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Case No. 9322-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.	Consol. C. A. No. 9322-VCL

PETITIONER'S MOTION TO ALTER OR AMEND THE COURT'S MAY 31, 2016 MEMORANDUM OPINION, OR IN THE ALTERNATIVE, FOR REARGUMENT

Petitioner Morgan Stanley Defined Contribution Master Trust ("Moving Petitioner") through its undersigned counsel and pursuant to Court of Chancery Rule 59(e) hereby moves to alter or amend the Court's May 31, 2016 Memorandum Opinion ("Opinion") determining that the fair value of the common stock of Dell Inc. ("Dell" or the "Company") was $17.62 as of the effective date of a transaction in which Dell founder Michael S. Dell took the Company private (the "Merger"), or in the alternative, for reargument pursuant to Rule 59(f). The grounds for this motion are as follows:

1. As explained below, Moving Petitioner believes that the Court's DCF analysis with respect to the adjusted BCG 25% Case contains a mathematical error that impacts its ultimate calculation of fair value of Dell in this case. This is precisely the type of scenario that warrants a motion to alter or amend an order under Court of Chancery Rule 59.

2. On May 31, 2016, the Court issued the Opinion, determining that the fair value of a share of Dell stock was $17.62 per share at the effective time of the

Merger.[1] In reaching this conclusion, the Court employed a discounted cash flow ("DCF") valuation methodology. The Court's valuation was based on two sets of forecasts, as modified by Professor Hubbard: a forecast developed by the Boston Consulting Group that projected Dell achieving 25% of planned cost savings (the "BCG 25% Case"); and a case created by one of the parties to the Merger, Silver Lake (the "Bank Case").[2] The adjustments to those cases made by Professor Hubbard and accepted by the Court are described in the Opinion.[3]

3. In calculating its DCF value, the Court applied the following inputs:

- A 2% perpetual growth rate,[4] which was already reflected in Professor Hubbard's models;
- A 21% tax rate throughout the forecast period;[5]
- A weighted average cost of capital ("WACC") of 9.46%,[6] which was already reflected in Professor Hubbard's models;
- A deduction from available cash of $3 billion for working capital and $1.2 billion for restricted cash for purposes of determining enterprise value[7]; and

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[1] Trans. Id. 59072455.

[2] Op. at 104

[3] Op. at 101-104.

[4] Op. at 105 ("[Although a] 2% growth rate is arguably too low . . . [t]his decision nevertheless uses the 2% rate.").

[5] Op. at 107 ("Cornell's tax estimate [of 21%] is more reliable and consistent with the Company's operative reality.").

[6] Op. at 108 ("The inputs selected [by the Court] generate a WACC of 9.46%").

- A deduction from excess cash of $650 million to account for a liability for unrecognized tax benefits[8].

4. According to the Opinion, the Court's DCF analysis generated a fair value of $16.43 per share using the adjusted BCG 25% Case, and a fair value of $18.81 per share using the adjusted Bank Case. Weighting these calculations equally, the Court ruled that the fair value of Dell at the time of the Merger was $17.62 per share.

5. Following the issuance of the Opinion, Petitioners replicated the Court's calculations, using the financial models created by Professor Hubbard and adopted by the Court, modified only insofar as necessary to reflect the inputs specifically adopted by the Court in the Opinion identified above in Paragraph 3. Professor Hubbard's models were submitted as JX899 (adjusted BCG 25% Case) and JX900 (adjusted Bank Case).

6. As described in the attached affidavit ("Cornell Affidavit" or "Cornell Aff."),[9] and at the request of Petitioners, Professor Cornell employed the same

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[7] Op. at 110 ("This decision deducts working capital of $3 billion and restricted cash of $1.2 billion from the Company's available cash for purposes of determining its enterprise value.").

[8] Op. at 112 ("This decision deducts $650 million from the Company's excess cash.").

[9] Moving Petitioner recognizes that in some cases, the Court has declined to consider affidavits when ruling on a Rule 59(f) motion. *See, e.g.*, *Techmer Accel Holdings, LLC v. Amer*, 2011 WL 567456 (Del. Ch. Feb. 8, 2011); *Miles v.*

forecasts, the same inputs, and the same assumptions as the Court described in its Opinion. Although Professor Cornell's calculations confirmed the Court's calculations using the adjusted Bank Case,[10] Professor Cornell's calculation using the adjusted BCG 25% Case, and the same inputs that were adopted by the Court and applied to the adjusted Bank Case, produced a per share value of $16.90. Compared to the Court's calculation of $16.43 per share, Professor Cornell's check yielded a per share value that is $0.47 per share higher. Weighting $18.81 and $16.90 per share values equally (per the Court's Opinion) produces an implied fair value of Dell of $17.85, a $0.23 per share increase over the Court's calculation of $17.62.[11]

7. "Under Rule 59(e), a motion to alter an Order may be granted if the [movant] demonstrates (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a

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Cookson, 677 A.2d 505, 506 (Del. Ch. 1995). In those cases, however, the movants had submitted new and additional facts, rather than constraining their motion to the record. This situation is different—Moving Petitioner does not adduce new facts, but rather points to a mathematical error in the calculation of fair value based on the facts adopted by the Court.

[10] Professor Cornell's calculation using the adjusted Bank Case was $18.80 per share, as compared to the Court's calculation of $18.81 per share—an immaterial difference Moving Petitioner attributes to rounding. Cornell Aff. at 7 n.15.

[11] Moving Petitioner, by attempting to recreate the Court's DCF result and by filing this motion, does not concede that the Court adopted the correct forecasts, inputs, or other assumptions, and therefore does not concede that Professor Cornell's calculation of the $17.85 per share value based on the Court's model represents the true value of Dell's shares.

clear error of law or to prevent manifest injustice." *Nash v. Schock*, 1998 WL 474161, at *1 (Del. Ch. July 23, 1998).

8. Relief is also appropriate pursuant to Chancery Court Rule 59(f). Rule 59(f) motions are granted when the "court . . . has misapprehended the facts or the law such that the outcome of the decision would be different." *Adams v. Calvarese Farms Main. Corp.*, 2011 WL 383862, at *1 (Del. Ch. Jan. 13, 2011); *see also Reed v. Reed*, 2011 WL 378929 (Del. 2011) (affirming a court's correction of a clerical error in a judgment, applying Rule 60(f)).

9. The Court's authority to correct computational errors derives not only from Rule 59, but from its inherent power. *See Crescent Mach 1 P'ship, L.P. v. Dr Pepper Bottling Co. of Texas*, 2008 WL 2440303, at *2 (Del. Ch. June 4, 2008), *rev'd on other grounds*, 962 A.2d 505 (Del. 2008) (citing *Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958)).

10. This Court has granted requests to modify orders and judgments in circumstances similar to this case. In *Doft & Co. v. Travelocity.com Inc.*, for example, the Court recognized that its calculation of the per share equity value for Travelocity was incorrect as a result of two computational errors, and so granted a request for reargument under Rule 59(f). 2004 WL 3578094 (Del. Ch. June 10, 2004). Similarly, in *Henke v. Trilithic Inc.*, the Court determined that its DCF analysis failed to account for particular assets owned by the company and therefore

it modified its appraisal decision. 2005 WL 3578094 (Del. Ch. Dec. 20, 2005); *see also e.g.*, *Crescent Mach 1 P'ship, L.P.*, 2008 WL 2440303 (recognizing the ability of the Court to modify its decisions and correct computational errors).

11. As demonstrated in the Cornell Affidavit, Professor Cornell's application of the inputs accepted by the Court to the financial models created by Professor Hubbard and adopted by the Court results in a per share value of $16.90 using Professor Hubbard's adjusted BCG 25% Case.

12. If the Court equally weighted the $16.90 resultant value for the corrected BCG 25% model and the $18.81 value for the Bank Case, the calculated fair value of each share of Dell stock would be $17.85, a difference of $0.23 per share. For the appraisal class, this represents an increase of $1,266,317.90 over the awarded value.[12] Because these errors identified by Professor Cornell materially affected the Court's valuation opinion, a revision of the Opinion is appropriate.

[12] *See* Petr.'s Mot. for Award of Attorneys' Fees and Expenses, at 2-3 (Trans. Id. 59081925) (noting that the total number of appraisal shares is 5,505,730).

13. For these reasons, Moving Petitioner respectfully requests that the Court grant its Rule 59 motion and revise the Opinion accordingly.

Dated: June 6, 2016

Respectfully submitted,

/s/ Stuart M. Grant

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CERTIFICATE OF SERVICE

I, Christine M. Mackintosh, hereby certify that on June 6, 2016, *Petitioner's Motion to Alter or Amend the Court's May 31, 2016 Memorandum Opinion, or In the Alternative, for Reargument,* was filed and served via File & Serve*Xpress* on the following counsel of record:

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.	Consol. C. A. No. 9322-VCL

AFFIDAVIT OF BRADFORD CORNELL

STATE OF CALIFORNIA)
) S.S.
COUNTY OF LOS ANGELES)

Bradford Cornell, being duly sworn, does hereby state as follows:

I. INTRODUCTION

1. I submit this affidavit at the request of counsel for petitioners.

2. After the Court issued its Memorandum Opinion on May 31, 2016 (the "Opinion"), I was asked to run the Discounted Cash Flow ("DCF") calculations based on the inputs accepted by the Court in that Opinion using the Excel models created by Professor Glenn Hubbard ("Hubbard"), which also appeared to have been largely accepted by the Court, to confirm the per share equity value calculations in the Opinion.

3. These files were produced as Hubbard BCG Case DCF Model.xlsx ("BCG Case Excel Model") (JX900) and Hubbard Bank Case DCF model.xlsx ("Bank Case Excel Model") (JX899).

4. As explained below, although the calculations using the Bank Case confirmed the Court's calculation of $18.81 per share, my calculations using the same model and the same inputs taken from the Opinion for the adjusted BCG 25% Case reflect a per share value of $16.90, as compared to the Court's calculation of $16.43 per share. Weighting those calculations equally increases the implied fair value of shares of common stock of Dell Inc. ("Dell" or the "Company") from $17.62 per share as calculated in the Court's Opinion to $17.85 per share.

5. The Court concluded that "the fair value of the Company's common stock at the effective time of the Merger was $17.62 per share."[1] This valuation conclusion was based on an equal weighting of Professor Hubbard's adjusted BCG 25% Case (calculated by the Court to be $16.43 per share) and Professor Hubbard's adjusted Bank Case (calculated by the Court to be $18.81 per share).[2]

6. To confirm the calculation the fair value resulting from the Court's Opinion, I used the Excel models that Professor Hubbard produced at the time of his Opening Report, simply replaced the specific metrics in those spreadsheets with the specific inputs adopted by the Court to determine the implied enterprise

[1] Opinion, p. 1.

[2] *Id.*, p. 112.

value, and then adjusted the resulting enterprise value with the specific inputs adopted in the Court's Opinion.

A. Enterprise Value

7. The Court's decision accepted Professor Hubbard's BCG 25% Case and Bank Case forecasts except with respect to his selection of tax rates.[3]

8. The Court's decision calculated a WACC of 9.46%,[4] which also was used in Professor Hubbard's model.[5]

9. The Court's decision also accepted Professor Hubbard's use of a 2% perpetuity growth rate in calculating the Company's terminal value.[6]

10. The Opinion adopts a 21% tax rate over the forecast period and terminal value.[7] Accordingly, I changed the relevant cells in the Hubbard Excel models to reflect a tax rate of 21.0% for the forecast period and terminal value.[8] Mechanical changes:

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[3] *Id.*, pp. 103-104, 105-107.

[4] *Id.*, t p. 08 ("The inputs selected below generate a WACC of 9.46%").

[5] *See* JX900 (BCG Case), "DCF Results" tab, cells D47 and D48 = 9.46%; JX899 (Bank Case), "DCF Control" tab, cell D30 = 9.46%.

[6] Op., p. 105.

[7] "Cornell used a 21% tax rate throughout his forecast period" (*id.*, p. 105) and "Cornell's tax estimate is more reliable and consistent with the Company's operative reality" (*Id.*., p. 107).

[8] Note that the decrease in the tax rate for the terminal period from Professor Hubbard's 35.8% to 21.0% has the automatic effect (*i.e.*, an effect built-in the model) of increasing the Additional Requirement Investment in Professor

i. JX900 (BCG Case), "DCF Results" tab, cells D39 and D40 = 21%.

ii. JX899 (Bank Case), "DCF Control" tab, cells D31 and D32 = 21%.

Making these mechanical changes to the Hubbard Excel models automatically results in the following revised enterprise values per share:

i. JX900 (BCG Case), "DCF Results" tab, cell D34 = $16.00.

ii. JX899 (Bank Case), "DCF Control" tab, cell D21 = $17.90.

B. Enterprise Value to Equity Value Per Share Conversion

11. The Opinion determined that at the time of the closing of the Merger, the Company had net cash of $6.158 billion.[9]

12. <u>Working Capital and Restricted Cash</u>. The Opinion concluded that the Company required $3 billion in cash for working capital purposes and that $1.2 billion in cash on the balance sheet was restricted.[10]

Hubbard's valuation model. (See Hubbard Report, p. 112 and cells Q56 and K56-O56 (Core Dell) and Q60 and K60-O60 (New Dell) in the "DCF Results" tab of the BCG Case Excel Model and cells R43 and L43-P43 (Core Dell) and R47 and L47-P47 (New Dell) in the "DCF Control" tab of the Bank Case Excel Model. I express no opinion with regard to such Additional Requirement Investment or any increase thereof, and simply applied Professor Hubbard's model without altering any input other than the tax rate.

9 Op., p. 109 ("At the time of the Merger, the Company had $11.04 billion in cash and $5.054 billion in debt on its balance sheet. After adding back $172 million in transaction-related expenses, the Company had net cash of $6.158 billion.").

10 *Id.*, p. 110 ("This decision deducts working capital of $3 billion and restricted cash of $1.2 billion from the Company's available cash for purposes of determining its [equity] value.").

13. Deferred Taxes. The Opinion determined that it was not necessary to make any additional deduction for Deferred Taxes.[11]

14. Liability for Unrecognized Tax Benefits. The Opinion concluded that Dell's cash balance should be adjusted to account for a $650 million liability for Unrecognized Tax Benefits (FIN 48).[12]

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[11] As the Court noted: "Hubbard deducted $2.24 billion for deferred taxes attributable to the Company's foreign earnings and profits" but that "the effective tax rate accounts for the deferred taxes, and because the Company never plans to repatriate those funds, a proper valuation would have to back out any deferred taxes on foreign earnings from its effective tax rate, which would increase the Company's value." *Id.*, p. 110.

[12] *Id.*, p. 112 ("This decision deducts $650 million from the Company's cash" for Unrecognized Tax Benefits.)

15. The following table summarizes these cash adjustments:

	Memorandum Opinion (in millions)
Net Cash	$6,158
Adjustments to Net Cash:	
Working Capital	($3,000)
Restricted Cash	($1,200)
Deferred Taxes	$0
Contingent Taxes	($650)
NOL[13]	$278
Total Adjustments to Cash	($4,572)
Adjusted Net Cash	$1,586
Shares Outstanding	1,765.4[14]
Adjusted Net Cash Per Share	$0.90

13 Since the Opinion does not mention the appropriate treatment of Dell's Net Operating Loss ("NOL") carryforward benefits and Petitioners did not dispute this amount, I have assumed that the Court accepted Professor Hubbard's addition of $278 million to Net Cash. *See* Hubbard Opening Report p. 137.

14 Op., p.112 ("This decision adopts the parties' agreed upon calculation of 1,765,369,276 fully diluted shares outstanding.")

16. The following table summarizes the per share values based on the valuation inputs set forth in the Memorandum Opinion:

		BCG Case	Bank Case
Enterprise Value per Share	(¶ 10)	$16.00	$17.90
Adjusted Net Cash per Share	(¶ 15)	$0.90	$0.90
Equity Value per Share		$16.90	$18.80[15]

17. The following table compares the valuations set forth in the Memorandum Opinion with my calculations described above:

	Opinion	Cornell Calculation	Difference
BCG 25% Case	$16.43	$16.90	$0.47
Bank Case	$18.81	$18.80	($0.01)
Average	$17.62	$17.85	$0.23

15 My calculation for the value of the adjusted Bank Case is $18.80. This is not a material difference from the Court's calculation of the value under the adjusted Bank Case of $18.81.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: June 6, 2016

Bradford Cornell

Bradford Cornell

SWORN AND SUBSCRIBED

Before me this ___ day of June, 2016

My Commission Expires: ___________

CALIFORNIA JURAT WITH AFFIANT STATEMENT **GOVERNMENT CODE § 8202**

- ☒ ~~See Attached Document (Notary to cross out lines 1–6 below)~~
- ☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

1 ____

2 ____

3 ____

4 ____

5 ____

6 ____

Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 6th day of June, 20 16, by
(*Date*) (*Month*) (*Year*)

(1) Bradford Cornell
~~(and (2)~~ __________________________),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

SUSAN KIYO DROZDOWSKI
Commission # 2132346
Notary Public - California
Los Angeles County
My Comm. Expires Nov 28, 2019

Signature Susan Kiyo Drozdowski
Signature of Notary Public Notary Public

Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit of Bradford Cornell **Document Date:** June 6, 2016

Number of Pages: 8 **Signer(s) Other Than Named Above:** ____________

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.	Consol. C. A. No. 9322-VCL

[PROPOSED] ORDER

AND NOW, this ____ day of ___________, 2016, upon consideration of Petitioner Morgan Stanley Defined Contribution Master Trust's Motion to Alter or Amend the Court's May 31, 2016 Memorandum Opinion, or In the Alternative, for Reargument, it is hereby Ordered that Petitioner's Motion is GRANTED, and the May 31, 2016 Memorandum Opinion is modified such that the value of common stock of Dell Inc. at the time of the merger is determined to be $17.85 per share.

SO ORDERED

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Vice Chancellor J. Travis Laster