-11; Buscaglia complaint, Exh. E-25; Grefig affidavit, Exh. E-8; Cole affidavit, Exh E-3). Further, Dell repeatedly fails to respond to consumers' phone calls, letters and e-mails (Consolo complaint, Exh. E-19; Hill affidavit, Exh. E-9; Allen complaint, Exh. E-21; Julig affidavit, Exh. E-10).

Neal- HELP!!!! I have spent easily over 1 hour on the telephone today trying to find out the status of my [rebate] but received no satisfaction. Every time someone told me that they were going to transfer me to your extension, I was disconnected . . . Donne complaint, Exh. E-28

In the beginning of October I went on line to find the status of the rebate. I went to your website and to the rebate area, entered my customer # and was totally taken back with the message "*No rebate found*". I was expecting to see a message to the effect that the rebate was being processed and became concerned that the paperwork had been lost. I spent the next 2 hours calling several different 800 numbers and being transferred to a number of different people and holding on and finally was told by a woman at one of your customer service numbers that she would resubmit the necessary papers and all would be taken care of. The bill for the machine came at the end of October and was due at the beginning of November. Before sending in a check, I went to your website again and low and behold what do you think I saw - "*No rebate Found*". I immediately started calling your 800 numbers again and spent another couple of hours trying to get someone to help me . . . (consumer's saga continued for more than a year). Neufeld complaint, Exh. E-32

I called Dell on numerous occasions to find out . . . whether I would receive the rebate. Each time I called, I reached an

automated menu and had to select an extension, which I did. After waiting on hold, I was repeatedly transferred from one representative to the next, each of whom claimed that I needed to speak with someone from a different department. During one call I was on the phone for two and a half hours. On other occasions when I called, I was disconnected and had to start over from the same menu. Although the representatives with whom I spoke were all polite and apologetic, none of them could tell me how I could obtain the rebate . . . Curran affidavit, Exh. E-4

After I bought the computer, I sent in all the necessary rebate papers and received several notices that . . . my rebate was valid and I would receive my rebate in 10-15 business days. When I did not receive my rebate . . . I tried several times to contact the company via email and phone to address the matter. As far as the email rebate center/customer service, no one responded to my concerns whatsoever . . . And concerning the phone - when you call Dell they place you on hold, no one ever comes on the line, and when they give you an extension, it forwards to a non-working number and hangs up on you. In one case when I did get a live person, I addressed the matter and was placed on hold for over 2 hours, and finally hung up in disgust. Another time, after turning the company in to the Better Business Bureau, I tried calling Dell and spoke with an Alayna Evins who told me that my rebate was valid and would be sent. This was way back in April and as you can see 10-15 business days, as Ms. Evins told me, has long passed, and when I wrote to her personal email, she did not respond, and when I called her extension, it forwards to yet again, another non-working number. See, June 15, 2003 letter, attached to Hill affidavit, Exh. E-9.

After I did not receive the rebate within two months of submitting the forms, I e-mailed the Dell rebate center to inquire about the rebate. Although I received an automated return e-mail stating that someone would contact me within two to three business days, no one from Dell contacted me. I sent three more e-mails and received the same automated response, but no one ever contacted me about the rebate. After receiving no response to my e-mails, in February 2006, I called Dell and I spoke with a representative who claimed that the rebate check had been sent to me months ago. After I explained that I never received the money, the representative promised that the rebate would be re-issued and I would receive it within three weeks. When I did not receive the rebate within three weeks, I called Dell again. Another

representative assured me she would re-issue the rebate. After calling Dell at least three times, and receiving the same empty promises . . . I submitted a complaint to the New York State Office of the Attorney General. Julig affidavit, Exh. E-10

74. Dell's evasive tactics ensure that only the most determined and persistent consumers actually receive the promised rebates. Ultimately, many consumers obtained their rebate only after complaining to our office after spending months getting a runaround from Dell.

Connie Badger, Exh. E-22 (consumer sent in her rebate form and invoice, as requested by Dell, in February, 2004. After hearing nothing, Ms. Badger called on March 23, 2004 and was advised to fax a copy of the invoice and told that Dell would take care of the rebate. After hearing nothing again, the consumer called Dell on April 20, 2004 and was advised that she had faxed her papers to the wrong address and was told to re-fax the paperwork. After doing so as directed and hearing nothing yet again, she called Dell in the middle of May and was told that she could not get a rebate because the rebate deal had expired. It was only after the consumer filed a complaint with our office on June 14, 2004, that Dell promised to credit her account for the rebate amount.)

I made several more calls to Dell, talking to various departments . . . My answers from all these people ranged from advice to call a different department, to that Dell could not give me a rebate, because it was not listed on my invoice. In all, I made at least five phone calls . . . At last, I wrote to corporate headquarters in Austin, Texas . . . Two weeks later, I had a message on my answering machine when I returned home from work. It was from a female representative at Dell, who said that they would be sending me my rebate check in about a month . . . I gave the rebate check 8 to 10 weeks for delivery . . . When it did not come by June 28<sup>th</sup>, I again called Dell. The news this time was yet another version: Dell would never be sending me that rebate, because their rebate offers are only good for online purchases . . . Shanks complaint, Exh, E-36

Debejian affidavit, Exh. E-6 (although consumer timely submitted the rebate forms on November 11, 2002, and contacted Dell numerous times by phone and e-mail, he did not receive his rebate until June 2003, after he complained to our office).

LaJoie complaint, Exh. E-30 (consumer timely submitted her rebate form on December 22, 2003, but did not get her rebate until after she complained to our office on April 2, 2004).

Trace complaint (Consumer ordered computer on June 14, 2005 but did not receive her rebate until after she complained to our office in February 2006).

Sementelli complaint, Exh. E-35 (consumer submitted rebate form on September 22, 2005, but did not receive his rebate check until March 2, 2006, after he complained to our office).

Vilella complaint, Exh. E-11 (consumer purchased computer on January 6, 2005, but did not receive his rebate until June 2006, after he complained to our office).

See also, Julig affidavit, Exh. E-10; Cole affidavit, Exh. E-3; Sacchitella complaint, Exh. E-33; Morgan affidavit, Exh. E-12; Schwartz affidavit, Exh. E-16; Consolo complaint, Exh. E-19; Buscaglia complaint, Exh. E-25.

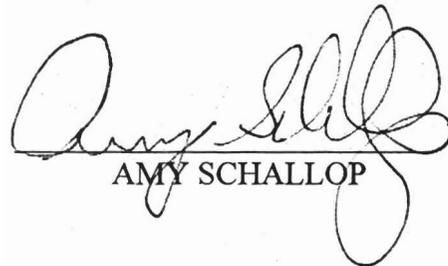
## CONCLUSION

75. In sum, Dell and DFS have repeatedly engaged in numerous fraudulent, illegal and deceptive business practices. Respondents lure consumers to purchase and finance equipment with elusive and misleading rebate and promotional financing offers. Respondents also repeatedly improperly bill consumers for merchandise they did not receive or accept, or on accounts they did not authorize, and fail to take corrective action when advised of these errors. And, respondents fail to provide consumers with the customer and technical support to which they are entitled or led to believe they will receive. Many consumers who attempt to contact respondents for assistance waste hours trapped in respondents' maddening labyrinthian phone system and ultimately receive no relief. Respondents have repeatedly failed to satisfy even the most desperate and compelling pleas, whether it was the senior citizen on a fixed income who

sought the rebate she was promised (Sacchitella complaint, Exh. E-33), the desperate mother on disability who sought to end the ceaseless harassing collection calls for a debt she did not owe (Suzanne L., Exh. C-33) or the disabled man who sought the “on-site” service for which he had paid (Peckham complaint, Exh. D-73). Many persistent consumers ultimately wrote directly to Dell’s CEO, Michael Dell or Kevin Rollins (see, e.g., Ferguson complaint, Exh. C-26; Orcutt complaint, Exh D-99; Rea complaint, Exh. C-16). Even then, in most cases, their pleas went unanswered until they complained to our office.

WHEREFORE, it is respectfully requested that the Petition be granted in all respects.

Dated: Albany, New York  
May 14, 2007



AMY SCHALLOP