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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 CHAD BRAZIL and STEVEN SEICK,
13 individually and on behalf of all others
14 similarly situated,

15 Plaintiffs,

16 v.

17 DELL INC. and Does 1-10,

18 Defendant.
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Case No. C-07-01700 RMW

FINAL ORDER AND JUDGMENT

20 Having considered all motions, memoranda and submissions made in connection with the
21 request for final approval of the Settlement Agreement and Release, previously filed with the
22 Court on May 27, 2011 (Doc. No. 310-1), together with all of its Exhibits attached thereto
23 (“Settlement Agreement” or “Settlement”), and the record of these proceedings, the
24 representations, argument, and recommendation of counsel for the moving parties, and the
25 requirements of law;

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:
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1 1. The definitions and terms set forth in the Settlement Agreement are hereby
2 adopted and incorporated into this Final Order and Judgment. A copy of the Settlement
3 Agreement as previously filed with the Court is attached hereto as Exhibit “A.”

4 2. The Court has jurisdiction over the subject matter and parties to this proceeding
5 pursuant to 28 U.S.C. § 1332. Venue is proper in this district.

6 3. The Court has carefully reviewed the Settlement Agreement as well as the files,
7 records, and proceedings to date in this matter.

8 4. The Settlement is hereby approved as fair, reasonable, and adequate.

9 5. The Plaintiffs, by and through their counsel, have investigated the facts and law
10 related to the matters alleged in their Complaint, including extensive pre-trial discovery, motion
11 practice, class certification, and an evaluation of the risks associated with continued litigation,
12 trial, and/or appeal. The settlement was reached as a result of arms-length negotiations between
13 Class Counsel and Counsel for Dell, Inc. (“Dell”), including a full-day mediation session with a
14 respected mediator, Mr. Randall Wulff. The Settlement confers substantial benefits upon the
15 Settlement Class, particularly in light of the damages that Plaintiffs and Class Counsel believe are
16 recoverable at trial, without the costs, uncertainty, delays, and other risks associated with
17 continued litigation, trial, and/or appeal.

18 6. The Settlement Class is in substance the same class of consumers that the Court
19 certified in its Order Granting In Part and Denying In Part Plaintiffs’ Motion for Class
20 Certification (Docket No. 306) and consists of:

21 “All individuals and entities in California who purchased a Dell-
22 branded product identified below and advertised with an instant-off
23 discount online from Dell’s Home & Home Office segment during
the time frame listed for that product:

Form	Model	Start Date	End Date
Desktop	Dimension B110	November 1, 2005	November 30, 2006
Desktop	Dimension C521	September 1, 2006	May 5, 2007
Desktop	Dimension E310	November 1, 2005	October 31, 2006
Desktop	Dimension E510	November 1, 2005	October 31, 2006
Desktop	Dimension E520	September 1, 2006	May 3, 2007
Desktop	Dimension E521	September 1, 2006	May 5, 2007

1	Desktop	Dimension E521n	September 1, 2006	June 25, 2007
2	Desktop	Precision 670	November 1, 2005	June 30, 2006
3	Desktop	Precision 690	April 1, 2007	January 31, 2008
4	Notebook	Inspiron 14(1420)	May 1, 2007	June 25, 2007
5	Notebook	Inspiron 1420n	May 1, 2007	June 26, 2007
6	Notebook	Inspiron 1501	September 1, 2006	June 25, 2007
7	Notebook	Inspiron 1520	June 1, 2007	June 25, 2007
8	Notebook	Inspiron 1521	June 1, 2007	June 25, 2007
9	Notebook	Inspiron 1720	June 1, 2007	June 25, 2007
10	Notebook	Inspiron 1721	June 1, 2007	June 25, 2007
11	Notebook	Inspiron 2200	October 1, 2005	January 31, 2006
12	Notebook	Inspiron 6000	November 1, 2005	March 31, 2006
13	Notebook	Inspiron 600m	November 1, 2005	March 31, 2006
14	Notebook	Inspiron 700m	November 1, 2005	March 31, 2006
15	Notebook	Inspiron 710m	February 1, 2006	August 31, 2006
16	Notebook	Inspiron 9300	November 1, 2005	March 31, 2006
17	Notebook	Inspiron B120	November 1, 2005	May 31, 2006
18	Notebook	Inspiron B130	December 1, 2005	January 31, 2007
19	Notebook	Inspiron E1405	March 1, 2006	June 28, 2007
20	Notebook	Inspiron E1505	March 1, 2006	June 28, 2007
21	Notebook	Inspiron E1705	March 1, 2006	June 28, 2007

Individuals and entities who purchased an above-listed product on a listed date without an instant-off discount (e.g. those who paid the full list price, were eligible for or received a mail-in-rebate, or received advertised free hardware or upgraded hardware included in a purchase price without an instant off) are not part of the Settlement Class. Excluded from the Settlement Class are: (1) Dell, any entity in which Dell has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) retailers, wholesalers, and other individuals or entities that purchased listed Dell products for resale; (3) the United States government and any agency or instrumentality thereof; (4) the judge to whom this case is assigned and any member of the judge's immediate family; and (5) persons who timely and validly opt to exclude themselves from the Settlement Class."

7. The Court finds that the prerequisites for a class action under Rules 23(a) and(b)(3) of the Federal Rules of Civil Procedure have been satisfied for the same reasons previously set forth in the Order Granting In Part and Denying In Part Plaintiffs' Motion for Class Certification (Docket No. 306).

1 8. The Court continues the appointment of Lieff Cabraser Heimann & Bernstein,
2 LLP (lawyers Michael W. Sobol, Rachel Geman, and Roger Heller) and the Law Offices of
3 Angelo Salvatore Parise (Daniel M. Hattis) as Class Counsel. For purposes of these Settlement
4 approval proceedings, the Court finds that these firms are competent and capable of exercising
5 their responsibilities as Class Counsel.

6 9. The Court reconfirms the appointment of Chad Brazil and Steven Seick as Class
7 Representatives.

8 10. The Court reconfirms the appointment of Analytics, Incorporated as the
9 independent settlement administrator.

10 11. The Court finds that the Settlement Notice and Notice Plan as carried out by the
11 Administrator complied with this Court's Order Granting Preliminary Approval of Class action
12 Settlement (Doc. No. 318) and satisfied the requirements of Federal Rule of Civil Procedure 23(e)
13 and due process. As set forth in the declaration of the independent settlement administrator, the
14 Settlement Class received direct Notice through email and/or U.S. Mail, as described in the
15 Settlement Agreement, and additional notice was provided through publication notice and Dell's
16 website and the case-specific website. *See* Declaration of Jonathan Reid (Doc. No. 323-1).

17 12. The Notice disseminated to the Settlement Class constitutes due, adequate and
18 sufficient notice to all persons entitled to receive notice, and it meets the requirements of due
19 process in Rule 23 of the Federal Rules of Civil Procedure. The Court finds that the matter of
20 dissemination of the Notice complies with Fed. R. Civ. P. Rule 23(e) as it is a reasonable manner
21 of providing notice to those Settlement Class members who would be bound by the Settlement.
22 The Court also finds that the Notice complies with Rule 23(c)(2) as it is also the best practicable
23 notice under the circumstances, provides individual notice to all Class Members who can be
24 identified through a reasonable effort, and is reasonably calculated, under all the circumstances,
25 to apprise the members of the Settlement Class of the pendency of this action, the terms of the
26 Settlement, and the right to object to the Settlement or opt out.

27 13. Class Members who do not timely submit a claim per paragraphs 5 and 6 of
28 section I of the Settlement Agreement will not be eligible to participate in the Settlement.

1 14. The members of the Settlement Class identified on Exhibit “B” attached hereto
2 have filed timely requests to be excluded from the Settlement (“Excluded Class Members”).

3 15. Except for Excluded Class Members, upon the Effective Date of the Settlement
4 Agreement, all members of the Settlement Class, their heirs, executors, administrators,
5 representatives, agents, attorneys, partners, successors, predecessors and assigns and all those
6 acting or purporting to act on their behalf, will be bound by this Judgment, and will be
7 conclusively deemed to have fully, finally and forever settled, released and discharged the Dell
8 Releasees of and from all Released Claims as provided in the Settlement Agreement, and are
9 enjoined from bringing, joining or continuing to prosecute against the Released Parties any
10 Released Claims.

11 16. Neither this Order, nor any aspect of the Settlement Agreement, is to be construed
12 or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Dell
13 Inc. Dell Inc. specifically denies any liability. Each of the Parties to the Settlement entered into
14 the Settlement Agreement with the intention to avoid further disputes and litigations with the
15 attendant inconvenience and expenses.

16 17. The Court finds that defendant Dell Inc. fully complied with the notice provisions
17 set forth under the Class Action Fairness Act, 28 U.S.C. § 1715.

18 18. The Court hereby approves the Settlement Agreement, all terms of which are
19 incorporated herein by reference, as being fair, adequate, and reasonable and in the best interests
20 of the Settlement Class, satisfying Federal Rule of Civil Procedure 23(e). The Settlement of this
21 case on the terms and conditions set forth in the Settlement Agreement is approved and confirmed
22 in all respects as fair, reasonable and adequate under Federal Rule of Civil Procedure 23, and in
23 the best interest of the Settlement Class and Settlement Class Members, especially in light of the
24 benefits to the Settlement Class and the costs and risks associated with the complex proceedings
25 necessary to achieve a favorable result at trial and through any post-judgment appeals.

26 19. Class Counsel and defendant Dell, Inc. are directed to consummate the Settlement
27 in accordance with the Settlement Agreement.
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20. Without further order of the Court, the Parties may agree to reasonable extensions of the time to carry out any provisions of the Settlement Agreement.

21. Without affecting the finality of this Order, or the judgment to be entered pursuant hereto, in any way, this Court shall retain jurisdiction over the Parties to the Settlement Agreement to administer, supervise, construe and enforce the Settlement in accordance with its terms for the mutual benefit of the parties.

Pursuant to Fed. R. Civ. P. 54(b) and the Orders referenced above, and under the terms of the Settlement Agreement approved by the Court, the Court hereby enters JUDGMENT dismissing with prejudice all claims in the Third Amended Complaint. IT IS SO ORDERED AND ADJUDGED this 28th day of October, 2011

Ronald M. Whyte
The Honorable Ronald M. Whyte
United States District Court Judge