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NORTHERN DISTRICT OF CALIFORNIA

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15 (Pending Pro Hac Vice Admission)

11 **IN THE UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

MHP

<p>15 MILDRED J. CHAPMAN, ANGELA 16 HOPKINS, JULIA M. MAHAFFEY and 17 BETHANY RICHES on behalf of 18 themselves and all others similarly 19 situated,</p> <p>20 Plaintiffs,</p> <p>21 vs.</p> <p>22 DELL INC., formerly known as Dell 23 Computer Corporation,</p> <p>24 Defendant.</p>	<p>15 CV 08 4945</p> <p>16 Civil Action</p> <p>17 CLASS ACTION COMPLAINT</p> <p>18 Case No.:</p> <p>19 Jury Trial Requested</p>
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24 Plaintiffs **MILDRED J. CHAPMAN, ANGELA HOPKINS, JULIA M.**
25 **MAHAFFEY, and BETHANY RICHES** (collectively "Plaintiffs," "Named Plaintiffs," or

1 “Class Representatives”), by their attorneys Sanford Wittels & Heisler, LLP, bring this action for
2 themselves and on behalf of two Classes more specifically defined below: (1) a class of current
3 and former female employees of Defendant **DELL INC.** (“Dell” or the “Company”); and (2) a
4 class of current and former Dell employees over the age of 40. Based upon knowledge as to
5 themselves and their own acts, and otherwise upon information and belief, Plaintiffs allege as
6 follows:

7
8 **I. INTRODUCTION AND OVERVIEW OF THE CLASS-WIDE**
9 **DISCRIMINATION AT DELL**

10 **A. Basic Class-wide Allegations**

11
12 1. This case arises out of Defendant Dell’s systemic, company-wide discriminatory
13 treatment of thousands of its female employees and employees over the age of 40.

14 2. *As one of the senior Dell male executive Vice Presidents, Michael Summers,*
15 *informed Human Resources Senior Manager, Plaintiff Bethany Riches, in a written mid-year*
16 *review, it’s no easy task “breaking into arguably one of the toughest old boy networks in*
17 *Dell.”* Indeed.

18 3. Dell’s discriminatory practices against Plaintiffs and the Classes span the gamut
19 of prohibited acts, and read like an employment discrimination primer on how a company should
20 *not* treat its employees, including:

21 ***A. Failing to Pay Women Salaries and Bonuses Equal to Men Who***
22 ***Perform Substantially Similar and/or Comparable Work***
23 ***Company-wide, including at the Senior Manager D1 and***
Manager/Senior Analyst C3 Grade Levels¹;

24
25 ¹ Dell professional employees are categorized into grade levels which ascend in hierarchy in the following order: C1s to C3s (Managers and Senior Analysts); D1s (Senior Managers) to D3s (Directors); E1s (Vice Presidents) to E2s (Officers and Executive Leadership Team). These grade levels determine an employee’s salary range, bonus range, and other benefits. The Company has very few D2s, and none in

- 1
- 2 **B.** *Segregating Women into Lower Grade Level Positions with Less Pay*
3 *and Promotion Opportunities than Men Who Perform*
4 *Substantially Similar and/or Comparable Work Company-*
5 *wide, including at the Senior Manager D1 and*
6 *Manager/Senior Analyst C3 Grade Levels;*
- 7
- 8 **C.** *Failing to Promote Women at an Equal Rate with Men Company-*
9 *wide, including at the Senior Manager D1 and*
10 *Manager/Senior Analyst C3 Grade Levels;*
- 11
- 12 **D.** *Disproportionately Awarding Men a Larger Share of Incentive*
13 *Compensation Company-wide, including at the Senior*
14 *Manager D1 and Manager/Senior Analyst C3 Grade Levels ;*
- 15
- 16 **E.** *Disproportionately Terminating Women as Compared to Men in*
17 *Recent Mass Layoffs Company-wide, including at the Senior*
18 *Manager D1 and Manager/Senior Analyst C3 Grade Levels;*
19 and
- 20
- 21 **F.** *Disproportionately Terminating Dell Employees Over the Age of 40*
22 *in Recent Mass Layoffs Company-wide, including at the*
23 *Senior Manager D1 and Manager/Senior Analyst C3 Grade*
24 *Levels.*

25

B. Named Plaintiffs/Class Representatives

4. Plaintiff Mildred J. Chapman held a leadership position as a Senior Manager (D1) in Dell's Global Human Resources Department from November 2005 until April 3, 2008, when she was also selected for Dell's mass layoff. At the time of her termination, Ms. Chapman was 59 years of age.

the Department in which Plaintiffs worked. The ordinary progression line for D1s is directly to D3.

1 5. Plaintiff Angela Hopkins held a leadership position as a Senior Manager (D1) at
2 Dell's Global Human Resources Department from January 2006 until April 3, 2008, when Dell
3 announced mass layoffs across all departments and terminated Ms. Hopkins without warning.

4 6. Plaintiff Julia M. Mahaffey held a leadership position as a Manager (C3) in Dell's
5 Global Human Resources Department from 2000 until October 26, 2007.

6 7. Plaintiff Bethany Riches held a leadership position as a Senior Manager (D1) in
7 Dell's Human Resources Department from September 2003 until May 26, 2008.

8 8. Dell has subjected each of the Plaintiffs to discrimination in pay, compensation,
9 promotion, and termination alleged above:

- 11 • Plaintiffs Chapman, Hopkins, Mahaffey and Riches were paid less than
12 similarly-situated male employees.
- 13 • Plaintiffs Chapman, Hopkins, Mahaffey and Riches were segregated based
14 on their gender into lower grade level positions than similarly-situated male
15 employees.
- 16 • Plaintiffs Chapman, Hopkins, Mahaffey and Riches were not promoted at an
17 equal rate to similarly-situated male employees.
- 18 • Plaintiffs Chapman and Hopkins were terminated based on their gender.
- 19 • Plaintiff Chapman was terminated based on her age.

20 9. Although Dell consistently recognized their leadership and accomplishments,
21 Plaintiffs Chapman, Hopkins, Mahaffey and Riches hit the glass ceiling that so many Dell
22 women face, and were subsequently cast aside by the Company – in part as retaliation for
23 speaking out against the gender discrimination infecting Dell.

24 **C. Dell's Overall Diversity Record**

1 10. Although the Company and its founder and CEO, Michael Dell, publicly tout their
2 commitment to diversity, the reality fails to live up to the rhetoric. While simultaneously
3 proclaiming that diversity is “an essential element of our corporate values,” the old adage “A
4 *picture paints a thousand words*” tells the real story. The following photographic array from
5 Dells’ website shows the current inner cadre of Dell’s 14-man strong Executive Leadership
6 Team:

7 ([http://www.dell.com/content/topics/global.aspx/about_dell/company/leadership](http://www.dell.com/content/topics/global.aspx/about_dell/company/leadership/execution_team?~ck=ln&c=us&l=en&lnki=0&s=corp)
8 [/execution_team?~ck=ln&c=us&l=en&lnki=0&s=corp](http://www.dell.com/content/topics/global.aspx/about_dell/company/leadership/execution_team?~ck=ln&c=us&l=en&lnki=0&s=corp))



14 **Michael S. Dell**
15 Chairman of the Board and Chief Executive Officer



22 Brad R. Anderson
23 Senior Vice President, Business Product
24 Group



25 Paul D. Bell
 Senior Vice President and President,
 Americas



[Michael R. Cannon](#)

President, Global Operations



[Jeffrey W. Clarke](#)

Senior Vice President, Business Product Group



[Andrew Esparza](#)

Senior Vice President, Human Resources



[Stephen J. Felice](#)

Senior Vice President and President, Asia-Pacific/Japan



[Ronald G. Garriques](#)

President, Global Consumer Group



[Brian T. Gladden](#)

Senior Vice President, Chief Financial Officer



[Mark Jarvis](#)

Chief Marketing Officer



[David A. Marmonti](#)

Senior Vice President and President, Europe, Middle East and Africa



[Timothy W. Mattox](#)

Vice President, Strategy



[Stephen F. Schuckenbrock](#)

Senior Vice President and President, Global Services, and Chief Information Officer



[Lawrence P. Tu](#)

Senior Vice President, General Counsel

11. As evidenced by the previous photographs, there are NO WOMEN members of the all-male Dell Executive Leadership Team. This dearth of women at the highest reaches of

1 the Company sets the tone for women's poor representation in its upper-level professional and
2 executive ranks, and helps explain the pay and promotion disparities women encounter at Dell.
3 Upon information and belief, women are significantly underrepresented at the highest circles of
4 corporate leadership, and have made few inroads into the male-dominated Officer's "club" at
5 Dell.

6 12. Upon information and belief, women also continue to be substantially
7 underrepresented at the E1 (Vice President) level. Upon information and belief, approximately
8 80 percent of all Vice Presidents are male.
9

10 13. Upon information and belief, women also continue to be substantially
11 underrepresented at the D3 (Director) level, the level at which Plaintiffs Chapman, Hopkins, and
12 Riches actually worked and should have been paid and promoted. Upon information and belief,
13 approximately 80 percent of all Directors are male.

14 14. Upon information and belief, women also continue to be substantially
15 underrepresented at the D1 (Senior Manager) level, the level at which Plaintiff Mahaffey actually
16 worked and should have been paid and promoted. Upon information and belief, approximately
17 80 percent of all Senior Managers are male.

18 **D. The Instant Class Action/Collective Action Lawsuit**

19 15. Plaintiffs Chapman, Hopkins, Mahaffey, and Riches bring this lawsuit on their
20 own behalf and on behalf of: (i) a class of similarly-situated female employees company-wide,
21 including female employees at the D1 and C3 grade levels, to remedy the gender discrimination
22 they have witnessed and experienced during their exemplary tenures at Dell; and Plaintiff
23 Chapman further brings this lawsuit on behalf of (ii) a class of similarly-situated employees over
24 the age of 40 years old company-wide, including employees over 40 at the D1 and C3 grade
25

1 levels, to remedy the age discrimination she witnessed and experienced at Dell. This lawsuit is
2 designed to achieve systemic injunctive relief to change Dell’s discriminatory pay, promotion,
3 and termination policies and practices.

4 16. With no viable alternative to achieve the top-to-bottom changes that are needed to
5 address Dell’s discriminatory practices, Plaintiffs Chapman, Hopkins, Mahaffey, and Riches now
6 sue Defendant Dell for individual, class, and collective relief.

7 17. Defendant Dell carried out its discrimination at the direction of and/or with the
8 assistance of the Company’s Senior Management and/or Officers, including

- 9
- 10 • MICHAEL S. DELL, Founder, CEO and Chairman of the Board;
 - 11 • BRIAN T. GLADDEN , Senior Vice President and Chief Financial Officer;
 - 12 • LAWRENCE P. TU, Senior Vice President and General Counsel;
 - 13 • ANDREW ESPARZA, Senior Vice President of Corporate Human Resources; and
 - 14 • DOMINICK DICOSIMO, Vice President of Global Human Resources Operations (which
15 includes responsibility for compensation and benefits functions).

16 18. Each of these members of the Dell leadership team engineered, approved, ratified
17 and/or assisted in the wrongful acts described in this Complaint, including the discriminatory
18 treatment of Plaintiffs Chapman, Hopkins, Mahaffey and Riches, the discriminatory termination
19 of Plaintiffs Chapman and Hopkins, and discriminatory treatment and termination of other
20 female employees and older employees at Dell.

21 **II. JURISDICTION AND VENUE**

22 19. This Court has subject matter jurisdiction over this suit pursuant to 28 U.S.C. §
23 1331; 28 U.S.C. § 1337; 28 U.S.C. § 1343(a)(4); the Age Discrimination in Employment Act
24 (“ADEA”), 29 U.S.C. §§ 621, *et seq*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§
25 2000e, *et seq.*; the Equal Pay Act, 29 U.S.C. §§ 206, *et seq.*; and supplemental jurisdiction (28

1 U.S.C. § 1367), to redress and enjoin employment practices of Defendant in violation of these
2 federal statutes.

3 20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
4 Defendant Dell is located in this District, and at all times relevant to this action has been doing
5 substantial business in this District. Plaintiff Hopkins also resides in this District.

6 **III. PROCEDURAL HISTORY**

7 21. Class Representative Mildred J. Chapman timely filed a Charge of Discrimination
8 with the Equal Employment Opportunity Commission (“EEOC”) on or about April 29, 2008.
9 Ms. Chapman received her Notice of Right to Sue Letter from the EEOC on or about August 2,
10 2008, and is now timely filing suit within ninety (90) days of receipt of her Notice of Right to
11 Sue Letter.

12 22. Class Representative Angela Hopkins timely filed a Charge of Discrimination
13 with the Equal Employment Opportunity Commission (“EEOC”) on or about April 21, 2008.
14 Ms. Hopkins received her Notice of Right to Sue Letter from the EEOC on or about August 2,
15 2008, and is now timely filing suit within ninety (90) days of receipt of her Notice of Right to
16 Sue Letter.

17 23. The Class Representatives are relying on their own EEOC charges and/or those of
18 other Class Representatives.

19 **IV. THE PARTIES**

20 **A. Plaintiffs**

21 24. **Plaintiff Mildred J. Chapman** is a resident of Texas. Plaintiff Chapman was
22 employed as a Senior Manager in the Global Human Resources Department for **Defendant Dell**
23
24
25

1 in Round Rock, Texas from November 2005 until April 2008, when Dell terminated her at the
2 age of 59.

3 **25. Plaintiff Angela Hopkins** is a resident of California. Plaintiff Hopkins was
4 employed as a Senior Manager in the Global Human Resources Department for **Defendant Dell**
5 in Round Rock, Texas from January 2006 until her termination in April 2008.

6 **26. Plaintiff Julia M. Mahaffey** is a resident of Indiana. Plaintiff Mahaffey was
7 employed as a Manager in the Global Human Resources Department for **Defendant Dell** in
8 Round Rock, Texas from 2000 until October 2007.

9 **27. Plaintiff Bethany Riches** is a resident of Texas. Plaintiff Riches was employed
10 as a Senior Manager in the Human Resources Department for **Defendant Dell** in Round Rock,
11 Texas from September 2003 until May 2008.

12
13 **B. Defendant**

14 **28. Defendant Dell Inc.** is and has been a multi-national company incorporated in
15 Delaware. Dell is headquartered in Texas, with offices in Northern California, including
16 Mountain View, California and Fremont, California. At a leading global computer systems and
17 services company, Dell generated over \$57 billion in revenue in 2007, and ranks as Number 34
18 on the Fortune 500.

19
20 **V. FACTUAL ALLEGATIONS**

21 **A. PLAINTIFF MILDRED J. CHAPMAN**

22 **1. Ms. Chapman's Hiring by Dell in November 2005 – Because of**
23 **Her Skills and Experience, Dell Executives Promise Ms. Chapman**
24 **Future Job Security and Promotion.**

25 **29.** In November 2005, Ms. Chapman joined the Dell Global Human
Resources (HR) Department as a Senior Manager at the D1 level.

1 3. **Ms. Chapman is Subjected to Gender Discrimination in Salary and**
2 **Incentive Compensation and, on the Basis of Gender and Age, is**
3 **Denied the Promotion Promised and Due to Her.**

4 35. Ms. Chapman was not awarded with a promotion or any increase in remuneration,
5 although her level of responsibility now equaled or exceeded that of male Directors. The
6 individual who was previously responsible for Ms. Chapman's new duties was a male Director,
7 titled and compensated at the D3 level.

8 36. Despite Dell's promises that Ms. Chapman would be made Director, her
9 outstanding performance reviews, and her increased level of responsibility, Dell management
10 never elevated Ms. Chapman to D3 status in her two and a half years at the Company. Although
11 additional Director were available, they were instead awarded to less qualified and less
12 experienced males under the age of 40. Furthermore, during the April 2008 restructuring, Ms.
13 Chapman was not considered for Director level HR positions for which she was highly qualified
14 but which were instead granted to younger males.

15 37. Upon information and belief, during her November 2005-April 2008 tenure,
16 Dell significantly underpaid Ms. Chapman relative to her male counterparts at the D3 level. As a
17 further result of Dell's failure to provide her equal pay or promote her to Director (either by
18 elevating her title to be commensurate with her duties, by elevating her pay to be commensurate
19 with her duties, or by awarding her another open position) Ms. Chapman lost a substantial
20 amount in incentive compensation, including promotion grants, Short (IBP) and Long Term
21 Incentive (LTI) awards for 2006 through 2008 as compared to men with equivalent or lesser
22 responsibilities and qualifications.
23

24 4. **Ms. Chapman Complains to Management Regarding**
25 **Discriminatory Treatment.**

1 38. During Ms. Chapman’s employment at Dell, she repeatedly complained about
2 discrimination to her immediate manager as well as to Mr. DiCosimo. In particular, Plaintiff
3 Chapman maintained that she should be paid equally to males with similar levels of
4 responsibility, and promoted to the Director (D3) title and compensation scale occupied by males
5 with similar levels of responsibility. Dell repeatedly told her she was “on the list” to be
6 promotion to the Director (D3) level.

7
8 **5. During Dell’s April 2008 Layoffs, Ms. Chapman is Subjected to**
9 **Discriminatory Termination/Retaliation Which Also Constitutes a**
10 **Breach of Dell’s Promises of Future Job Security.**

11 39. On April 3, 2008, Ms. Chapman was terminated in one of Dell’s mass layoffs.
12 Ms. Chapman’s selection for the reduction in force was discriminatory based on gender and age
13 and in retaliation for her previous complaints of discrimination.

14 40. Dell’s layoffs had a disproportionate effect on women and employees over 40.
15 Upon information and belief, women were laid off at a statistically significant higher rate than
16 men, while older employees over 40 were also laid off at a statistically significant higher rate
17 than younger employees. At age 59, Ms. Chapman was the oldest employee within her
18 immediate workgroup to be laid off.

19 41. While women and older employees such as Ms. Chapman were laid off, low
20 performing and less qualified men and younger executives in equivalent positions were protected
21 by their bosses, given safe havens within the Company, offered an opportunity to accept a
22 demotion, or otherwise afforded preferential treatment.

23 42. In an attempt to justify their termination decisions, senior Dell executives
24 improperly manipulated and lowered the favorable performance ratings that Plaintiff Chapman
25 and other women received for performance in 2007. As a result of the manipulation of her 2007

1 performance appraisal, Dell failed to grant Ms. Chapman an LTI award for 2008 and granted her
2 a substantially lower bonus; consequently, she lost a substantial amount in additional
3 employment benefits. Further, the Company informed terminated female employees that there
4 were no available positions; however, almost simultaneously with the announcement of the
5 layoffs, Dell had available at least thirteen other open jobs in HR for which Ms. Chapman is very
6 qualified based on her experience and performance. Those positions which Plaintiffs are aware
7 have been filled were given to male employees and/or to younger employees.

8
9 43. Accordingly, Dell has discriminatorily denied Ms. Chapman the compensation
10 and promotional opportunities due to her since her hiring in November 2005, the effect of which
11 was compounded by each passing year and was significantly magnified by Dell's discriminatory
12 and retaliatory termination of her employment in April 2008. Dell's discriminatory and
13 retaliatory acts not only deprived Ms. Chapman of equal pay, promotional opportunities and just
14 compensation during her time at Dell, but also continue to act as a black mark on Ms.
15 Chapman's exceptional career, undeniably hindering her future opportunities for employment.
16 At the same time, Ms. Chapman has suffered significant physical and emotional harm as a result
17 of her treatment at Dell, impeding her personal life and general well-being.

18 **B. PLAINTIFF ANGELA HOPKINS**

19
20 **1. Angela Hopkins' Hiring by Dell in January 2006 – Despite Being**
21 **Qualified for Director (D3) Position, Ms. Hopkins is Hired into a**
22 **Senior Manager (D1) Position with Promised Opportunity for**
23 **Advancement.**

24 44. In January 2006, Ms. Hopkins joined Dell's Global Human Resources
25 (HR) Department as a Senior Manager at the D1 level. In placing Ms. Hopkins, the Company's
aim was to have Ms. Hopkins serve as an experienced HR professional, qualified and ready to

1 “back-fill” and replace the then-Manager, David Strauss, at the Director (D3) level, in the event
2 that Strauss changed positions or left the company.

3 45. From the outset of her employment, the Company acknowledged that Ms.
4 Hopkins was qualified for a D3 level position. Men comparably qualified with Ms. Hopkins
5 were hired immediately into Director positions.

6
7 **2. Ms. Hopkins is Commended by Dell Management for her
8 Outstanding Job Performance.**

9 46. Throughout her employment, Ms. Hopkins received numerous accolades
10 from high ranking Executives at Dell for going above and beyond the normal expectations of her
11 job, including successful integration of newly acquired companies and strategic implementation
12 of policies to attract and retain superior employees.

13 47. As a result of Ms. Hopkins’ efforts, the Company concluded her 2006
14 performance review with the accolade that she “*exceeded individual goals through superior
15 customer experience, team work, integration and effective leadership.*” As a result of her
16 outstanding performance, the Company increased her salary in 2007, following repeated
17 commendations from her managers, although her salary remained well below her similarly-
18 situated male counterparts .

19
20 **3. Ms. Hopkins is Subjected to Gender Discrimination in Salary and
21 Incentive Compensation, and is Discriminatorily Denied a Scheduled
22 Promotion.**

23 48. Despite her stellar performance, Ms. Hopkins was compensated less than
24 her similarly-situated male counterparts. Upon information and belief, during her January 2006-
25 April 2008 tenure, Dell significantly underpaid Ms. Hopkins relative to her male peers at D1

1 status. Ms. Hopkins was also paid at a lower market rate for her work while comparable male
2 employees at Dell were routinely paid much higher on the market rate scale.

3 49. In January 2007, Ms. Hopkins' Manager, David Strauss, left the Company, as
4 Dell had anticipated when the Company hired Ms. Hopkins. Ms. Hopkins was asked to assume
5 the role of her departing Manager over the course of eight months while the Company conducted
6 an external search for a permanent replacement. In addition, Ms. Hopkins was also asked to fill
7 in during this time period for a department colleague who went on a 3-month maternity leave.
8 Despite its representations, and in defiance of Ms. Hopkins' exemplary performance and
9 evaluations while serving multiple roles, Dell did not offer her the Director (D3) position.
10 Instead, in October 2007, Dell hired a male from outside the Company with less experience and
11 qualifications than Ms. Hopkins.
12

13 50. Upon information and belief, during the course of 2007 through 2008, Dell
14 significantly underpaid Ms. Hopkins relative to her male counterparts at the D3 level. As a
15 further result of Dell's failure to provide her equal pay or promote her to Director (either by
16 elevating her title to be commensurate with her duties, by elevating her pay to be commensurate
17 with her duties, or by awarding her another open position) Ms. Hopkins lost a substantial amount
18 in incentive compensation, including Short (IBP) and Long Term Incentive (LTI) awards as
19 compared to men with equivalent or lesser responsibilities and qualifications, as well as a
20 substantial amount in promotion grants and retention awards.
21

22 **4. Ms. Hopkins Complains to Management Regarding** 23 **Discriminatory Treatment.**

24 51. Before her wrongful termination, Plaintiff Hopkins repeatedly complained to the
25 Company about gender discrimination against herself and other similarly situated women in pay,
compensation, promotion, and other terms and conditions of employment.

1 **5. Ms. Hopkins is Subjected to Discriminatory Termination/
2 Retaliation During Dell's April 2008 Layoffs.**

3 52. In 2008, Dell planned a mass company-wide reduction in force scheduled
4 to take effect in April 2008. Two weeks before these layoffs, Ms. Hopkins' Manager, Paul
5 Gregory, informed her that due to her exceptional record – including her rating as a “Valued
6 Performer” – she would be retained at the Company. Despite such representations, Ms. Hopkins
7 was terminated without warning on April 3, 2008.
8

9 53. Ms. Hopkins' selection for Dell's mass layoff was both discriminatory
10 based on gender and retaliatory for her complaints of previous gender discrimination.

11 54. While women such as Ms. Hopkins were laid off, low performing and less
12 qualified male executives in equivalent positions were protected based on their gender. Men
13 with less qualifications than Ms. Hopkins and her terminated female peers were frequently given
14 safe havens within the Company or otherwise afforded preferential treatment.

15 55. In an attempt to justify their termination decisions, senior Dell executives
16 improperly manipulated and lowered the favorable performance ratings that Plaintiff Hopkins
17 and other women received for performance in 2007. As a result of the manipulation of her 2007
18 performance review, Dell reduced Ms. Hopkins' bonus and also failed to grant her an LTI award
19 for 2008, estimated to have been worth several hundred thousand dollars. Further, the Company
20 informed terminated female employees that there were no available positions; however, almost
21 simultaneously with the announcement of the mass layoffs, Dell had available at least thirteen
22 other open jobs in the HR department for which Plaintiff Hopkins is very qualified based on her
23 experience and performance. Those positions which Plaintiffs are aware have been filled were
24 given to male employees.
25

1 56. Accordingly, Dell has discriminatorily denied Ms. Hopkins the compensation and
2 promotional opportunities due to her since her hiring in January 2006, the effect of which was
3 compounded by each passing year and was significantly magnified by Dell’s discriminatory and
4 retaliatory termination of her employment in April 2008. Dell’s discriminatory and retaliatory
5 acts not only deprived Ms. Hopkins of equal pay, promotional opportunities and just
6 compensation during her time at Dell, but also continue to act as a black mark on Ms. Hopkins’
7 exceptional career, undeniably hindering her future opportunities for employment. At the same
8 time, Ms. Hopkins has suffered significant physical and emotional harm as a result of her
9 treatment at Dell, impeding her personal life and general well-being.

11 **C. PLAINTIFF JULIA M. MAHAFFEY**

12 **1. Julia Mahaffey Is Hired by Dell in 2000 – Despite Being Qualified for**
13 **a Senior Manager (D1) Position, Ms. Mahaffey is Hired into a**
14 **Manager (C3) Position with Promised Opportunity for Advancement.**

15 57. In or around 2000, Ms. Mahaffey joined Dell as a Human Resources (HR) Senior
16 Consultant/Manager at the C3 level. At the time of her hiring, Ms. Mahaffey held two
17 professional degrees – a *Juris Doctor* degree and a *Masters of Business Administration* degree.
18 From the outset of her employment, Dell acknowledged that Ms. Mahaffey was qualified for a
19 higher level position at the Senior Manager (D1) level. Men comparably qualified with Ms.
20 Mahaffey were hired immediately into Senior Manager (D1) positions.

21 **2. Ms. Mahaffey is Lauded for Her Exemplary Job Performance**
22 **and Given Increased Duties and Responsibilities.**

23 58. Throughout her employment, Ms. Mahaffey received numerous commendations
24 from her managers at Dell. Dell designated Ms. Mahaffey in her 2007 performance review as
25 “Key Talent,” the highest rating for future potential at the Company. They also recognized Ms.

1 Mahaffey “for her leadership which had resulted in Dell winning the Alexander Hamilton Award
2 by Treasury & Risk Management Magazine” in her 2006 performance review.

3 59. As a result of her strong performance, Dell continued to increase the
4 responsibilities of Ms. Mahaffey. In her 2006 review, Dell noted that Ms. Mahaffey took "*on*
5 *more project work in the first 6 months of this year than she has done previously.*" In addition to
6 her full-time job as a HR Benefits Manager, Dell had Ms. Mahaffey co-lead a global
7 compensation and benefits market gap analysis project, organize a global compensation and
8 benefits forum, and provide leadership to the global compensation and benefits organization.
9 Only higher level employees - at the D1 level or higher - were responsible for similar duties.
10

11 60. In or about March 2006, Ms. Mahaffey assumed even greater responsibilities in
12 her new role as the International Compensation and Benefits Manager for Dell. In this role, Ms.
13 Mahaffey performed duties substantially equal to male employees at the D1 level.

14 61. Given her increased responsibilities, Ms. Mahaffey repeatedly requested Dell
15 increase her pay to the level of her similarly-situated male counterparts and promote her to the
16 Senior Manager (D1) level. Dell, however, refused to pay or promote her at the D1 level.

17 **3. Ms. Mahaffey is Subjected to Gender Discrimination in Salary and**
18 **Incentive Compensation, and is Continuously Denied the Promotion**
19 **Promised and Due to Her.**

20 62. Although Ms. Mahaffey’s level of responsibility now equaled or exceeded that of
21 male Senior Managers (D1), Dell refused to award her a promotion or any increase in
22 compensation comparable to her job responsibilities. From March 2005 until the date of her
23 resignation, Ms. Mahaffey performed duties substantially equal and/or comparable to male
24 Senior Managers, titled and compensated at the D1 level.

25 63. During this same time-period, Ms. Mahaffey continuously requested to be

1 paid equally to a Senior Manager (D1) or promoted to Senior Manager (D1). Although Dell
2 promised that Ms. Mahaffey would be made a Senior Manager and continued to award her
3 outstanding performance reviews and to increase her levels of responsibility, Dell management
4 never elevated Ms. Mahaffey to D1 status in her seven years at the Company. Dell instead
5 awarded pay increases and promotions to less qualified and less experienced males throughout
6 this time.

7
8 **4. Ms. Mahaffey Complains to Management Regarding
Discriminatory Treatment.**

9
10 64. Ms. Mahaffey repeatedly complained to the Company about gender
11 discrimination against herself and other similarly situated women in pay, compensation,
12 promotion, and other terms and conditions of employment.

13 **5. Ms. Mahaffey is Subjected to Retaliation by Dell.**

14 65. After complaining about the gender discrimination at Dell, the Company
15 retaliated against Ms. Mahaffey. Shortly after her complaints were made about gender
16 discrimination, Ms. Mahaffey learned that her promotion was never going to happen at Dell.
17 This led Ms. Mahaffey to resign from the Company.

18 67. Accordingly, Dell has discriminatorily denied Ms. Mahaffey the
19 compensation and promotional opportunities due to her since her hiring in 2000, the effect of
20 which was compounded by each passing year and was significantly magnified by Dell's
21 discriminatory and retaliatory treatment of her which led to her resignation in October 2007.
22 Dell's discriminatory and retaliatory acts deprived Ms. Mahaffey of equal pay, promotional
23 opportunities and just compensation during her time at Dell. At the same time, Ms. Mahaffey
24 has suffered emotional harm as a result of her treatment at Dell, impeding her personal life and
25 general well-being.

1 **D. PLAINTIFF BETHANY RICHES**

2 **1. Bethany Riches’ Hiring by Dell in September 2003 – Despite Being**
3 **Qualified for Director (D3) Position, Ms. Riches is Hired into a Senior**
4 **Manager (D1) Position with Promised Opportunity for Advancement.**

5 68. In September 2003, Ms. Riches joined Dell as a Human Resources (HR) Senior
6 Manager at the D1 level. Ms. Riches previously held a Director level position at another multi-
7 national company. From the outset of her employment, Dell acknowledged that Ms. Riches was
8 qualified for a Director (D3) level position. Men comparably qualified with Ms. Riches were
9 hired immediately into Director (D3) positions.

10 **2. Ms. Riches is Lauded for Her Exemplary Job Performance**
11 **and Given Increased Duties and Responsibilities.**

12 69. Throughout her employment, Ms. Riches received numerous commendations
13 from her managers at Dell who recognized her “*outstanding service level,*” “*excellent coaching*
14 *and feedback*” to clients, and excellent “*execute[ion] ... on the core HR programs...*” in her
15 performance reviews. As a result of her efforts, Dell gave Ms. Riches an Exceptional rating, the
16 highest rating for future potential, in her 2006 performance review.. Dell executives also stated
17 in her review that “*Beth will have a great opportunity for increased exposure, influence across*
18 *the Americas and growth in the upcoming year...*”.

19 70. In August 2006, Ms. Riches assumed a new, larger role as HR Leader for Dell
20 Public Sales Organization (PSO). In this role, she replaced a male HR Director (D3), and
21 assumed his responsibilities for overseeing approximately 1,000 employees in the PSO business.
22 In addition to assuming her new responsibilities, she also continued with her previous
23 responsibilities of overseeing 850 employees in Dell Advanced Systems Organization (ASO).
24 Although Ms. Riches was now performing in a role even larger than her male predecessor
25 Director’s role, Dell refused to promote her to the D3 level.

1 71. In February 2007, Ms. Riches assumed an even larger role as HR Leader for Dell
2 Medium Business Organization (MBO). In this role, she replaced another male HR Director
3 (D3), and assumed his responsibilities for overseeing approximately 1,500 employees in the
4 MBO business. At the same time, the male Director moved into Ms. Riches old role as HR
5 Leader for Dell Public Sales Organization (PSO). But unlike Ms. Riches, the male Director
6 filled that role at the Director (D3) level.

7
8 72. In the summer of 2007, Ms. Riches again assumed an even larger role as HR
9 Leader for Dell Small and Medium Business Organization (SMBO). In this role, she replaced
10 another male HR Director (D3), and assumed his responsibilities for overseeing approximately
11 5,000 employees in the businesses. Like her male predecessor, she had six (6) direct reports and
12 a total HR team of twenty (20) employees. She was also responsible for overseeing employees
13 at both the Nashville and Oklahoma facilities. Despite her increased responsibilities and her
14 repeated requests for equal pay and a promotion, Dell again refused to pay or promote Ms.
15 Riches at the D3 level.

16 **3. Ms. Riches is Subjected to Gender Discrimination in Salary and**
17 **Incentive Compensation, and is Continuously Denied the Promotion**
18 **Promised and Due to Her.**

19 73. Although Ms. Riches' level of responsibility now equaled or exceeded that of
20 male Directors (D3), Dell refused to award her a promotion or any increase in compensation
21 comparable to her job responsibilities. From August 2006 until the date of her resignation, all
22 individuals who were previously responsible for Ms. Riches' duties were male Directors, titled
23 and compensated at the D3 level.

24 74. During this same time-period, Ms. Riches continuously requested to be paid and
25 promoted at the Director (D3) level. Although Dell promised that Ms. Riches would be made

1 Director and continued to award her outstanding performance reviews and to increase her levels
2 of responsibility, Dell management never elevated Ms. Riches' pay or title to D3 status in her
3 four and a half years at the Company. Dell instead awarded increased pay and promotions to less
4 qualified and less experienced males throughout this time.

5 **4. While Ms. Riches is Commended for “Making Nice Progress Breaking**
6 **into Arguably One of the Toughest Old Boy Networks in Dell,” She is**
7 **Subjected to Discriminatory Stereotypes in Her Employment Reviews.**

8 75. In Ms. Riches' mid-year feedback in 2007, Dell management commended her for
9 her abilities to break into “*one of the toughest old boy networks in Dell.*” They also told her that
10 her slow progression “*is not about you,*” and promised her that “*you'll reap the benefits of this*
11 *over time.*”

12 76. Applying similar stereotypes throughout the same review, the male executive who
13 supervised her V.P. Mr Summers commended her for being “*very direct*” and “*influential with*
14 *others,*” while at the same time repeatedly cautioning her against being too “*strong.*” For
15 example, he stated:

- 16
- 17 • “*Be cautious of your tendency to form ... strong opinions...*”
 - 18 • “*You have a strong drive for results and a strong bias to the ‘right’ way to do*
19 *things, based on your experiences. Try and balance that...*”
 - 20 • *You have a strong presence with your colleagues and have a voice at the table.*
21 *Be careful not to overuse it...*”

22 77. Although strength is typically an asset in an employee, that is apparently not the
23 case for female employees at Dell. This example illustrates how Dell employs impermissibly
24 subjective evaluation and criteria that permit the introduction of gender stereotypes into
25 employment decisions.

1 **5. Ms. Riches Complains to Management Regarding**
2 **Discriminatory Treatment.**

3 78. During Ms. Riches' employment at Dell, she repeatedly complained about
4 unequal treatment to her immediate managers. In particular, Ms. Riches often complained about
5 Dell's failure to pay her and promote her at the Director (D3) level occupied by males with
6 similar levels of responsibility.

7 79. In the summer of 2007, Ms. Riches was also interviewed as part of an internal
8 investigation or audit referred to as a "focus group" regarding gender discrimination at Dell. In
9 that interview, Ms. Riches candidly discussed her complaints about discrimination with the
10 interviewer, an outside consultant working for Dell. She specifically discussed how Dell
11 repeatedly moved her into positions previously occupied by male Director (D3) employees,
12 without any change in job responsibilities, but then refused to pay or promote her at the Director
13 (D3) level. Time and time again, Dell refused to provide Ms. Riches with any pay increases or
14 promotional opportunities equivalent to the title and compensation occupied by males with
15 similar levels of responsibility.
16

17 **6. Ms. Riches is Subjected to Retaliation by Dell.**

18 80. After she complained about the gender discrimination at Dell, the Company
19 retaliated against Ms. Riches. Shortly after her participation in the internal investigation, her
20 male supervisor told her that her promotion was "never going to happen at Dell." This led Ms.
21 Riches to resign from the Company.

22 81. Accordingly, Dell has discriminatorily denied Ms. Riches the compensation and
23 promotional opportunities due to her since her hiring in September 2003, the effect of which was
24 compounded by each passing year and was significantly magnified by Dell's discriminatory and
25 retaliatory treatment of her which led to her resignation in May 2008. Dell's discriminatory and

1 retaliatory acts deprived Ms. Riches of equal pay, promotional opportunities and just
2 compensation during her time at Dell. At the same time, Ms. Riches has suffered emotional
3 harm as a result of her treatment at Dell, impeding her personal life and general well-being.

4 **VI. CLASS ACTION ALLEGATIONS**

5 **A. General Allegations Relevant to Class Claims and Class Definitions**

6 *(1) Gender Class*

7 82. Class Representatives Chapman, Hopkins, Mahaffey and Riches and the class of
8 female Dell managers and other professional level employees they seek to represent have been
9 subjected to a systemic pattern and practice of gender discrimination involving a battery of
10 practices which have had a continuing, unlawful disparate impact on them and their employment
11 opportunities. Such gender discrimination includes (a) compensating female employees,
12 including female employees at the D1 and C3 grade levels, less than their male counterparts; (b)
13 segregating female employees, including female employees at the D1 and C3 grade levels, into
14 lower paying grade levels than their male counterparts; (c) denying female employees, including
15 female employees at the D1 and C3 grade levels, development, placement, promotion, and
16 advancement opportunities resulting in their remaining in lower classification and compensation
17 levels; and (d) disproportionately terminating female employees, including female employees at
18 the D1 and C3 grade levels, when compared with their male counterparts.

19 83. Dell, in effect, bars female professionals and managers from better and higher-
20 paying positions which have traditionally been held by men. The systemic means of
21 accomplishing such gender-based stratification include, but are not limited to, Dell's
22 development, placement, promotion, advancement, training, performance evaluation, and
23 termination/retention policies, practices, and procedures.
24
25

1 84. Dell incorporates the following gender-based discriminatory practices: (a) relying
2 upon subjective judgments, procedures, and criteria which permit and encourage the
3 incorporation of gender stereotypes and biases by Dell's predominately male executive,
4 managerial, and supervisory staff in making placement, promotion, training, performance
5 evaluation, compensation, and termination decisions; (b) refusing or failing to provide equal
6 training opportunities to females; and (c) refusing or failing to establish and/or follow policies,
7 practices, procedures, or criteria that reduce or eliminate disparate impact and/or intentional
8 biases or stereotypes.
9

10 85. Defendant's development, compensation, placement, promotion, training,
11 performance evaluation, termination/retention, and transfer policies, practices and procedures
12 have a disparate impact on the Class Representatives and the class they seek to represent. Such
13 procedures are not valid, job-related, or justified by business necessity. Such practices form a
14 part of the Defendant's overall pattern and practice of keeping women in lower classifications
15 which have less desirable terms and conditions of employment, and in terminating women in
16 disproportionate numbers.
17

18 86. Because of Defendant's systemic pattern and practice of gender discrimination,
19 the Class Representatives and the class they seek to represent have been adversely affected and
20 have experienced harm, including the loss of compensation, wages, backpay, bonuses, stock, and
21 employment benefits.
22

23 87. Dell has failed to impose adequate discipline on managers and employees who
24 violate the Company's diversity mandates and equal employment opportunity laws and has failed
25 to create adequate incentives for its managerial and supervisory personnel to comply with such
policy and such laws regarding the policies, practices, and procedures described above.

1 88. The Class Representatives and the Class have no plain, adequate, or complete
2 remedy at law to redress the wrongs alleged herein, and this suit is their only means of securing
3 adequate relief. The Class Representatives and the Class are now suffering, and will continue to
4 suffer, irreparable injury from Dell’s ongoing, unlawful policies, practices, and procedures as set
5 forth herein unless those policies, practices, and procedures are enjoined by this Court.

6 89. Class Representatives Chapman, Hopkins, Mahaffey, and Riches seek to maintain
7 claims on their own behalf and on behalf of a class of current and former female employees,
8 including female employees at the D1 and C3 grade levels, at Dell.

9 90. The class consists of all current and former female employees, including female
10 employees at the D1 and C3 grade levels, who are, or have been, employed by Dell during the
11 applicable liability period. Upon information and belief, there are thousands of such employees
12 in the proposed gender class.

13 91. The Class Representatives seek to represent all of the female employees described
14 above. The systemic gender discrimination described in this Complaint has been, and is,
15 continuing in nature.

16
17 (2) *Age Class*

18 92. Class Representative Chapman and the class of Dell managers and other
19 professional level employees over the age of 40 have been subjected to a systemic pattern and
20 practice of age discrimination, including selective, disparate, and disproportionate termination
21 during Dell’s ongoing reduction in force, including mass layoffs in April 2008 and other recent
22 layoffs.

23 93. Dell, in effect, implements its company-wide layoffs as an opportunity to
24
25

1 disproportionately get rid of older employees at the Company or utilizes its termination practices
2 and procedures as to have a disparate impact on such employees.

3 94. Dell's termination/retention and layoff policies, practices and procedures
4 incorporate subjective judgments, procedures, and criteria which permit and encourage the
5 incorporation of age-based stereotypes and biases and fail to establish criteria that reduce or
6 eliminate disparate impact and/or intentional biases or stereotypes.

7 95. Dell's layoff and termination/retention policies, practices, and procedures have
8 had a disparate impact on the Class Representative and the members of the class. Such
9 procedures are not valid, reasonable, job-related, or justified by business necessity.

10 96. Because of Defendant's systemic pattern and practice of age discrimination, the
11 Class Representative and the class she seeks to represent have been adversely affected and have
12 experienced harm, including the loss of compensation, wages, backpay, bonuses, stock, and
13 employment benefits.

14 97. Dell has failed to impose adequate discipline on managers and employees who
15 violate the Company's policies and equal employment opportunity laws and has failed to create
16 adequate incentives for its managerial and supervisory personnel to comply with such policy and
17 such laws regarding the policies, practices, and procedures described above.

18 98. The Class Representative and the class have no plain, adequate, or complete
19 remedy at law to redress the wrongs alleged herein, and this suit is their only means of securing
20 adequate relief. The Class Representative and the class are now suffering, and will continue to
21 suffer, irreparable injury from Dell's on-going, unlawful policies, practices, and procedures as
22 set forth herein unless those policies, practices, and procedures are enjoined by this Court.
23
24
25

1 99. Class Representative Chapman seeks to maintain claims on her own behalf and on
2 behalf of former employees over the age of 40, including employees over 40 at the D1 and C3
3 grade levels, who were laid off by the Company, as well as current and future employees over
4 the age of 40, including employees over 40 at the D1 and C3 grade levels, who are subject to
5 ongoing and future layoffs at Dell.

6 100. Upon information and belief, there are thousands of such employees in the
7 proposed class.
8

9 101. The Class Representative seeks to represent all of the older employees described
10 above. The systemic age discrimination described in this Complaint has been, and is, continuing
11 in nature.

12 **B. Inapplicability of Waivers**

13 (1) *Gender Class*

14 102. Along with the mass layoffs in April 2008 and earlier, Dell provided to the
15 members of the gender class Separation Agreement and Release form contracts. In exchange for
16 a class member signing the Agreement and thereby releasing all claims – including federal and
17 state employment discrimination claims – Dell agreed to provide standardized severance
18 packages, including two weeks’ pay, the employee’s prorated incentive bonus payout for time
19 already worked in Fiscal Year 2009, and a maximum of two months of outplacement services.
20 Dell provided only 14 days for an employee to return the signed agreement and did not advise or
21 otherwise mention consultation with an attorney.
22

23 103. The terms of the Agreement expressly applied to future defamation by Dell
24 against the employee and implicitly waived prospective rights under various labor and
25 employment statutes such as Title VII and the Fair Labor Standards Act (“FLSA”). Finally, the

1 Agreement specified that the employee agreed not to “voluntarily participate in, or directly or
2 indirectly aid or encourage any other party in connection with, any lawsuit, claim, demand, or
3 proceeding of any kind,” but on the contrary would “fully cooperate” with Dell with regard to
4 lawsuits brought by other parties.

5 104. Upon information and belief, this standard Agreement is designed to insulate
6 Dell’s underlying discrimination as well as future discrimination by coercing the class members
7 into remaining silent or into following marching orders and parroting the company line. Any
8 class members who signed the Agreement did not do so knowingly and voluntarily.
9 Furthermore, various provisions – including but not limited to the waiver of prospective rights,
10 waiver of the right to file EEOC charges and initiate or participate in an EEOC investigation, and
11 potential witness tampering or subornation of perjury – are contrary to public policy and
12 therefore void.
13

14 (2) *Age Class*

15 105. Along with the mass layoffs in April 2008 and earlier, Dell provided to the
16 members of the age class Separation Agreement and Release form contracts. In exchange for
17 members of the age class signing the Agreement and thereby releasing all claims – including
18 federal and state employment discrimination claims – Dell agreed to provide standardized
19 severance packages, including two weeks of severance pay, employees’ prorated incentive bonus
20 payout for time already worked in Fiscal Year 2009, and a maximum of two months of
21 outplacement services. Dell provided 45 days for an employee to return the signed agreement as
22 well as 7 days to revoke the Agreement after signing. Dell further advised age class members to
23 consult with an attorney and specified that they did not waive any ADEA claims that might arise
24 in the future.
25

1 106. In addition, Dell provided the age class members with an attachment including the
2 ages and job titles of some (but not all) employees both terminated and retained in the mass
3 layoffs/reduction in force. While Dell stated that all U.S. employees in its Human Resources
4 Organization were “eligible for the [termination] program,” it did not mention employees in
5 other Departments in the Company. It also did not specify the eligibility factors for selection –
6 merely stating in tautological fashion that the employees “whose positions are being affected as
7 part of the reduction in force are selected for the program.” Nor did Dell provide written
8 information concerning the program’s time limits. For these reasons as well as others, any
9 releases signed by class members are invalid and unenforceable under the strict requirements of
10 29 U.S.C. § 626(f).
11

12 107. Furthermore, the terms of the Agreement expressly applied to future defamation
13 by Dell against the employee and implicitly waived prospective rights under various labor and
14 employment statutes such as Title VII and the FLSA. Finally, the Agreement stipulated that the
15 employee agreed not to “voluntarily participate in, or directly or indirectly aid or encourage any
16 other party in connection with, any lawsuit, claim, demand, or proceeding of any kind,” but on
17 the contrary would “fully cooperate” with Dell with regard to lawsuits brought by other parties.
18

19 108. Upon information and belief, this standard Agreement is designed to insulate
20 Dell’s underlying discrimination as well as future discrimination by coercing the class members
21 into remaining silent or into following marching orders and parroting the company line. Any
22 class members who signed the Agreement did not do so knowingly and voluntarily.
23 Furthermore, various provisions – including but not limited to the waiver of prospective rights,
24 waiver of the right to file EEOC charges and initiate or participate in an EEOC investigation, and
25 potential witness tampering or subornation of perjury – are contrary to public policy and void.

1 **C. Efficiency of Class Prosecution of Common Claims**

2 109. Certification of classes of female employees, including female employees at the
3 D1 and C3 grade levels, and employees over the age of 40, including employees over 40 at the
4 D1 and C3 grade levels, is the most efficient and economical means of resolving the questions of
5 law and fact which are common to the claims of the Class Representatives and the proposed
6 classes. The individual claims of the Class Representatives require resolution of the common
7 questions of whether Dell has engaged in a systemic pattern and/or practice of gender
8 discrimination against female employees, including female employees at the D1 and C3 grade
9 levels, and whether Dell has engaged in a systemic pattern and/or practice of age discrimination
10 against employees over the age of 40, including employees over 40 at the D1 and C3 grade
11 levels.
12

13 110. Class Representatives Chapman, Hopkins, Mahaffey and Riches seek
14 remedies to eliminate the adverse effects of such discrimination in their own lives, careers and
15 working conditions and in the lives, careers and working conditions of the proposed class
16 members, and to prevent continued discrimination in the future. Plaintiffs Chapman, Hopkins,
17 Mahaffey and Riches have standing to seek such relief because of the adverse effect that such
18 discrimination has had on them individually and on class members generally. In order to gain
19 such relief for themselves, as well as for the class members, Class Representatives Chapman,
20 Hopkins, Mahaffey and Riches will first establish the existence of systemic discrimination as the
21 premise for the relief they seek. Without class certification, the same evidence and issues would
22 be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of
23 inconsistent adjudications and conflicting obligations. Certification of the proposed classes is
24
25

1 the most efficient and judicious means of presenting the evidence and arguments necessary to
2 resolve such questions for the Class Representatives, the proposed classes, and Defendant Dell.

3 111. The Class Representatives' individual and class claims are premised upon the
4 traditional bifurcated method of proof and trial for disparate impact and systemic disparate
5 treatment claims of the type at issue in this case. Such a bifurcated method of proof and trial is
6 the most efficient method of resolving such common issues.

7
8 **D. Numerosity and Impracticability of Joinder**

9 112. The members of the classes which the Class Representatives seek to represent are
10 too numerous to make joinder practicable. The proposed classes each consist of thousands of
11 current, former and future employees during the liability period. Dell's pattern and/or practice of
12 discrimination also makes joinder impracticable by discouraging employees from applying for or
13 pursuing equal pay, promotional, training, or transfer opportunities, thereby making it
14 impractical and inefficient to identify many members of the classes prior to determination of the
15 merits of Dell's class-wide liability.

16 **E. Common Questions of Law and Fact**

17 113. The prosecution of the claims of the Class Representatives will require the
18 adjudication of numerous questions of law and fact common to both their individual claims and
19 those of the classes they seek to represent.

20 114. The common questions of law include, *inter alia*:

21
22 (a) whether Dell has engaged in unlawful, systemic gender discrimination in its
23 compensation, selection, placement, promotion, advancement, transfer, training,
24 discipline, and termination/retention policies, practices, and procedures, and in the
25 general terms and conditions of work and employment;

1 (b) whether Dell is liable for a continuing systemic violation of Title VII, and/or other
2 statutes;

3
4 (c) a determination of the proper standards for proving a pattern or practice of
5 discrimination by Dell against its female employees, including female employees at the
6 D1 and C3 grade levels;

7
8 (d) whether Dell has engaged in unlawful, systemic age discrimination in its
9 termination/retention policies, practices, and procedures and in the general terms and
10 conditions of work and employment; and

11
12 (e) a determination of the proper standards for proving a pattern and practice of
13 discrimination by Dell against its employees over the age of 40, including employees
14 over 40 at the D1 and C3 grade levels.

15
16 115. The common questions of fact include, *inter alia*:

17 (a) whether Dell has, through its policies, practices, and procedures, compensated female
18 employees, including female employees at the D1 and C3 grade levels, less than
19 similarly-situated males through the use of salary, incentive compensation and/or other
20 perks;

21
22 (b) whether Dell has, through its policies, practices, and procedures, precluded or delayed
23 the selection, placement and promotion of female employees, including female
24 employees at the D1 and C3 grade levels, into higher level jobs, including but not limited
25 to Director-level positions, traditionally held by male employees;

1
2 (c) whether Dell has, through its policies, practices, and procedures, disproportionately
3 terminated female employees, including female employees at the D1 and C3 grade levels,
4 during the company-wide layoffs in April 2008 and other recent layoffs; and
5

6 (d) whether Dell has, through its policies, practices, and procedures, disproportionately
7 terminated employees over the age of 40, including employees over 40 at the D1 and C3
8 grade levels, during the company-wide layoffs in April 2008 and other recent layoffs.

9 These common questions of fact are naturally amenable to class-based proof.

10 116. The employment policies, practices, and procedures to which the Class
11 Representatives and the class members are subjected are set at Dell's corporate level at its Round
12 Rock, TX headquarters and apply universally to all class members. These employment policies,
13 practices and procedures are not unique or limited to any department; rather, they apply to all
14 departments and, thus, affect the Class Representatives and class members in the same ways no
15 matter the facility, department, or position in which they work.

16
17 117. Throughout the liability period, a disproportionately large percentage of the
18 executives, senior executives and officers at Dell have been male.

19 118. Discrimination in selection, placement, promotion, and advancement occurs as a
20 pattern and practice throughout all departments of Dell. Selection, placement, promotion, and
21 advancement opportunities are driven by personal familiarity, subjective decision-making, pre-
22 selection, and interaction between male executives and subordinates rather than by merit or
23 equality of opportunity. As a result, male employees have advanced and continue to advance
24 more rapidly to better and higher-paying jobs than do female employees. Dell's policies,
25 practices, and procedures have had an adverse impact on female employees, including female

1 employees at the D1 and C3 grade levels, seeking selection for, or advancement to, better and
2 higher-paying positions. In general, the higher the level of the job classification, the lower the
3 percentage of female employees holding it.

4 119. Furthermore, discrimination within Dell's April 2008 mass layoffs and other
5 recent layoffs occurred as a pattern and practice throughout the manager level of all departments
6 of Dell. Selection of employees to be terminated was driven by personal familiarity, subjective
7 decision-making, pre-selection and interaction between executives and subordinates rather than
8 by merit or equality of opportunity. In addition, the layoffs were used to target female
9 employees and older employees, including these employees at the D1 and C3 grade levels, who
10 were disproportionately terminated while equivalent male employees and younger employees
11 were retained.
12

13 **F. Typicality of Claims And Relief Sought**

14 *(1) Gender Class*

15 120. The claims of Plaintiffs Chapman, Hopkins, Mahaffey and Riches are typical of
16 the claims of the gender class. The relief sought by the Class Representatives for discrimination
17 complained of herein is also typical of the relief which is sought on behalf of the class.

18 121. Like the members of the gender class, the Class Representatives are female D1
19 and C3 level employees who have worked at Dell during the liability period.
20

21 122. Discrimination in selection, placement, promotion, advancement, training, and
22 termination/retention affects the compensation of the Class Representatives and all the employee
23 class members in the same or similar ways.

24 123. Dell has failed to create adequate incentives for its executives and managers to
25 comply with its own policies and equal employment opportunity laws regarding each of the

1 policies, practices, and procedures referenced in this Complaint, and has failed to discipline
2 adequately its executives, managers, and other employees when they violate Company policy or
3 discrimination laws. These failures have affected the Class Representatives and the class
4 members in the same or similar ways.

5 124. The relief necessary to remedy the claims of the Class Representatives is exactly
6 the same as that necessary to remedy the claims of the class members in this case. The Class
7 Representatives seek the following relief for their individual claims and for those of the members
8 of the proposed class:
9

10 (a) a declaratory judgment that Dell has engaged in systemic gender discrimination
11 against female managers and senior professionals by (1) paying female employees,
12 including female employees at the D1 and C3 grade levels, less than their male
13 counterparts, (2) segregating female employees, including female employees at the D1
14 and C3 grade levels, into lower-paying grade levels than their male counterparts, (3)
15 denying female employees, including female employees at the D1 and C3 grade levels,
16 promotions into better and higher-paying positions, and (4) disproportionately
17 terminating them during layoffs while retaining comparable male employees or otherwise
18 giving similarly situated males preferential treatment;

19 (b) a permanent injunction against such continuing discriminatory conduct;

20 (c) injunctive relief which effects a restructuring of Dell's placement, promotion, transfer,
21 training, performance evaluation, compensation, discipline, and termination/retention
22 policies, practices, and procedures – so that female managers and professionals will be
23 able to compete fairly in the future for promotions, transfers, and assignments to better
24
25

1 and higher-paying classifications with terms and conditions of employment traditionally
2 enjoyed by male employees, as well as for retention during layoffs;

3 (d) backpay, front pay, and other equitable remedies necessary to make the female
4 employees, including female employees at the D1 and C3 grade levels, whole from the
5 Defendant's past discrimination;

6 (f) punitive and nominal damages to prevent and deter Dell from engaging in similar
7 discriminatory practices in the future;

8 (g) compensatory damages; and

9 (h) attorneys' fees, costs and expenses.

10
11 (2) *Age Class*

12 125. The claim of Plaintiff Chapman is typical of the claims of the age class. The relief
13 sought by the Class Representative for age discrimination complained of herein is also typical of
14 the relief which is sought on behalf of the class.

15 126. Like the members of the age class, Class Representative Chapman is an employee
16 over the age of 40 who worked at Dell during the liability period and was terminated in Dell's
17 ongoing series of layoffs.

18 127. Discrimination in termination/retention affects the compensation and benefits
19 afforded to the Class Representative and all the employee class members in the same or similar
20 ways.

21
22 128. Dell has failed to create adequate incentives for its executives and managers to
23 comply with its own policies and equal employment opportunity laws regarding the policies,
24 practices, and procedures referenced in this Complaint, and has failed to discipline adequately its
25 executives, managers and other employees when they violate Company policy or discrimination

1 laws. These failures have affected the Class Representative and the class members in the same
2 or similar ways.

3 129. The relief necessary to remedy the claims of the Class Representative is exactly
4 the same as that necessary to remedy the claims of the class members in this case. The Class
5 Representative seeks the following relief for her individual claims and for those of the members
6 of the proposed class:

7 (a) a declaratory judgment that Dell has engaged in systemic age discrimination against
8 managers and senior professionals over age 40 by disproportionately terminating them in
9 the April 2008 layoffs and other recent layoffs;

10 (b) a permanent injunction against such continuing discriminatory conduct;

11 (c) injunctive relief which effects a restructuring of Dell's termination policies, practices,
12 and procedures – so that older managers and professionals will be able to compete fairly
13 in the future for retaining their positions during layoffs;

14 (d) backpay, front pay, and other equitable remedies necessary to make the class
15 members whole from the Defendant's past discrimination;

16 (f) punitive and nominal damages to prevent and deter Dell from engaging in similar
17 discriminatory practices in the future;

18 (g) compensatory damages; and

19 (h) attorneys' fees, costs and expenses.

20
21
22 **G. Adequacy of Representation**

23 130. The Class Representatives' interests are co-extensive with those of the members
24 of the proposed classes which they seek to represent in this case. The Class Representatives seek
25 to remedy Dell's discriminatory employment policies, practices, and procedures so that class

1 members will no longer be prevented from advancing into higher paying and more desirable
2 positions and subject to disparate and disproportional termination. Plaintiffs Chapman, Hopkins,
3 Mahaffey and Riches are willing and able to represent the proposed classes fairly and vigorously
4 as they pursue their individual claims.

5 131. The Class Representatives have retained counsel who are qualified, experienced,
6 and able to conduct this litigation and to meet the time and fiscal demands required to litigate an
7 employment discrimination class action of this size and complexity. The combined interests,
8 experience, and resources of Class Representatives' counsel to litigate competently the
9 individual and class claims at issue in this case clearly satisfy the adequacy of representation
10 requirement of Fed. R. Civ. P. 23(a)(4).
11

12 **H. Requirements of Rule 23(b)(2)**

13 132. Dell has acted on grounds generally applicable to the Class Representatives and
14 the classes by adopting and following systemic policies, practices, and procedures which are
15 discriminatory. Gender and age discrimination is Dell's standard operating procedure rather than
16 a sporadic occurrence. Dell has refused to act on grounds generally applicable to the classes by,
17 *inter alia:*

18 (a) failing to pay, compensate, place, promote, and retain female employees, including
19 female employees at the D1 and C3 grade levels, on par with similarly-situated male
20 employees;

21 (b) refusing to adopt and apply selection, placement, promotion, training, performance
22 evaluation, compensation, discipline, and termination/retention policies, practices, and
23 procedures which do not have a disparate impact on, or otherwise systemically
24
25

1 discriminate against female employees, including female employees at the D1 and C3
2 grade levels;

3 (c) refusing to provide equal terms and conditions of employment for female employees,
4 including female employees at the D1 and C3 grade levels;

5 (d) failing to retain employees over the age of 40, including employees over 40 at the D1
6 and C3 grade levels, on par with similarly-situated younger employees;

7 (e) refusing to adopt and apply selection and termination/retention policies, practices, and
8 procedures that do not have a disparate impact on, or otherwise systemically discriminate
9 against employees over the age of 40, including employees over 40 at the D1 and C3
10 grade levels,; and

11 (f) refusing to provide equal terms and conditions of employment for employees over the
12 age of 40, including employees age 40 at the D1 and C3 grade levels. Dell's systemic
13 discrimination and refusal to act on grounds that are not discriminatory have made
14 appropriate the requested final injunctive and declaratory relief with respect to the classes
15 as a whole.
16

17 133. Injunctive and declaratory relief are the predominant modes of relief sought in
18 this case because they are the culmination of the proof of Dell's individual and class-wide
19 liability at the end of Stage I of a bifurcated trial and the essential predicate for the Class
20 Representatives' and class members' entitlement to monetary and non-monetary remedies at
21 Stage II of such trial. Declaratory and injunctive relief flow directly and automatically from
22 proof of the common questions of law and fact regarding the existence of systemic gender
23 discrimination against female employees and systemic age discrimination against employees
24 over 40 at Dell. Such relief is the factual and legal predicate for the Class Representatives' and
25

1 class members' entitlement to monetary and non-monetary remedies for individual losses caused
2 by such systematic discrimination.

3 **I. Requirements of Rule 23(b)(3)**

4 134. The common issues of fact and law affecting the claims of the Class
5 Representatives and proposed class members, including, but not limited to, the common issues
6 previously identified herein, predominate over any issues affecting only individual claims.
7 These issues include whether Dell has engaged in gender discrimination against female
8 employees, including female employees at the D1 and C3 grade levels, by denying them equal
9 pay, placement, promotion, advancement, and retention opportunities and whether Dell has
10 tolerated a culture of gender discrimination directed against such employees. These issues
11 further include whether Dell has engaged in age discrimination against employees over the age
12 of 40, including older employees at the D1 and C3 grade levels, by denying them equal
13 opportunities to retain their positions during layoffs, and whether Dell has tolerated a culture of
14 age discrimination against such employees.
15

16 135. A class action is superior to other available means for the fair and efficient
17 adjudication of the claims of the Class Representatives and members of the proposed classes.

18 136. The cost of proving Dell's pattern and practice of discrimination makes it
19 impracticable for the Class Representatives and members of the proposed classes to prosecute
20 their claims individually.
21

22 **VII. COLLECTIVE ACTION ALLEGATIONS (EQUAL PAY ACT)**

23 137. Named Plaintiffs Chapman, Hopkins, Mahaffey and Riches incorporate by
24 reference the allegations from the previous paragraphs of this Complaint alleging class-based
25 discrimination against female employees.

1 **A. Collective Action Standards**

2 138. Named Plaintiffs bring collective violations of the Equal Pay Act (“EPA”) as a
3 collective action pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
4 § 216(b) on behalf of all members of the gender class – e.g. current, former, and future female
5 employees, including female employees at the D1 and C3 grade levels, during the liability
6 period. The EPA action includes female employees who (a) were not compensated equally to
7 males who had substantially similar job classifications, functions, families, titles and/or duties,
8 (b) were not compensated equally to males who performed substantially similar work, and (c)
9 who were denied equal compensation with similarly situated males by being hired into positions
10 at lesser grades than male employees who performed substantially similar work.
11

12 139. Questions of law and fact common to the EPA Collective Action Plaintiffs as a
13 whole include but are not limited to the following:

14 (a) Whether Defendant unlawfully failed and continues to fail to compensate female
15 professionals and managers at a level commensurate with similarly situated male
16 employees;

17 (b) Whether Defendant unlawfully failed and continues to fail to hire female
18 professionals and managers into positions graded at an equal pay and compensation
19 scale to similarly qualified males;

20 (c) Whether Defendant unlawfully failed and continues to fail to promote and advance
21 female professionals and managers in a fashion commensurate with similarly
22 qualified males;

23 (d) Whether Defendant’s policy and practice of failing to compensate female
24 employees, including female employees at the D1 and C3 grade levels, on a par
25

1 with comparable male employees as a result of (a), (b), and (c) violates applicable
2 provisions of the EPA; and

3
4 (e) Whether Defendant's failure to compensate female employees, including female
5 employees at the D1 and C3 grade levels, on a par with comparable male employees
6 as a result of (a), (b), and (c) was willful within the meaning of the EPA;

7 140. Counts for violation of the EPA may be brought and maintained as an "opt-in"
8 collective action pursuant to 29 U.S.C. § 216(b), for all claims asserted by the EPA Collective
9 Action Plaintiffs because the claims of the Named Plaintiffs are similar to the claims of the EPA
10 Collective Action Plaintiffs.

11 141. Plaintiffs Chapman, Hopkins, Mahaffey and Riches and the EPA
12 Collective Action Plaintiffs (a) are similarly situated; (b) have substantially similar job
13 classifications, functions, families, titles and/or duties; and (c) are subject to Defendant's
14 common policy and practice of gender discrimination in (i) failing to compensate female
15 professionals and managers on par with men who perform substantially equal work and/or hold
16 equivalent levels and positions; (ii) failing to provide female professionals and managers with
17 job classifications, grades and titles commensurate with male employees who perform
18 substantially equal work and/or have similar duties and responsibilities; (iii) hiring females into
19 lower-level positions than males who perform substantially equal work and/or have similar or
20 lesser experience and qualifications; and (iv) failing to provide female professionals and
21 managers equal pay by denying opportunities for promotion and advancement to them
22 comparable to those afforded to males who perform substantially equal work.
23
24
25

1 **VIII. COLLECTIVE ACTION ALLEGATIONS (AGE DISCRIMINATION)**

2 **A. General Allegations and Invalidation of Waivers**

3 142. Named Plaintiff Chapman incorporates by reference the previous allegations of
4 this Complaint alleging discrimination against employees over the age of 40, including
5 employees over 40 at the D1 and C3 grade levels.

6 **B. Collective Action Standards**

7 143. Named Plaintiff brings collective violations of the Age Discrimination in
8 employment Act (“ADEA”) as a collective action pursuant to Section 16(b) of the FLSA, 29
9 U.S.C. § 216(b), incorporated by reference, on behalf of all members of the age class. The
10 ADEA action includes current, former and future employees over the age of 40, including
11 employees over 40 at the D1 and C3 grade levels, during the liability period who were either (a)
12 terminated in Dell’s recent series of layoffs or (b) are subject to termination in Dell’s ongoing
13 layoffs.
14

15 144. Questions of law and fact common to the ADEA Collective Action Plaintiffs as a
16 whole include but are not limited to the following:

- 17 (a) Whether Defendant unlawfully discriminated and continues to unlawfully
18 discriminate against older professionals and managers over the age of 40 during
19 layoffs;
- 20
- 21 (b) Whether Defendant’s policy and practice of selectively, disparately, and/or
22 disproportionately terminating older professionals and managers over the age of
23 40 violates applicable provisions of the ADEA; and
- 24
- 25 (c) Whether Defendant’s selective, disparate, and/or disproportional termination of
employees over the age of 40 was willful within the meaning of the ADEA.

1 on the basis of their gender. The members of the Class have suffered both disparate impact and
2 disparate treatment as a result of Defendant's wrongful conduct.

3 150. Defendant has discriminated against the Class Representatives and all members of
4 the Class by treating them differently from and less preferably than similarly-situated male
5 employees and by subjecting them to discriminatory compensation, discriminatory placement,
6 discriminatory denials of promotions, discriminatory denials of pay raises, discriminatory and
7 selective termination and other forms of discrimination, in violation of Title VII.
8

9 151. Defendant's conduct has been intentional, deliberate, willful, malicious, reckless
10 and conducted in callous disregard of the rights of the Class Representatives and the members of
11 the proposed Class, entitling the Class Representatives and the members of the Class to punitive
12 damages.

13 152. By reason of the continuous nature of Defendant's discriminatory conduct, which
14 persisted throughout the employment of the Class Representatives and the members of the Class,
15 the Class Representative and the members of the Class are entitled to application of the
16 continuing violations doctrine to all violations alleged herein.

17 153. As a result of Defendant's conduct alleged in this complaint, the Class
18 Representatives and the members of the Class have suffered and continue to suffer harm,
19 including but not limited to lost earnings, lost benefits, and other financial loss, as well as
20 humiliation, embarrassment, emotional and physical distress, and mental anguish.
21

22 154. Defendant's policies, practices and/or procedures have produced a disparate
23 impact on the Class Representatives and the class members with respect to their terms and
24 conditions of employment.
25

1 160. Defendant caused, attempted to cause, contributed to, or caused the continuation
2 of, the wage rate discrimination based on sex in violation of the Equal Pay Act. Moreover,
3 Defendant knew of or showed reckless disregard for the fact that its conduct was in violation of
4 the Equal Pay Act.

5 161. Dell's discriminatory acts were accomplished in large part through its Vice
6 President of Global HR Operations, Dominick DiCosimo, a male Officer and agent of Dell who,
7 upon information and belief, was not only directly aware of the substantial inequity in
8 compensation and benefits between similarly situated male and female professionals and
9 managers but is knowledgeable about the laws regarding equal pay. In his leadership role, Mr.
10 DiCosimo reported to Dell's senior management, including CEO Michael Dell and the
11 Company's Senior VP in charge of Human Resources, Andrew Esparza.

12 162. As a result of Defendant's conduct alleged in this Complaint and/or Defendant's
13 willful, knowing and intentional discrimination, the Named Plaintiffs and EPA Collective Action
14 Plaintiffs have suffered and will continue to suffer harm, including but not limited to lost
15 earnings, lost benefits, and other financial loss, as well as humiliation, embarrassment, emotional
16 and physical distress, and mental anguish.

17 163. The Named Plaintiffs and EPA Collective Action Plaintiffs are therefore entitled
18 to all legal and equitable remedies, including doubled compensatory awards for all willful
19 violations.

20 164. Attorneys' fees should be awarded under 29 U.S.C. §§ 216, *et seq.*

1 170. As a result of Defendant’s conduct alleged in this complaint, Named Plaintiff and
2 the ADEA Collective Action Plaintiffs have suffered and continue to suffer harm, including but
3 not limited to lost earnings, lost benefits, and other financial loss, as well as humiliation,
4 embarrassment, emotional and physical distress, and mental anguish.

5 171. By reason of Defendant’s conduct as alleged herein, Named Plaintiff Chapman
6 and the ADEA Collective Action Plaintiffs are entitled to all legal and equitable remedies
7 available for violations of the ADEA, including liquidated damages.

8 172. Attorneys’ fees should be awarded under 29 U.S.C. § 626(b)

9
10 **INDIVIDUAL COUNTS—PLAINTIFF CHAPMAN**

11 **COUNT IV**

12 **RETALIATION**
13 **IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT,**
14 **42 U.S.C. § 2000e-3(a)**

15 173. Plaintiff Chapman re-alleges and incorporates by reference each and every
16 allegation in each and every aforementioned paragraph as if fully set forth herein.

17 174. Plaintiff Chapman regularly complained to the Company regarding gender
18 discrimination at Dell as it related to Dell’s failure to promote her on an equal basis with
19 similarly situated men. In retaliation, Defendant maliciously manipulated her performance
20 review for 2007, thereby denying her a Long Term Incentive Award of approximately \$179,000
21 and ensuring that she would be a target for the upcoming layoff. Furthermore, Defendant
22 terminated Ms. Chapman’s employment during the April 2008 mass layoffs while retaining less
23 qualified men. Upon information and belief, other women at Dell who opposed or complained
24 about unlawful gender discrimination were similarly retaliated against by the Company.

1 information and belief, other women at Dell who opposed or complained about unlawful gender
2 discrimination were similarly retaliated against.

3 181. Defendant's conduct has been intentional, deliberate, willful, malicious,
4 reckless and conducted in callous disregard of the rights of Plaintiff Chapman, entitling her to
5 punitive damages.

6 182. As a result of Defendant's conduct alleged in this Complaint, Plaintiff Chapman
7 has suffered and continues to suffer harm, including but not limited to lost earnings, lost benefits,
8 and other financial loss, as well as humiliation, embarrassment, emotional and physical distress,
9 and mental anguish. Because of Defendant's conduct as alleged herein, Plaintiff Chapman is
10 entitled to all legal and equitable remedies including doubled compensatory awards for all willful
11 violations.
12

13 183. Attorneys' fees should be awarded under 29 U.S.C. § 216, *et seq.*

14 **COUNT VI**

15 **FRAUDULENT INDUCEMENT/BREACH OF CONTRACT/
16 PROMISSORY ESTOPPEL**

17 184. Plaintiff Chapman re-alleges and incorporates by reference each and every
18 allegation in each and every aforementioned paragraph as if fully set forth herein.

19 185. Defendant induced Plaintiff Chapman to accept a position at Dell and to relocate
20 from Houston to Austin by falsely or fraudulently promising or misrepresenting that her position
21 would be secure, that she would be protected from any layoffs, and that she would be promoted
22 to the Director level within 12 to 18 months.
23

24 186. In reliance, Plaintiff Chapman sold her home in Houston and purchased a home in
25 Austin and incurred substantial moving expenses. Furthermore, she and her husband forfeited

1 other employment opportunities. As a result, Plaintiff Chapman and her husband have sustained
2 significant financial losses.

3 187. Defendant breached said promises and representations by failing to promote Ms.
4 Chapman to Director and by terminating her in the April 2008 layoffs (while retaining similarly
5 situated males and younger employees).

6 188. Plaintiff Chapman is therefore entitled to all legal and equitable remedies, as well
7 as punitive damages.

8
9 **INDIVIDUAL COUNTS—PLAINTIFF HOPKINS**

10 **COUNT VII**

11 **RETALIATION**
12 **IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT,**
13 **42 U.S.C. § 2000e-3(a)**

14 189. Plaintiff Hopkins re-alleges and incorporates by reference each and every
15 allegation in each and every aforementioned paragraph as if fully set forth herein.

16 190. Plaintiff Hopkins regularly complained to the Company regarding gender
17 discrimination at Dell and the failure to pay and promote women, including herself, on an equal
18 basis with similarly situated men. In retaliation, Defendant maliciously manipulated her
19 performance review for 2007, thereby reducing her bonus and denying her a Long Term
20 Incentive Award and ensuring that she would be a target for the upcoming layoff. Furthermore,
21 Defendant terminated her employment during the April 2008 mass layoffs while retaining less
22 qualified men. Upon information and belief, other women at Dell who opposed or complained
23 about unlawful gender discrimination were similarly retaliated against by the Company.
24
25

1 qualified men. Upon information and belief, other women at Dell who opposed or complained
2 about unlawful gender discrimination were similarly retaliated against.

3 197. Defendant's conduct has been intentional, deliberate, willful, malicious, reckless
4 and conducted in callous disregard of the rights of Plaintiff Hopkins, entitling her to punitive
5 damages.

6 198. Because of Defendant's conduct alleged in this Complaint, Plaintiff Hopkins has
7 suffered and continues to suffer harm, including but not limited to lost earnings, lost benefits,
8 and other financial loss, as well as humiliation, embarrassment, emotional and physical distress,
9 and mental anguish.

10 199. By reason of Defendant's conduct as alleged herein, Plaintiff Hopkins is entitled
11 to all legal and equitable remedies including doubled compensatory awards for all willful
12 violations.

13 200. Attorneys' fees should be awarded under 29 U.S.C. §§ 216, *et seq.*

14 **INDIVIDUAL COUNTS—PLAINTIFF MAHAFFEY**

15 **COUNT IX**

16 **RETALIATION**
17 **IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT,**
18 **42 U.S.C. § 2000e-3(a)**

19 201. Plaintiff Mahaffey re-alleges and incorporates by reference each and every
20 allegation in each and every aforementioned paragraph as if fully set forth herein.

21 202. Plaintiff Mahaffey regularly complained to the Company regarding gender
22 discrimination at Dell and the failure to pay and promote women, including herself, on an equal
23 basis with similarly situated men. In retaliation, Defendant took adverse employment actions
24 against Ms. Mahaffey, including failing to provide her equal pay or promote her. Upon
25

1 belief, other women at Dell who opposed or complained about unlawful gender discrimination
2 were retaliated against by the Company.

3 198. Defendant's conduct has been intentional, deliberate, willful, malicious, reckless
4 and conducted in callous disregard of the rights of Plaintiff Mahaffey, entitling her to punitive
5 damages.

6 199. Because of Defendant's conduct alleged in this Complaint, Plaintiff Mahaffey has
7 suffered and continues to suffer harm, including but not limited to lost earnings, lost benefits,
8 and other financial loss, as well as humiliation, embarrassment, emotional and physical distress,
9 and mental anguish.

10 200. By reason of Defendant's conduct as alleged herein, Plaintiff Mahaffey is entitled
11 to all legal and equitable remedies including doubled compensatory awards for all willful
12 violations.

13 201. Attorneys' fees should be awarded under 29 U.S.C. §§ 216, *et seq.*

14 **INDIVIDUAL COUNTS—PLAINTIFF RICHES**

15 **COUNT XI**

16 **VIOLATIONS OF TITLE VII,
17 42 U.S.C. 2000e-3(a) – RETALIATION**

18 202. Plaintiff Riches re-alleges and incorporates by reference each and every
19 allegation in each and every aforementioned paragraph as if fully set forth herein.

20 203. Plaintiff Riches regularly complained to the Company regarding gender
21 discrimination at Dell and the failure to pay and promote women, including herself, on an equal
22 basis with similarly situated men. In retaliation, Defendant took adverse employment actions
23 against Ms. Riches, including failing to provide her equal pay or promote her. Upon information
24

1 and belief, other women at Dell who opposed or complained about unlawful gender
2 discrimination were similarly retaliated against by the Company.

3 204. Defendant's conduct has been intentional, deliberate, willful, malicious,
4 reckless and conducted in callous disregard of the rights of Plaintiff Riches, entitling her to
5 punitive damages.

6 211. As a result of Defendant's conduct alleged in this Complaint, Plaintiff Riches has
7 suffered and continues to suffer harm, including but not limited to lost earnings, lost benefits,
8 and other financial loss, as well as humiliation, embarrassment, emotional and physical distress,
9 and mental anguish.

10 212. By reason of Defendant's conduct as alleged herein, Plaintiff Riches is entitled to
11 all legal and equitable remedies available for violations of Title VII, including an award of
12 punitive damages.

13 213. Attorneys' fees should be awarded under 42 U.S.C. §2000e-5(k).

14
15
16 **COUNT XII**

17 **VIOLATIONS OF THE EQUAL PAY ACT.**
18 **29 U.S.C. § 215(a)(3)-RETALIATION**

19 214. Plaintiff Riches re-alleges and incorporates by reference each and every
20 allegation in each and every aforementioned paragraph as if fully set forth herein.

21 215. Plaintiff Riches regularly complained to the Company regarding gender
22 discrimination at Dell and the failure to pay women, including herself, on an equal basis with
23 similarly situated men. In retaliation, Defendant took adverse employment actions against Ms.
24 Riches, including failing to provide her equal pay or promote her. Upon information and belief,
25

1 other women at Dell who opposed or complained about unlawful gender discrimination were
2 similarly retaliated against by the Company.

3 216. Defendant's conduct has been intentional, deliberate, willful, malicious, reckless
4 and conducted in callous disregard of the rights of Plaintiff Riches, entitling her to punitive
5 damages.

6 217. Because of Defendant's conduct alleged in this Complaint, Plaintiff Riches has
7 suffered and continues to suffer harm, including but not limited to lost earnings, lost benefits,
8 and other financial loss, as well as humiliation, embarrassment, emotional and physical distress,
9 and mental anguish.

10 218. By reason of Defendant's conduct as alleged herein, Plaintiff Riches is entitled to
11 all legal and equitable remedies including doubled compensatory awards for all willful
12 violations.

13 219. Attorneys' fees should be awarded under 29 U.S.C. §§ 216, *et seq.*

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs Chapman, Hopkins, Mahaffey and Riches, on their own behalf
16 and on behalf of the class members and collective action plaintiffs, pray that this Court:

17 A. Certify the case as a class action maintainable under Fed. R. Civ. P. 23(a), (b)(2)
18 and/or (b)(3), on behalf of the proposed Plaintiff classes (the gender class under Title VII and the
19 age class under Texas law), and designate Plaintiffs Chapman, Hopkins, Mahaffey and Riches as
20 the representatives of the gender class and Ms. Chapman as representative of the age class and
21 their counsel of record as class counsel;

22 B. Designate this action as a collective action on behalf of the proposed EPA
23 Collective Plaintiffs (asserting EPA claims) and
24
25

1 (i) promptly issuing notice pursuant to 29 U.S.C. §216(b) to all similarly
2 situated members of the EPA Opt-In Class, which (a) appries them of the
3 pendency of this action, and (b) permits them to assert timely EPA claims in
4 this action by filing individual Consent to Sue forms pursuant to 29 U.S.C.
5 §216(b); and

6 (ii) tolling the statute of limitations on the claims of all members of the
7 FLSA Opt-In Class from the date the original complaint was filed until the
8 Class members are provided with reasonable notice of the pendency of this
9 action and a fair opportunity to exercise their right to opt-in as Plaintiffs;
10

11 C. Designate Plaintiffs Chapman, Hopkins, Mahaffey and Riches as representatives
12 of the EPA Collective Action;

13 D. Designate this action as a collective action on behalf of the proposed ADEA
14 Collective Plaintiffs (asserting ADEA claims) and

15 (i) promptly issuing notice pursuant to 29 U.S.C. §216(b) to all similarly
16 situated members of the ADEA Opt-In Class, which (a) appries them of the
17 pendency of this action, and (b) permits them to assert timely ADEA claims in
18 this action by filing individual Consent to Sue forms pursuant to 29 U.S.C.
19 §216(b); and

20 (ii) tolling the statute of limitations on the claims of all members of the
21 ADEA Opt-In Class from the date the original complaint was filed until the
22 Class members are provided with reasonable notice of the pendency of this
23 action and a fair opportunity to exercise their right to opt-in as Plaintiffs;
24

25 E. Designate Plaintiff Chapman as representative of the ADEA Collective Action;

1 F. Declare and adjudge that Defendant Dell's employment policies, practices and/or
2 procedures challenged herein are illegal and in violation of the rights of Plaintiffs Chapman,
3 Hopkins, Mahaffey and Riches, class members, and collective action plaintiffs under Title VII,
4 the EPA, and the ADEA,

5 G. Issue a permanent injunction against Dell and its partners, officers, trustees,
6 owners, employees, agents, attorneys, successors, assigns, representatives and any and all
7 persons acting in concert with them from engaging in any conduct violating the rights of
8 Plaintiffs Chapman, Hopkins, Mahaffey and Riches, class members, and collective action
9 plaintiffs and those similarly situated as secured by Title VII, the EPA, and the ADEA and order
10 such injunctive relief as will prevent Dell from continuing its discriminatory practices and
11 protect others similarly situated;
12

13 H. Issue a permanent injunction against Dell and its partners, officers, trustees,
14 owners, employees, agents, attorneys, successors, assigns, representatives and any and all
15 persons acting in concert with them from engaging in any further unlawful practices, policies,
16 customs, usages, gender discrimination, age discrimination, or retaliation by Dell as set forth
17 herein;
18

19 I. Order Dell to initiate and implement programs that will: (i) provide equal
20 employment opportunities for the class members and collective action plaintiffs; (ii) remedy the
21 effects of its past and present unlawful employment policies, practices and/or procedures; and
22 (iii) eliminate the continuing effects of the discriminatory and retaliatory practices described
23 above;
24
25

1 J. Order Dell to initiate and implement systems of assigning, training, transferring,
2 compensating, promoting, and terminating and retaining female employees, including female
3 employees at the D1 and C3 grade levels in a non-discriminatory manner;

4 K. Order Dell to establish a task force on equality and fairness to determine the
5 effectiveness of the programs described in G through J above, which would provide for: (i)
6 monitoring, reporting, and retaining of jurisdiction to ensure equal employment opportunity; (ii)
7 the assurance that injunctive relief is properly implemented; and (iii) a quarterly report setting
8 forth information relevant to the determination of the effectiveness of the programs described in I
9 through J above;

10 L. Order Dell to place or restore Plaintiffs Chapman, Hopkins, Mahaffey and Riches,
11 the class members, and the collective action plaintiffs into those jobs they would now be
12 occupying but for its discriminatory policies, practices and/or procedures;

13 M. Order Dell to adjust the wage rates and benefits for Plaintiffs Chapman, Hopkins,
14 Mahaffey and Riches, the members of the gender class, and the EPA Collective Action Plaintiffs
15 to the level that they would be enjoying but for its discriminatory policies, practices and/or
16 procedures;

17 N. Order that this Court retain jurisdiction of this action until such time as the Court
18 is satisfied that Dell has remedied the practices complained of herein and are determined to be in
19 full compliance with the law;

20 O. Award nominal, compensatory, liquidated, and punitive damages to Plaintiffs
21 Chapman, Hopkins, Mahaffey and Riches, the class members, and the collective action plaintiffs
22 in excess of \$500,000,000 (five hundred million dollars);
23
24
25

1 P. Award litigation costs and expenses, including, but not limited to, reasonable
2 attorneys' fees, to Plaintiffs Chapman, Hopkins, Mahaffey and Riches, the class members, and
3 the collective action plaintiffs;

4 Q. Award back pay, front pay, lost benefits, preferential rights to jobs and other
5 damages for lost compensation and job benefits with pre-judgment and post-judgment interest
6 suffered by Plaintiffs Chapman, Hopkins, Mahaffey and Riches, the class members, and the
7 collective action plaintiffs to be determined at trial;

8 R. Order Defendant to make whole Plaintiffs Chapman, Hopkins, Mahaffey and
9 Riches, the class members, and the collective action plaintiffs by providing them with
10 appropriate lost earnings and benefits, and other affirmative relief;

11 S. Award any other appropriate equitable relief to Plaintiffs Chapman, Hopkins,
12 Mahaffey and Riches, the class members, and the collective action plaintiffs; and
13

14 T. Award any additional and further relief as this Court may deem just and proper.
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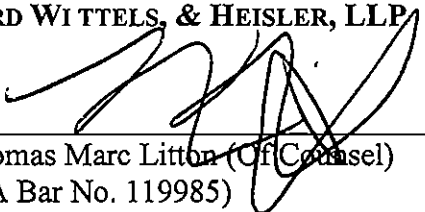
1 **JURY DEMAND**

2 Plaintiffs Chapman, Hopkins, Mahaffey and Riches demand a trial by jury on all issues
3 triable of right by jury.

4 Dated: October 29, 2008

Respectfully submitted,

5 **SANFORD WITTELS, & HEISLER, LLP**

6
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