UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, 100 F Street, N.E. Washington, D.C. 20549 Plaintiff, vs. RANDALL D. IMHOFF, Defendant.	Civil Action No. **COMPLAINT** **ECF CASE**

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") alleges as follows:

SUMMARY

1. From 2001 to 2004, Dell Inc. ("Dell") engaged in fraudulent and improper accounting that wrongfully made it appear that Dell was consistently meeting Wall Street earnings targets and reducing its operating expenses as a percentage of revenue. Dell committed the accounting violations through the conduct of its most senior former accounting executives. The SEC brings this action against Randall D. Imhoff ("Imhoff"), a former Assistant Controller at Dell, for various accounting violations by Dell from 2001 to 2003.

2. Imhoff and others maintained a number of "cookie jar" reserves that they used to cover shortfalls in Dell's operating results. Through this improper accounting, Dell materially misrepresented its financial results. Dell was subsequently forced to restate its financial statements for its fiscal years 2003 through 2006, with a cumulative balance sheet adjustment for periods before fiscal year 2003 (the "Restatement").

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

JURISDICTION AND VENUE

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

5. Defendant, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with acts, practices and courses of business alleged in this Complaint. Venue is proper in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], because, among other reasons, certain of the acts, practices and courses of business constituting the violations alleged herein occurred within this District.

DEFENDANT

6. **Randall D. Imhoff**, CPA, 48, resides in Austin, Texas. Imhoff joined Dell in February 2000 as Corporate Assistant Controller, was named Finance Director for U.S. Small and Medium Business in September 2003, and was named Finance Director for Global I/T in November 2005, a position he retained until he left Dell in April 2007. From 1984 to 2000, prior to working at Dell, Imhoff, a CPA licensed in Texas, worked as an auditor at Arthur Andersen LLP, rising to the level of partner. Imhoff holds a bachelor's degree in Accounting from Iowa State

University. During his time as Corporate Assistant Controller, Imhoff reviewed and edited Dell's annual reports on Forms 10-K and quarterly reports on Forms 10-Q filed with the Commission. Imhoff served as a member of Dell's Disclosure Review Committee from November 2002 to April 2003.

RELEVANT ENTITIES

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

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

DELL'S FISCAL YEAR

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

THE ACCOUNTING VIOLATIONS

10. For several years beginning in or about FY02, Dell engaged in improper accounting involving "cookie jar" reserves and other reserve accounts. As explained more fully below, these

manipulations were undertaken to meet consensus earnings targets or to misstate materially other important financial metrics. These practices not only materially misstated Dell's financial results, but caused additional material misstatements in Dell's annual and quarterly reports filed with the Commission during the period.

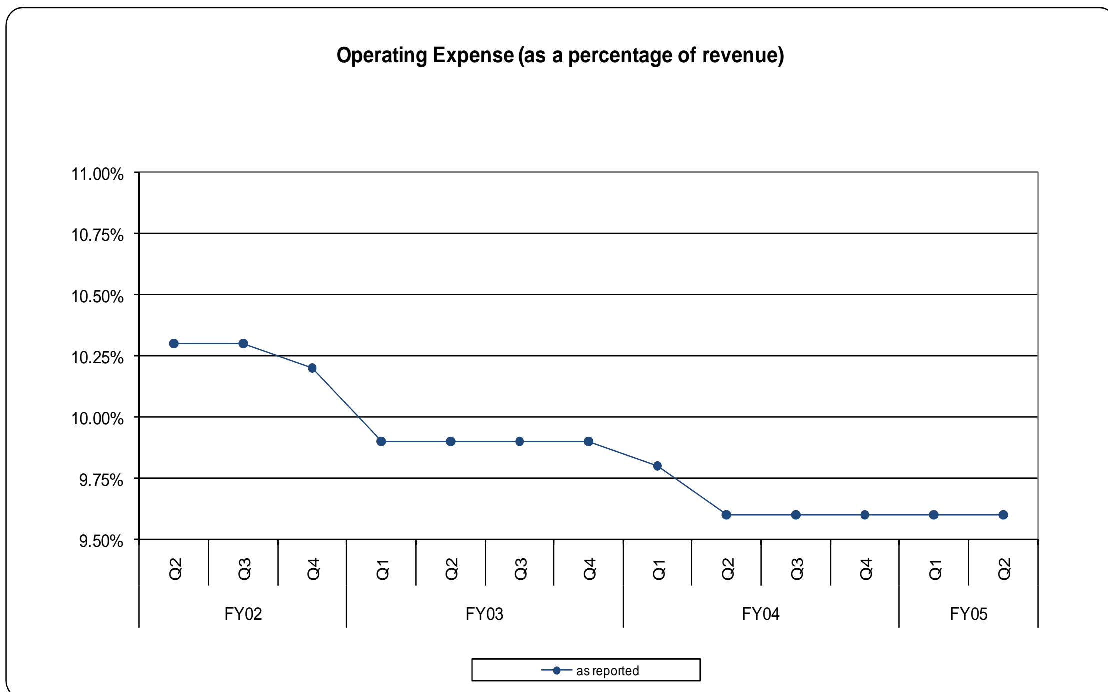
11. Contrary to generally accepted accounting principles ("GAAP"), Dell created and maintained excess accruals in multiple reserve accounts. Dell used the excess accruals in these reserves to offset the financial statement impacts of future expenses. From FY02 to FY04, Imhoff was actively involved in these practices.

12. As set forth in detail below, Dell improperly managed reserves including a) the Strat Fund and other "Corporate Contingencies;" b) the Accrued Relocation Account; c) an improperly-established and used restructuring reserve; d) several reserves in EMEA, one of Dell's overseas business units; e) cookie jar reserves in bonus and profit-sharing accounts; and f) an under-accrued restructuring Las Cimas reserve.

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

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

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



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

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

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

consistency." Also, in February 2005, a Bear Stearns report lauded Dell "as a core holding in any tech portfolio given its consistency in achieving operating targets."

a. The Strat Fund and Other "Corporate Contingencies"

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

19. Imhoff reported to a former Dell official who was named Vice President of Corporate Planning and Reporting in FY02 and who served as Chief Accounting Officer from Q4FY03 through Q4FY05 ("Senior Finance Executive"). Acting under the Senior Finance Executive's general direction, Imhoff planned and issued instructions regarding Dell's build-up and use of the Corporate Contingencies. The Senior Finance Executive's and Imhoff's accounting decisions and actions concerning the reserves were contrary to GAAP. The Senior Finance Executive and Imhoff instructed subordinates that when excess reserves were identified – *e.g.*, previously-reserved amounts no longer needed for *bona fide* liabilities – the subordinates were to check with them about the disposition of the excess reserves instead of releasing them to the income statement. When the excess accruals were significant, the Senior Finance Executive and Imhoff often directed the subordinates to transfer them to account 24990. The Senior Finance

Executive and Imhoff viewed the Corporate Contingencies as a way to offset future liabilities and "earmarked" the excess accruals for various purposes.

20. Dell tracked the Corporate Contingencies in schedules entitled "Estimated Contingencies in Corporate" (hereinafter "Corporate Contingency Schedules") that employees produced at least once per quarter. The improper reserves were reflected in the schedules in a column labeled "Available Balance." The Corporate Contingency Schedules typically reflected total available balances in the range of $20 million to $30 million. The highest available balance was $39 million in June/July 2003. The lowest available balance was $3 million in September 2002.

21. In the 11 quarters that Imhoff was Assistant Controller (from Q1FY02 to Q3FY04), Dell made at least 17 releases from the Strat Fund and other Corporate Contingencies, 11 of which were recorded after the end of a quarter while Dell was in the process of closing its books. In its Restatement, Dell reversed all Strat Fund activity and all "Available" balances for the other reserves that appeared on the Corporate Contingency Schedules.

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

only a portion of it was released, and that the balance was improperly carried over to FY04 and transferred to Corporate.

23. On April 7, 2003, Imhoff sent an email to the Senior Finance Executive with the subject line "JCT Reserve Transferred to Corp Books" that stated, "Following up . . . we are carrying a remaining reserve on Corp's balance sheet of roughly $12M." The next day, Imhoff forwarded the email to the Senior Finance Executive with the additional message, "The amount is $12M and it's on [a Corporate Planning Manager's] balance sheet in [account 24990]."

24. On April 16, 2003 (Q1FY04), the Senior Finance Executive received an email with the current Corporate Contingency Schedule that listed the $12 million excess Japanese Consumption Tax reserve as an "Available Balance."

25. Towards the end of Q2FY04, Dell agreed to settle litigation (the "Tulip Litigation") at an estimated cost to Dell, net of insurance, of $9.3 million. Imhoff knew that Dell had not established a reserve for this settlement. On July 5, 2003 (Q2FY04), Imhoff wrote in an email that he was working with Dell's forecasting group "to determine where other goodness might exist to deflect some or all [of] the P&L impact" of the settlement. Three days earlier, Imhoff had received from the forecasting group a copy of the current Corporate Contingency Schedule, which listed the $12 million excess Japanese Consumption Tax reserve as an "Available Balance."

26. On July 11, 2003, the Senior Finance Executive wrote an email to another senior executive about a letter that the Senior Finance Executive was drafting for Dell's Board of Directors. The Senior Finance Executive said, "[t]he tone will be that this is a tough quarter (especially from a [gross margin percentage] perspective), but we expect to scrap our way through it and still hit the EPS target for the quarter."

27. On August 1, 2003, the Senior Finance Executive received an email with the current Corporate Contingency Schedule. The excess Japanese Consumption Tax reserve was listed on the schedule in the amount of about $12 million, with about $7 million in the "Required Funds" column and about $5 million in the "Available Balance" column. The "Description" column stated that the $7 million was required to "Cover Tulip Settlement in July."

28. On or about the same day, the Senior Finance Executive emailed Dell's Chief Financial Officer ("CFO") a document that had a column labeled "JCT Reserve," with a column labeled "Tulip Settlement" to its immediate right. The document showed plans for $12 million of gross margin to be added to the quarter's results by release of the JCT reserve, and for the payment of the Tulip Settlement to lower gross margin by $7 million.

29. On August 7, 2003, late in the process of closing its books for Q2FY04, Dell deflected the $9.3 million impact of the Tulip Settlement by releasing $7.1 million from the excess Japanese Consumption Tax reserve that had been transferred to the Corporate Contingencies, $700,000 from the Strat Fund, and $1.5 million of excess from an accrued legal services account. On the same day, Dell released the remaining $5 million of the excess Japanese Consumption Tax reserve to provide an additional boost to Dell's operating results.

30. Imhoff knew that the Japanese Consumption Tax reserve was an excess accrual from a prior period, and that Dell released it in Q2FY04 to offset the impact of the settlement of the Tulip Litigation and otherwise to provide an additional boost to Dell's operating results.

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

31. In addition to the Strat Fund and the Corporate Contingency Schedules, from time to time, Dell's Corporate Reporting group, including Imhoff, assembled a list of items that could help or hinder Dell's efforts to meet its financial targets. Corporate Reporting compiled the items

in spreadsheets called "Risks and Opportunities Schedules" ("R&O Schedules"). Imhoff and his subordinates prepared the schedules when the Senior Finance Executive asked for them. For example, in an email dated July 10, 2001, from the Senior Finance Executive to Dell's CFO, responding to the CFO's request about how to handle potential financial items related to telecommunications negotiations, the Senior Finance Executive stated: "Let's discuss in the morning. I asked Randy [Imhoff] to update our Risks and Opportunities schedule this afternoon to include this item." The R&O Schedules were prepared as early as Q1FY01 and as late as Q2FY04. Like the Corporate Contingency Schedules, the R&O Schedules included excess reserves that Dell was carrying from period to period. Unlike the Corporate Contingency Schedules, which were limited only to Corporate accounts, the R&O Schedules included non-Corporate accounts, such as excess reserves maintained in Dell's business units.

32. One account listed on several R&O Schedules was the Accrued Relocation Account. During the Q2FY02 close in August 2001, a payroll and benefits accounting manager informed Imhoff that she had identified excess relocation accruals of $6 million. Imhoff responded, "Great news . . . DO NOT PLAN TO RECORD ANY OF THIS GOODNESS IN Q2." (emphasis in original) Under GAAP, Dell should have released the $6 million as a reduction of operating expenses in Q2FY02. Instead, Imhoff told Dell's CFO and Senior Finance Executive that he had directed that it be carried into Q3FY02, when work would be done to determine whether that account had even more excess accruals. The Q3FY02 R&O Schedule reflects the $6 million excess accrual as an item available to reduce Dell's operating expenses in that quarter. Dell released the $6 million excess accrual in Q3FY02. In its Restatement, Dell moved the income effect of the release of the excess accrual from Q3FY02 back to Q2FY02.

33. In March 2002 (Q1FY03), the payroll and benefits accounting manager again informed Imhoff that Dell had excess relocation accruals. She told Imhoff that she had identified another $5 million in excess accruals and asked Imhoff when she should release these excess reserves. Imhoff responded, "My sense is that it will be okay to reverse the unneeded accrual at EOQ [end of quarter]."

34. On April 11, 2002, the Senior Finance Executive asked a Corporate Planning employee how the $5 million in excess accruals had been handled in a recent financial forecasting document. The employee replied that it was not reflected in the document, but that Dell could "flow it through the P&L in Q1 if needed." In an email sent to the Payroll Benefits Accounting Manager on April 18, 2002, Imhoff stated, "As uncomfortable as it may be, I now have reservations about booking this any time earlier than late in close week." One Q1FY03 R&O Schedule listed the excess reserve as available; another version of the R&O Schedule identified the reserve as a "Q1 FY03 - Carryforward to Q2." Subsequently, the reserve appeared on a Q2FY03 R&O Schedule. Dell did not release the excess reserve in Q2 either. In June 2002 (Q2FY03), the Payroll Benefits Accounting Manager asked Imhoff, "Do you have any indication if this amount will be used in Q2 or if we'll hold?" Imhoff responded, "Hold for now." On August 7, 2002, during the Q2 close, the manager again communicated with Imhoff about the excess reserve: "In the case that you may need to post the relocation relief, we have put the entry into the system as unposted. If it will be late this evening when the decision is made to use it or not, please let [someone who could post the entry] know . . ." The next day, Imhoff emailed subordinates to confirm that the excess reserve had not been released, and one confirmed that there were no plans to release it. Imhoff responded, "Cool." The excess accrual ultimately was released in Q3FY03, understating Dell's operating expenses ("OpEx") and overstating its operating income that quarter.

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

35. FASB Emerging Issues Task Force Issue No. 94-3, Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity, (including Certain Costs Incurred in a Restructuring) ("EITF 94-3"), and the related interpretations are among the principal GAAP provisions that relate to accounting and disclosure of certain costs and liabilities for restructuring activities, which include such things as involuntary employee terminations, contract terminations, and efforts to consolidate or close facilities. These principles allow companies to accrue for restructuring expenses to be incurred in future quarters when certain conditions are met, such as commitment to a formal restructuring plan, notification to affected employees and establishment of a probable and reasonable estimate of the anticipated restructuring costs. Further, the principles provide that related restructuring reserves should be regularly re-evaluated and any amounts no longer needed for the original purpose reversed to income. Retaining excess reserve amounts or using them for purposes other than that for which they were originally intended is not permitted under GAAP. Furthermore, costs incurred, but not specifically contemplated in the original estimate, must be charged to income in the period in which the expense is incurred.

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

what the company believed would ultimately be needed, Dell should have released those excess amounts to the company's income statement.

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

38. The balance of the restructuring reserve was inflated to create "cushion" that could be used in later periods to offset unrelated operating expenses. In May 2001, Imhoff wrote an e-mail saying "I've added another $40M of contingencies overall [to the restructuring reserve] based [on] a very scientific algorithmic formula (SWAG)." In August 2001, Dell's CFO wrote an email to Imhoff and the Senior Finance Executive acknowledging that the restructuring reserve included certain costs that Dell had already accrued in other reserve accounts.

39. Imhoff knew that the reserve included excess accruals. In November 2001, Imhoff and the Senior Finance Executive informed Dell's CFO of excess in the restructuring reserve and Dell's CFO directed Imhoff and the Senior Finance Executive not to take a "negative special charge" (*i.e.*, reverse excess amounts back to the income statement in keeping with GAAP) for any excess amounts in the reserve.

40. Following the CFO's instruction not to take a negative charge, the Senior Finance Executive and Imhoff directed, over the course of several periods, the transfer of the excess restructuring accruals to account number 24990, discussed in greater detail above, where it operated as a general reserve. The "re-designated" funds were used to offset expenses unrelated to Dell's restructuring. The cushion from the restructuring reserve was used to eliminate shortfalls in the company's forecasted results – making it appear as if Dell's operating expenses in future

periods were lower than they actually were. For example, in Q3FY04, Dell funded an $8.6 million required payment to the IRS relating to Dell's 401(k) plan using excess accruals from the restructuring reserve. In the prior quarter, Imhoff informed Dell's CFO that he and the Senior Finance Executive had "held back $10 million of redesignated special charge reserves" to make this payment.

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

42. Dell failed to disclose that excess amounts were utilized for non-restructuring related activities. Dell's annual report on Form 10-K filed with the Commission on May 1, 2002 and Dell's quarterly reports on Forms 10-Q filed with the Commission on September 16, 2002 and December 16, 2002 also misrepresented restructuring reserve amounts as "paid," when in fact a portion of them had been deemed as excess and re-designated to other accounts to be used for unrelated items. In his role as Corporate Assistant Controller in charge of SEC Reporting, Imhoff reviewed each of these filings.

d. Accounting Manipulations of Reserves at EMEA

43. In addition to its improper establishment and use of a Corporate restructuring reserve in FY02, Dell improperly created and released reserves to offset certain restructuring actions in its Europe, Middle East and Africa ("EMEA") segment in FY03 and FY04 in contravention of GAAP.

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

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

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

47. The creation of the improper reserves began in Q3FY03 when EMEA's finance team first assessed a restructuring plan that included laying off managers and transferring certain operations to less expensive countries. In September 2002, one of the two EMEA Finance

Directors sought authorization from Dell's CFO to record a reserve to pay for these anticipated restructuring expenses. The CFO refused the request.

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

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

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

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

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

53. Dell concealed the improper reserves from PWC. In November 2002, the EMEA Finance Director informed the CFO and Senior Finance Executive that EMEA told PWC that the $13 million reserve related to another account that was "something completely different" from the restructuring. Moreover, when PWC noticed that EMEA had initially accrued part of the $13 million in an account relating to a past EMEA restructuring, Imhoff told PWC that the funds would be reclassified but failed to mention that the funds were still going to be used for a *future* restructuring and that the accrual did not conform with GAAP.

54. Imhoff repeatedly communicated with the EMEA Finance Director and others in EMEA about the restructuring reserve in November 2002. In an e-mail with the subject line "EMEA Restructure Reserve," he told the Finance Director and others that "I do need the responses I requested. . .because I also understand. . .that your team indicated to [CFO] and [Senior Finance Executive] that you are working through me regarding the proper accounting for these items."

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

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

57. Although he knew of the improper EMEA reserves, Imhoff signed a management representation letter in February 2003 confirming to PWC that, among other things, (a) Dell's FY2003 consolidated financial statements conformed with GAAP; (b) that "[t]here are no material . . . accounts that have not been properly recorded in the accounting records underlying the consolidated financial statements;" and (c) that "[t]here are no significant deficiencies. . .in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data." These representations were false.

58. In Q2FY04, EMEA incurred most of the restructuring expenses it had been expecting since Q3FY03. Through releases from the improper reserves, EMEA offset restructuring and other costs in the quarter, and overstated its operating income by $23.5 million in the quarter. Dell reported the EMEA segment's operating income as $145 million in its Form 10-Q for the quarter ended August 1, 2003

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

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

60. Throughout the relevant period, Dell's Compensation Committee established a bonus and profit sharing target each year. Dell accrued throughout each fiscal year for the anticipated bonus and profit sharing payout. The bonus target was calculated using a grid based on revenue growth and operating margin targets. In March following the close of each fiscal year, the

Compensation Committee met to determine whether the company's bonus payout would adhere to or depart from the amounts indicated on the bonus grid.

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

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

63. On April 19, 2001, Imhoff received emails from subordinates in Corporate Planning & Analysis concerning the bonus over-accrual. The first email, which had "Bonus Over

Accrual" in the subject line, stated, in relevant part, "I wanted to make sure that you are aware $15M of the total [bonus] over accrual has been earmarked in the Corporate General cost center." The second email stated, in relevant part, "[The Senior Finance Executive] is trying to avoid having to explain the sequential growth in Corporate [OpEx] . . . . His thought was that we are going to bleed the Bonus over-accrual anyways so why not forecast for it in the Corporate General budget (this is where actuals would hit) and avoid any headaches related to Corporate opex. The Bonus supposedly belongs to Corporate anyways and we would have control over it and know where it is booked. That's as much reasoning as [two analysts] and I got in our meeting with him."

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

65. On October 30, 2001, Imhoff received an R&O Schedule that listed him as the "owner" of "PY [prior year] bonus". The PY bonus entry was as follows: "$8M of the $11M tentatively earmarked for Q4FY02; leaving $3M available for Q3."

66. On January 5, 2002, Imhoff received a bonus and profit sharing report that showed that the FY01 bonus/profit sharing over-accrual had been slowly bled down through releases in May, June, July, August, September, October and November, 2001.

67. In March 2002 (Q1FY03), Dell's Compensation Committee decided on a bonus/profit sharing payout for FY02 that was again less than what the company had accrued. Before Dell filed its FY02 Form 10-K on May 1, 2002, Imhoff and the Senior Finance Executive knew that Dell was over-accrued for the FY02 payout. On March 28, 2002, the Senior Finance Executive received an estimate that the over-accrual would be about $30 million. On April 29,

2002, Imhoff received an estimate that Dell was over-accrued by $18.6 million -- $3.6 million from FY01 and $15 million from FY02.

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

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

1. What is the current status of the [bonus] accrual carryover?

2. How does that compare with the Q1/Q2 forecast amounts for Corp Gen

3. What [sic] me thru the ESOIP portion (including how it was handled last year)

4. If we have a shortfall in 2, synch up with [Imhoff] to cover from the charge accrual

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

(emphasis in original)

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

71. On May 8, 2002, Imhoff sent the Senior Finance Executive a spreadsheet that showed restructuring reserve cushion and bonus over-accrual being used to cover the FY03 Corp General shortfall.

72. Instead of releasing the entire $18.6 million bonus over-accrual in Q4FY02 or Q1FY03, Dell bled down the over-accrual throughout the year, releasing $3.6 million from its FY01 bonus over-accrual and an additional $2.5 million from its FY02 bonus over-accrual in Q1FY03, $7.4 million in Q2FY03, and $5 million in Q3FY03. Imhoff knew of the bleed down in the bonus and profit sharing reserves.

73. On November 8, 2002, Imhoff received an email that evidenced that a $15 million bonus/profit sharing over-accrual that existed in Q1FY03 had been bled down gradually each month from April 2002 thru October 2002 to offset corporate operating expenses.

74. Imhoff knew that under GAAP, over-accruals relating to the FY01 bonus/profit sharing payout should have been released by the end of Q1FY02, and that over-accruals relating to the FY02 bonus/profit sharing payout should have been released by the end of Q1FY03, rather than retained and released gradually over time. He also knew that, contrary to GAAP, Dell bled its FY01 and FY02 over-accruals in multiple quarters in FY02 and FY03 to smooth operating expenses.

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

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

76. On February 24, 2003 (Q1FY04), Imhoff provided the Senior Finance Executive with an analysis showing that the cost of exiting the Las Cimas facility would likely be $53 million

more than Dell had reserved. Under GAAP, Dell should have increased its Las Cimas reserves by approximately $33 million (the net present value of $53 million).

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

ENGAGEMENT LETTER

78. Imhoff, as Corporate Assistant Controller, signed Dell's engagement letter, dated November 14, 2001, with Dell's auditor, PWC, for the financial statements for FY02. On behalf of Dell, Imhoff signed the agreement stating that: "The services and terms as set forth in this letter are agreed to."

79. Among the terms in the letter are "Management's responsibilities." The terms in the "Management's responsibilities" to which Imhoff agreed on behalf of Dell included, among others:

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

STATEMENTS TO AUDITOR

80. Imhoff signed a representation letter to Dell's auditor, PWC, dated August 16, 2001, which referred specifically to the charge for restructuring. The letter made a number of false representations and omitted material facts about the special charge that Dell took during the second quarter of FY02.

81. Imhoff signed the representation letter to Dell's auditor dated February 14, 2002, which stated that "[t]he restructuring accrual and all significant changes, if any, from the original restructuring plan have been properly recognized, classified and disclosed in accordance with EITF 94-3 and SAB 100."

82. Imhoff signed the representation letter to Dell's auditor dated February 13, 2003. This letter, as well as the February 14, 2002 letter discussed above, stated, among other things, (a) that Dell's consolidated financial statements were fairly presented in conformity with GAAP; (b) that Dell had made available to the auditor all financial records and related data; (c) that there were no material transactions, agreements or accounts that had not been properly recorded in the accounting records underlying Dell's consolidated financial statements; (d) that there had been no knowledge of fraud involving management or employees who have significant roles in Dell's internal control; and (e) that there had been no fraud involving others that could have a material effect on the consolidated financial statements. Both the February 2002 letter and the February 2003 letter were materially false and misleading.

INTERNAL CONTROLS

83. As evidenced by the misconduct described above, at least for the period from FY02 until the time Imhoff left his position as Corporate Assistant Controller, Dell did not have a system of internal controls that was sufficient to assure compliance with GAAP. Imhoff had responsibility for overseeing some aspects of Dell's internal controls. Imhoff also signed the November 2001 engagement letter with Dell's auditors. Based on his conduct described above, he knowingly circumvented those internal controls.

DELL'S RESTATEMENT

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

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

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

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

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

> The investigation raised questions relating to numerous accounting issues, most of which involved adjustments to various reserve and accrued liability accounts, and

> identified evidence that certain adjustments appear to have been motivated by the objective of attaining financial targets. According to the investigation, these activities typically occurred in the days immediately following the end of a quarter, when the accounting books were being closed and the results of the quarter were being compiled. The investigation found evidence that, in that timeframe, account balances were reviewed, sometimes at the request or with the knowledge of senior executives, with the goal of seeking adjustments so that quarterly performance objectives could be met. The investigation concluded that a number of these adjustments were improper, including the creation and release of accruals and reserves that appear to have been made for the purpose of enhancing internal performance measures or reported results, as well as the transfer of excess accruals from one liability account to another and the use of the excess balances to offset unrelated expenses in later periods. . . . The investigation identified evidence that accounting adjustments were viewed at times as an acceptable device to compensate for earnings shortfalls that could not be closed through operational means.

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

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

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

91. Dell's 2007 Form 10-K, in Item 9A, contained "Management's Report on Internal Control Over Financial Reporting." The Report stated that internal control includes, among other things, those policies and procedures . . . which "provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP." As stated in the report: "A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting that there is more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected."

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

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

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

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

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

95. Dell's Form 10-K contained the Report of Independent Registered Public Accounting Firm, dated October 29, 2007, by PWC, Dell's independent auditors. PWC audited management's assessment of internal controls, included in Management's Report on Internal Control. PWC rendered its opinion that "management's assessment that the Company did not maintain effective internal control over financial reporting as of February 2, 2007, is fairly stated, in all material respects. . . ." PWC also rendered its opinion that "because of the effects of the material weaknesses . . . on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of February 2, 2007. . . ."

INCENTIVE COMPENSATION

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

FIRST CLAIM

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

97. Paragraphs 1 through 96 above are realleged and incorporated by reference as if fully set forth herein.

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

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

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

SECOND CLAIM

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

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

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

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

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

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

THIRD CLAIM

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

106. Paragraphs 1 through 105 above are realleged and incorporated by reference as if fully set forth herein.

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

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

FOURTH CLAIM

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

109. Paragraphs 1 through 108 above are realleged and incorporated by reference as if fully set forth herein.

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

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

FIFTH CLAIM

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

112. Paragraphs 1 through 111 above are realleged and incorporated by reference as if fully set forth herein.

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

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

PRAYER FOR RELIEF

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

I.

Permanently restraining and enjoining defendant Imhoff, his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the Final Judgment by personal service or otherwise, and each of them from,

directly or indirectly, violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ §240.13b2-1, and 240.13b2-2], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13], promulgated thereunder, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

II.

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

III.

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

IV.

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

V.

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

Dated: August 27, 2010

Respectfully submitted,

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