

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

Petitioner, : **VERIFIED PETITION**

-against- : Index No.:
RJI No.:

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

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

JURISDICTION AND PARTIES

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

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

Hewlett Packard.

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

INTRODUCTION

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

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

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

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

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

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

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

Deceptive Financing Practices

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

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

Representative print advertisements are annexed as Exhibit A-1.

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

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

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

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

Dell’s misleading application process

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

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

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

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

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

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

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

Online sales

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

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

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

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

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

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

Congratulations, Jonathan Consumer!

You' ve been **approved** for a Dell Preferred Account!

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

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

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

Post-financing notification deception

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

“Effective ANNUAL PERCENTAGE RATE: .00%”.

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

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

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

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

Improper Billing and Collection Activity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Failure to honor warranties and service contracts

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

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

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

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

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

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

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

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

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

purchase these service contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Failure to Honor Rebates

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

credit reporting bureaus.

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

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

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

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

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

manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

meaning of 15 USC §1681.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: Albany, New York
May 14, 2007

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