

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS—AUSTIN DIVISION**

JILL HUBLEY and LAURA GUENTHER,  
On behalf of themselves and all others  
similarly situated,

*Plaintiffs,*

*v.*

DELL INC.,

*Defendant.*

Civil No. A-08-CA-804-JRN

CLASS ACTION

JURY TRIAL DEMAND

**THIS IS A NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT  
FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS  
PLEASE READ THIS NOTICE CAREFULLY.**

**THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS.**

**DATE OF MAILING: AUGUST 12, 2009**

This Notice is being sent to you, as ordered by the United States District Court for the Western District of Texas (the "Court"), to advise you of the preliminary approval of the settlement of an employment discrimination class action against Dell Inc. ("Dell").

You have received this Notice because Dell's records reflect that you are or were a woman employed by Dell in the United States in a C1 through D3 grade level position or their equivalent between February 14, 2007 and December 31, 2008, are not a former employee who previously executed a complete release as part of any prior litigation or settlement agreement (other than a severance agreement), and have not filed a separate complaint of discrimination with a state or federal agency. Therefore, you may be a Class Member in the lawsuit. Your individual status for evaluating whether you are a Class Member was determined based on a review of available records as of July 17, 2009. The purpose of this Notice is to provide you with a summary of the proposed settlement, and to advise you of your rights with respect to the proposed settlement.

**I. Important Deadlines**

- To participate in the monetary relief portion of the settlement, you do not have to do anything. All Class Members are automatically entitled to a monetary payment.
- As set forth in Section VI, below, you have the right to object to the proposed settlement. However, if you want to object to the settlement, or some part of the settlement, you must mail or file your pleading with the Court setting forth your written objection(s). The pleading must be filed with the Court or mailed to the Court and postmarked by September 16, 2009. A copy of your pleading must also either be mailed or hand delivered to Class Counsel and to Counsel for Dell by the same date. You may object and still participate in the settlement.

**II. Litigation and Settlement Background**

In 2008, Plaintiff Jill Hubley filed a charge of discrimination against Dell with the United States Equal Employment Opportunity Commission (the "EEOC"). Thereafter, Ms. Hubley filed this lawsuit, alleging that Dell engaged in a pattern and practice of gender discrimination with respect to compensating and promoting female employees. Dell denied and continues to deny any liability or wrongdoing of any kind associated with the claims alleged in this lawsuit. Plaintiff Laura Guenther also filed a charge of discrimination, and joined the lawsuit as a second class representative.

Thereafter, the parties agreed to first engage in Alternative Dispute Resolution ("ADR") and retained a highly-regarded and nationally known mediator who specializes in class action employment discrimination litigation to assist them in negotiations. The parties then exchanged documents and substantial data, which Plaintiffs had analyzed by a prominent labor economist and statistician. The parties later disclosed the results of their statistical investigation of the employment data and had detailed discussions about the statistical analyses and results. Ms. Hubley and Ms. Guenther (the "Named Plaintiffs") were very much involved in this process and analysis of the evidence, and they also provided background information to Class Counsel, attended and fully participated in mediations, provided guidance, assistance and direction to Class Counsel, and regularly responded to requests for information from Class Counsel and Dell.

In December 2008, the parties began settlement discussions through the ADR process. Numerous face-to-face negotiations, including many with the mediator, and dozens of telephone negotiating sessions took place during December 2008 through June 2009. The Named Plaintiffs were integrally involved in the negotiations and approved of all of the settlement offers and rejected responses. Ultimately, the parties agreed to settle the litigation on the terms set forth below.

Based upon their investigation and the risk of litigation, including the potential that a class would not be certified, Class Counsel and the Named Plaintiffs have concluded that the terms of the settlement are fair, reasonable, adequate, and in the best interests of the Class. In reaching this conclusion, Class Counsel and the Named Plaintiffs have analyzed the benefits of the settlement and the risk of an unfavorable outcome (*i.e.*, losing), as well as the expense and length of continued proceedings necessary to prosecute this action. Dell does not admit any wrongdoing or liability by entering into this settlement, and has agreed to these settlement terms because it wishes to avoid further costly, disruptive, and

time-consuming litigation, and desires to obtain complete and final settlement of the claims of the Named Plaintiffs and Class Members.

### **III. Programmatic and Monetary Relief—Summary of Employment Practices Affected by the Proposed Settlement with Dell**

As part of the negotiations, the Named Plaintiffs sought agreement from Dell in the area of Programmatic Relief. Dell, as part of the settlement, has agreed to the following:

- A. Commitment to Non-Discrimination. Dell has committed to maintain and enforce its non-discrimination policies and anti-retaliation policies. Dell has also specifically agreed, among other things, that it shall not retaliate against any Class Member who seeks or receives monetary and/or non-monetary relief pursuant to the Settlement Agreement.
- B. Industrial Psychologist and Policy Review. Dell has agreed to retain an Industrial Psychologist with a Ph.D., approved by Class Counsel, to work with Dell to evaluate and improve Dell's processes and procedures governing the Class concerning the hiring (external and internal), promotion, hiring classification, and lateral transfer process to make sure they are consistent with a policy of promoting equal opportunity for all employees. The Industrial Psychologist will also, with respect to the Class, evaluate and develop processes and procedures, or improve existing policies and procedures, relating to accountability, internal oversight and monitoring of individual managerial decisions regarding promotions, hires (both external and internal) and transfers. Dell has also agreed, in conjunction with the Industrial Psychologist, to evaluate and develop or improve existing managerial training on how to make decisions regarding promotions, hires (external and internal) and transfers. Class Counsel and an External Advisor retained to monitor Dell's compliance with the Settlement Agreement will have the continuing authority to question and raise issues if Dell does not implement the Industrial Psychologist's recommendations.
- C. Candidate Slate Consideration. Dell has agreed for any grade level position D3 and above to make all reasonable efforts to ensure that it interviews a diverse slate of candidates for such positions inclusive of females.
- D. Equity Review and Salary Adjustments. Dell has agreed to retain, with Class Counsel approval, a labor economist/statistician (the "Labor Economist") to conduct a pay equity analysis of existing compensation and recommend any pay equity adjustments for all current female employees in C1 through D3 grade level positions or their equivalents. The Labor Economist's recommendation will be utilized by Dell in paying those female employees adjustments pursuant to the Pay Equity Settlement Fund, which allocates Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for such adjustments. The pay equity adjustments will be retroactive to May 31, 2009. The total earnings increase for female employees in grade level positions C1 through D3 at Dell over the three year period of the Settlement Agreement is estimated to be at least \$12.6 million.
- E. Monetary Relief. In addition to expending the funds necessary to implement the Programmatic Relief and pay equity adjustments described above, Dell has also agreed to pay \$4,425,000.00 to be distributed to Class Members to resolve the Class Action. The \$4,425,000.00 will be paid to Class Members by the Class Administrator, who is approved by the Court, pursuant to a formula agreed to by the parties and set forth in the Settlement Agreement. Class Members do not need to take any action to participate in the Settlement Fund. The Claims Administrator will mail Class Members their allocated payments within thirty days of the Effective Date of the Settlement. The Claims Administrator, under the Settlement Agreement, will pay \$50,000.00 to Jill Hubley and \$25,000.00 to Laura Guenther for their service, efforts and dedication to advancing the interests of the Class. Both Ms. Hubley and Ms. Guenther have spent countless hours working on this case, working with Class Counsel as well as attending and participating in the mediations that brought about this settlement. Dell is also paying to reimburse Class Counsel's legal fees and expenses in the amount of \$1,100,000.00, which approximates the amount of legal fees and expenses incurred and expended, and to be incurred and expended, by Class Counsel.

### **IV. Taxes on Amounts Paid to Class Members**

The Claims Administrator will withhold from each payment to class members and the Class Representatives all applicable taxes under federal, state and/or local laws. The Claims Administrator will ensure that such monies withheld are paid to the appropriate authorities for each Class Member and Class Representative and will issue IRS Forms W-2 for the amounts reportable on each Form. Dell's share of taxes or contributions will be paid separately by Dell.

### **V. Release of Claims**

If the Court grants final approval of the Settlement, then all Class Members will release certain claims against Dell pursuant to Paragraph II.A.17 of the Settlement Agreement. Specifically, all Class Members will release Dell for the following:

Any and all claims for injunctive and/or equitable relief of whatever nature, known or unknown, including but not limited, to all claims for back pay, front pay, liquidated damages or other make whole relief, that the Named Plaintiffs and Settlement Class Members may have against Dell, its subsidiaries and affiliated companies, and in the case of all such entities, their respective past and present owners, representatives, officers, directors, attorneys, agents, employees, insurers, successors and assigns (collectively referred to as the "Released Parties"), arising out of the same transactions, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims that were or could have been asserted in *Hubley et. al v. Dell Inc.*, A-08-CA-804-JRN. This release includes and covers

without limitation all actions or omissions occurring through the Final Approval date as defined and all claims known or unknown for prior or past discriminatory actions outside any liability period, subject to the provisions set forth herein. Specifically included in this release are any and all employment discrimination claims or benefits claims or claims for losses caused by any unpaid wages or compensation arising out of the same transactions, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims that were or could have been asserted in *Hublely et. al v. Dell Inc.*, A-08-CA-804-JRN, including but not limited to, claims of alleged employment discrimination or benefits claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. (“Title VII”), the Equal Pay Act, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. (“ADEA”), the Texas Labor Code, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. (“ERISA”) (except for vested benefits otherwise entitled), and any other federal, state, or local statutes, common law, or regulation. Furthermore, this Release includes all claims for injunctive, declaratory or equitable relief, including all claims for back pay, front pay, liquidated damages or other make whole relief, and costs and attorneys’ fees, whether arising under Title VII, the Equal Pay Act or under any other federal, state, local or common laws or regulations relating to or arising out of the same transactions, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims that were or could have been asserted in *Hublely et. al v. Dell Inc.*, A-08-CA-804-JRN.

When claims are “released,” that means that a person covered by the release cannot sue Dell for any of the claims that are covered by the release. Nothing in the Settlement will be construed to release claims of Class Members that may not be legally waived, that post-date the Final Approval by the Court of the Settlement Agreement, or that are not covered by the release.

**VI. The Settlement Process and Final Fairness Hearing**

Every class action must be approved by the court that presided over the class action lawsuit. Thus far, the Court has only decided that the proposed settlement may be fair and, therefore, justifies the distribution of this Notice. In order to decide whether to give final approval to the proposed settlement, the Court will consider related papers and comments submitted by the parties or others and hold a hearing in open court. A Final Fairness Hearing will be held on October 29, 2009, at 2:00 p.m., in the Courtroom of United States District Judge James R. Nowlin, United States District Court, Western District of Texas, 200 West 8<sup>th</sup> Street, Austin, TX 78701. You may, but are not required to, attend this hearing. You may also enter an appearance in the case, individually or through your own attorney, if you so desire. You may also submit any objections to the proposed settlement in writing as noted herein. For any such written objections to be considered, the objection must be filed with the Court or mailed to the Court and postmarked by September 16, 2009, with copies mailed or hand delivered to Class Counsel and Counsel for Dell. Please do not send any comments directly to the Judge or attempt to reach the Judge in person.

You may review a copy of the Settlement Agreement at the Clerk’s Office at the Court (200 West 8<sup>th</sup> Street, Austin, TX 78701) or online at [www.hrsclaimsadministration.com](http://www.hrsclaimsadministration.com). You may also contact the Claims Administrator or Class Counsel to obtain a copy of the full Settlement Agreement, and they will e-mail or mail it to you upon request.

**VII. Contact Information**

<b>Claims Administrator</b>
HEFFLER, RADETICH & SAITTA LLP 1515 Market Street, Suite 1700 Philadelphia, PA 19102 Main: 215.665.8870 Fax: 215.665.0613 <a href="http://www.hrsclaimsadministration.com">www.hrsclaimsadministration.com</a>

Class Counsel	Counsel for Dell	The Court
JULIE A. SPRINGER, ESQ. ( <a href="mailto:jspringer@scottdoug.com">jspringer@scottdoug.com</a> ) SCOTT DOUGLASS & McCONNICO, L.L.P. 600 Congress Avenue, Suite 1500 Austin, Texas 78701 (512) 495-6300  GEOFFREY D. WEISBART, ESQ. ( <a href="mailto:gweisbart@hslawmail.com">gweisbart@hslawmail.com</a> ) HANCE SCARBOROUGH, L.L.P. 111 Congress Avenue, Suite 500 Austin, Texas 78701 (512) 479-8888	MICHAEL S. BURKHARDT, ESQ. ( <a href="mailto:mburkhardt@morganlewis.com">mburkhardt@morganlewis.com</a> ) MORGAN LEWIS & BOCKIUS, L.L.P. 1701 Market Street Philadelphia, PA 19103 (215) 963-5130	U.S. District Clerk’s Office Western District of Texas— Austin Division U.S. Courthouse 200 West 8 <sup>th</sup> Street, Room 130 Austin, Texas 78701 (512) 916-5896

**PLEASE DO NOT CONTACT THE COURT (except as referenced herein).**

*In re: Hubley et. al v. Dell Inc.*  
Claims Administrator  
c/o Heffler, Radetich & Saitta LLP  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102

**FIRST CLASS MAIL**

**PLEASE FORWARD—IMPORTANT LEGAL NOTICE**