

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

**THE MAGNETAR FUNDS' MOTION TO COMPEL DISCOVERY
RELATING TO LEAD COUNSEL'S SECTION 262(J) PETITION**

Petitioners Magnetar Capital Master Fund Ltd, Magnetar Global Event Driven Master Fund Ltd, Spectrum Opportunities Master Fund Ltd, and Blackwell Partners LLC (collectively, The “Magnetar Funds”), by and through their undersigned attorneys in C.A. No. 9322-VCL (the “Dell Appraisal”), hereby move for an order compelling the T. Rowe Price Petitioners¹ (the “Lead Petitioners”) and lead counsel Grant and Eisenhower PA (“G&E” or “Lead Counsel”) to respond to discovery and produce documents relating to Petitioner [Morgan Stanley Defined

¹ The fourteen T. Rowe Price petitioners are (i) T. Rowe Price Equity Income Fund, Inc.; (ii) T. Rowe Price Science and Technology Fund, Inc.; (iii) John Hancock Variable Insurance Trust - Equity Income Trust; (iv) John Hancock Funds II - Equity Income Fund; (v) T. Rowe Price Equity Income Trust, a sub-trust of T. Rowe Price Institutional Common Trust Fund; (vi) T. Rowe Price Institutional Equity Funds, Inc., on behalf of T. Rowe Price Institutional Large Cap Value Fund; (vii) John Hancock Funds II - Science & Technology Fund; (viii) T. Rowe Price Equity Income Series, Inc., on behalf of T. Rowe Price Equity Income Portfolio; (ix) John Hancock Variable Insurance Trust - Science & Technology Trust; (x) T. Rowe Price U.S. Equities Trust; (xi) Prudential Retirement Insurance and Annuity Co., on behalf of Separate Account SA-5T2; (xii) John Hancock Funds II - Spectrum Income Fund; (xiii) Tyco International Retirement Savings and Investment Plan Master Trust; and (xiv) The Bureau of National Affairs, Inc.

Contribution Master Trust²]’s Motion for an award of Attorneys’ Fees and Reimbursement of Expenses Pursuant to 8 *Del. C.* § 262(j) (the “262(j) Petition”).

The grounds for this motion are as follows:

1. In connection with the Court’s April 10, 2014 Consolidation Order, the Court found that T. Rowe Price Equity Income Fund (“T. Rowe Price”) and several affiliated funds and retirement plans were the largest petitioners and thus appointed those funds and plans to be lead plaintiffs.

2. Grant & Eisenhofer, P.A. (“G&E”), which was the counsel of choice for T. Rowe Price, was appointed Lead Counsel in the Dell Appraisal. Pursuant to this Court’s Consolidation Order, G&E was appointed Lead Counsel in the Dell Appraisal for the specific purpose of prosecuting the Dell Appraisal on behalf of all petitioning Dell shareholders, including the Magnetar Funds (collectively, “the Appraisal Class”).

3. Despite G&E’s responsibilities as Lead Counsel for all appraisal petitioners, G&E failed to timely disclose the voting issue concerning T. Rowe Price (until it was reported in the press), and continued to prosecute the action as if the T. Rowe Price shares would remain in the appraisal class.

² The only G&E Claimant that was not the subject of Dell’s motion was petitioner Morgan Stanley Defined Contribution Trust (Verified List No. 20), which holds 357,500 Dell shares. Accordingly, the Magnetar Funds’ 3,865,820 shares are the largest single stake held by any petitioner, followed by the 826,012 shares held by Global Continuum Fund, LTD and Wakefield Partners LP, and Morgan Stanley Defined Contribution Trust’s 357,000 shares.

4. By the Court's May 11, 2016 Opinion, the shares of fourteen of the appraisal petitioners that are mutual funds sponsored by T. Rowe Price (defined therein as the "T. Rowe Petitioners") were found not to qualify for appraisal because of the T. Rowe Petitioners' failure to dissent as to the shares for which they sought appraisal, with judgment being entered against them. The T. Rowe Petitioners have thus been disallowed from pursuing an appraisal of their shares in this case.

5. With their more than 3.8 million shares, the Magnetar Funds are now the largest single stockholder group in this proceeding and own over 70% of the Dell stock remaining in this case.

6. On June 2, 2016, Lead Counsel filed the 262(j) Petition. Remarkably, Lead Counsel's 262(j) Petition (a) fails to allocate any responsibility for the expenses in this action to the T. Rowe Price Petitioners who pursued this action through discovery, trial and/or post-trial briefing, but who were found not to be entitled to appraisal, and instead seeks to tax the remaining petitioners with the T. Rowe Price Petitioners' portion of the expenses and (b) seeks to impose upon the remaining petitioners a contingency fee arrangement to which they did not agree, with counsel that they specifically rejected. Moreover, precisely because the Magnetar Funds had concerns about Lead Counsel's alignment, they felt the need to hire and compensate their own additional co-counsel in this matter.

7. On June 6, 2016 the Magnetar Funds, together with the Global Continuum Fund, LTD and Wakefield Partners LP (the “Global Continuum Petitioners”), notified the Court that they intended to pursue discovery in support of their opposition to the 262(j) Petition.

8. Lead Counsel promptly indicated that they would be cooperative regarding discovery, but that they may also seek some reciprocal discovery if the Magnetar Funds challenged the fees (as opposed to only the allocation of expenses).³

9. On June 8, 2016, the Magnetar Funds served their discovery requests (the “Discovery Requests”) on Lead Petitioners and Lead Counsel.

10. Lead Counsel initially notified the Magnetar Funds that they would not provide *any responses* to the Discovery Requests unless (a) it was expressly ordered by the Court or (b) the Magnetar Funds withdrew their discovery demands and took Lead Counsel at its word that only a small fraction of the expenses related to entitlement issues. To support its second option, Lead Counsel insisted that the Magnetar Funds accept a smaller production of only the backup documents for

³ After filing the June 6, 2016 letter, counsel to the Magnetar Funds and Global Continuum Petitioners received a call from Chambers in which they were informed the Court was amenable to permitting discovery and suggesting they work out dates with Lead Counsel. Undersigned counsel promptly conveyed this message to Lead Counsel.

Lead Counsel's bare-bones two-page summary expense statement that accompanied its Section 262(j) petition.

11. On June 13, 2016, however, Lead Counsel provided written responses to the Discovery Requests. Those responses, however, refused to provide *any* information beyond access to the backup of all expenses incurred during the prosecution of this case and a letter claiming that only a single expense in the amount of \$20,475.00 -- of the \$4,035,787.18 of aggregate expenses that they seek in the G&E Fee Application from the remaining petitioners who were found entitled to appraisal -- related to the entitlement issue that they litigated on behalf of the T. Rowe Petitioners, who retained them through post-trial summary judgment proceedings and culminated in a 69-page Opinion from the Court. (See Exhibit A). In addition, Lead Counsel stated in a June 13, 2016 letter accompanying its discovery responses that the Discovery Requests were objectionable because they sought information protected by the attorney-client privilege. Lead Counsel failed to explain, however, how it could withhold information on the basis of attorney-client privilege from an entity that it claimed to have represented as its client (and against which it was assessing its attorney fees).

12. The requested discovery is clearly relevant and necessary to the resolution of the issues raised in the Section 262(j) petition. Thus, for instance, the

Magnetar Funds seek documents and information on the following subjects relating to that petition:⁴

- a. Whether the T. Rowe Petitioners and Lead Counsel understood or agreed that Lead Counsel would advance expenses or the T. Rowe Petitioners were obligated to pay them (T. Rowe Document Request #1; Interrogatories #9; Document Request #1).
- b. Whether the T. Rowe Petitioners and Lead Counsel had any understanding or agreement by which expenses would be allocated in the event that the T. Rowe Petitioners were found to be entitled to appraisal or not, or if they were found to be entitled to statutory interest or not (T. Rowe Document Request #2; Interrogatories ##9, 12; Document Request #4).
- c. Whether the T. Rowe Petitioners in fact have already paid any expenses to Lead Counsel (T. Rowe Document Request ##3, 7; Interrogatories #13; Document Request #5).
- d. Whether the T. Rowe Petitioners and Lead Counsel communicated about allocating their proportionate share of expenses to the Non-G&E Shareholders (T. Rowe Document Request #4; Interrogatories ##10-11; Document Request #3).
- e. Whether the T. Rowe Petitioners had any understanding or arrangement with Lead Counsel in respect of how expenses should be allocated as between the entitlement and the valuation issues in this case (T. Rowe Document Request #5; Document Request #7).

⁴ All references are to the discovery requests served upon Lead Counsel, except as indicated otherwise.

- f. How much of the expenses being sought by Lead Counsel in fact were attributable to the entitlement issue (T. Rowe Document Request #6; Request for Admission 1; Interrogatories ##1, 4-8; Document Requests ##6, 8-10).
- g. Why the T. Rowe Petitioners and Lead Counsel decided not to timely disclose the entitlement issue to the Court or Non-G&E Shareholders (T. Rowe Document Request ##8-9; Requests for Admission ##4-8; Interrogatories #14; Document Request ##11-12).
- h. Whether Lead Counsel acted in the best interests of all petitioners or predominantly its direct clients, and whether those direct clients enjoyed the benefits of Lead Counsel's representation -- including without limitation the benefits of any settlement discussions or opportunities -- even after the Court's May 11, 2016 entitlement decision (Requests for Admission ## 2, 3, 9, 10; Interrogatories #15; Document Request #13).

13. Accordingly, the Magnetar Funds respectfully request an Order (a) compelling complete responses to the Discovery Requests and (b) a scheduling conference to adjust the dates set forth in the Court's June 3 Scheduling Order so that the requested discovery can be completed in advance of the date for oppositions to the 262(j) Petition.

PROCTOR HEYMAN ENERIO LLP

/s/ Samuel T. Hirzel

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(302) 472-7300

OF COUNSEL:

LOWENSTEIN SANDLER LLP

Lawrence M. Rolnick

Steven M. Hecht

1251 Avenue of the Americas

New York, NY 10020

Dated: June 20, 2016

CERTIFICATE OF SERVICE

Samuel T. Hirzel, II, hereby certifies that on June 20, 2016, copies of the foregoing Magnetar Funds' Motion to Compel Discovery Related to Lead Counsel's Section 262(j) Petition were served electronically upon the following counsel:

Stuart M. Grant, Esq.
Megan D. McIntyre, Esq.
Michael J. Barry, Esq.
Christine M. Mackintosh, Esq.
Rebecca A. Musarra, Esq.
GRANT & EISENHOFER P.A.
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Gregory P. Williams, Esq.
Susan Hannigan, Esq.
Andrew J. Peach, Esq.
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/s/ Samuel T. Hirzel, II
Samuel T. Hirzel, II (# 4415)



EXHIBIT A

**THE MAGNETAR FUNDS' MOTION TO COMPEL DISCOVERY
RELATING TO LEAD COUNSEL'S SECTION 262(J) PETITION**



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June 13, 2016

VIA EMAIL AND U.S. MAIL

Steven M. Hecht, Esquire
Lowenstein Sandler LLP
1251 Avenue of the Americas
New York, NY 10020

Re: In re: Appraisal of Dell Inc., Consol. C.A. 9322-VCL

Dear Steve:

We have reviewed the discovery served upon this firm on behalf of The Magnetar Funds on June 8, 2016. The discovery is improper, seeks information protected from discovery by the attorney-client privilege and/or the work product doctrine, and seeks information wholly irrelevant to the Motion for an Award of Attorneys' Fees and Reimbursement of Expenses Pursuant to 8 *Del. C.* § 262(j). Formal objections to the discovery are enclosed with this letter. Except as set forth below and in the attached objections, Grant & Eisenhofer will not provide responses to the discovery requests absent Court order.

First, neither Section 262 of the DGCL nor the Court of Chancery Rules provide for discovery in this context. Rather, Section 262(j) provides as follows:

The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

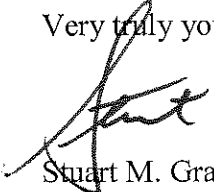
There is simply nothing in the statute that provides for discovery. Nevertheless, Grant & Eisenhofer will, voluntarily, provide you with access to the complete backup of all expenses incurred during the prosecution of this case. Upon review of the detailed expense information, we did identify a single expense in the amount of \$20,475.00 that related to what you have defined as the "Entitlement issue," which will be deducted from our expense reimbursement request. Other than that single identified expense, all other expenses incurred by this firm relate to what you have defined as the "Valuation issue." We also confirm that neither T. Rowe Price nor any other person or entity has reimbursed Grant & Eisenhofer for any of the expenses incurred during the prosecution of this case, nor will anyone do so except through the pending motion.



Steven M. Hecht, Esquire
June 13, 2016
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The remainder of your discovery requests seek irrelevant information and information protected from discovery by applicable privileges. Grant & Eisenhofer's request for fees is based on a rather modest percentage of the significant financial benefits realized by those shares entitled to appraisal resulting from the Court's determination that the fair price was at least 28% higher than the deal price. As you are aware, we recently filed a motion seeking to correct what appears to be a mathematical error in the Court's calculation of fair value which, if granted, will establish the fair value of Dell on the date of the merger to be \$17.85 per share. Because the fee request is based on a percentage of the common benefit provided through the successful prosecution of the litigation, requests for detailed time records or information relating to the hours devoted by Grant & Eisenhofer personnel to specific projects or areas of research is irrelevant. Further, discovery requests seeking disclosure of communications between Grant & Eisenhofer and any of its clients, including T. Rowe Price, plainly seek disclosure of confidential information protected by the attorney-client privilege. Such requests are wholly improper.

Very truly yours,



Stuart M. Grant

SMG/rm
Enclosures

cc: Samuel T. Hirzel, II, Esquire

RESPONSE TO NO. 2:

G&E objects to this Interrogatory on the basis that it is overbroad, as it seeks information concerning costs incurred by clients of G&E, regardless of whether the costs were paid by G&E itself. G&E further objects to this Interrogatory on the basis that it is overly burdensome. G&E has submitted an exhibit reflecting the aggregate costs incurred by G&E on behalf of appraisal claimants and refers the Magnetar Funds to that exhibit. *See* Fee Application Ex. A. G&E represents that it will produce documentation concerning expenses G&E paid prosecuting the Action.

G&E will not further respond to Interrogatory No. 2.

INTERROGATORY NO. 3: Please Identify all experts or consultants whom You have consulted with or retained or who have been consulted with or retained by Your Clients with respect to any fact or issue relevant to any issue in this litigation, and the Date on which You first contacted that expert or the expert was first contacted by Your client or clients.

RESPONSE TO NO. 3:

G&E objects to this Interrogatory as overbroad on the basis that it seeks discovery relating to “all experts or consultants” whom any of the appraisal petitioners represented by G&E may have “consulted or retained” regarding “any fact or issue relevant to any issue in the Action.”

The experts retained by G&E in connection with this Action are the following:

- Bradford Cornell, PhD. [March 2014]
- John P. Steines Jr., Esq. [June 19, 2015]
- Guhan Subramanian, Esq. [May 15, 2015]

To the extent G&E retained any other experts or consultants, information concerning them would be outside the scope of discovery information pursuant to Rule 26(b)(3) and (4) and would otherwise be irrelevant, as G&E seeks reimbursement for expert fees only for the above-listed experts.

G&E will not further respond to Interrogatory No. 3.

INTERROGATORY NO. 4: Please Identify the investigator or investigators, if any, whom You have consulted with or You retained or who have been consulted with or retained by Your Clients to conduct an investigation into the Entitlement issue.

RESPONSE TO NO. 4:

G&E objects to this Interrogatory on the basis that it seeks information outside the scope of permissible discovery under Court of Chancery Rule 26(b)(3) and (b)(4). G&E further objects to this Request to the extent it seeks information protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Interrogatory on the basis that it is overbroad, as it seeks information, if any exist, relating to any investigators who consulted with or were retained by G&E clients, regardless of whether they were retained or paid by G&E.

G&E will not further respond to Interrogatory No. 4.

INTERROGATORY NO. 5: Please Identify the legal counsel, if any, whom You have consulted with or You retained or who have been consulted with or retained by Your Clients to conduct an investigation into the Entitlement issue.

RESPONSE TO NO. 5:

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E further objects to this Interrogatory on the basis that it is overbroad, as it seeks information, if any exist, relating to any investigators who consulted with or were retained by G&E clients, regardless of whether they were retained or paid by G&E.

G&E will not further respond to Interrogatory No. 5.

INTERROGATORY NO. 6: Please Identify and describe any and all actions taken by You to litigate, investigate, or defend against the Entitlement issue.

RESPONSE TO NO. 6:

G&E objects to this Interrogatory on the basis that it is overbroad and unrelated to any issue presently before the Court. G&E has submitted an exhibit reflecting the aggregate costs and fees incurred by G&E on behalf of appraisal claimants and G&E refers the Magnetar Funds to that exhibit. See Fee Application Ex. A.

G&E will not further respond to Interrogatory No. 6.

INTERROGATORY NO. 7: Please Identify and describe, by timekeeper, the total number of attorney hours spent by You litigating the Entitlement issue. With respect to each timekeeper, please state that Person's: total hours to date; rate; and total amount of attorneys' fees in dollars attributable to that timekeeper to date.

RESPONSE TO NO. 7:

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E's fee request is based on a percentage of the common financial benefit conferred through the prosecution of the Action, and not on the time devoted by G&E personnel on the case. Accordingly, time records are not relevant. G&E has submitted an exhibit reflecting the aggregate costs and fees incurred by G&E on behalf of appraisal claimants and refers the Magnetar Funds to that exhibit. *See Fee Application Ex. A.*

G&E will not further respond to Interrogatory No. 7.

INTERROGATORY NO. 8: For the following disbursements listed in Exhibit A to Petitioner's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, filed in the Action on or about June 2, 2016 (the "Fee Motion"), please Identify and describe each individual disbursement, including but not limited to the date of each disbursement and its amount in dollars:

- a) Expert;
- b) Filing Fee;
- c) Meeting Expense;
- d) Outside Counsel;
- e) Travel;
- f) Case-Related Publication;
- g) Duplication Services;
- h) Postage & Delivery;
- i) Service Fees;
- j) Telephone;
- k) Transcription Services;

- l) Case-Related Research;
- m) E-Discovery Data Processing Services;
- n) E-Discovery Data Hosting Services.

RESPONSE TO NO. 8:

G&E has submitted an exhibit reflecting the aggregate costs incurred by G&E on behalf of appraisal claimants and refers the Magnetar Funds to that exhibit. *See* Fee Application Ex. A. G&E represents that it will produce documentation concerning expenses G&E paid prosecuting the Action.

G&E will not further respond to Interrogatory No. 8.

INTERROGATORY NO. 9: Please Identify and Describe the terms of Your engagement with T. Rowe Price, including but not limited to the terms applicable to Your attorneys' fees and reimbursement of any or all out-of-pocket expenses.

RESPONSE TO NO. 9:

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E further objects on the basis that it seeks information protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving the foregoing objection, G&E confirms that it will provide The Magnetar Funds with access to the complete backup of all expenses incurred during the prosecution of this case. In addition, G&E confirms that neither T. Rowe Price nor any other person or entity has reimbursed G&E for

any of the expenses incurred during the prosecution of this case, nor will anyone do so except through the pending motion.

G&E will not further respond to Interrogatory No. 9.

INTERROGATORY NO. 10: Please Identify and describe all Communications (and Documents related to those Communications) between You and any other Person, including internal personnel and Persons at T. Rowe Price, regarding Moving Petitioner's decision to request that all expenses be shared pro rata among the 5,505,730 appraisal shares entitled to appraisal in the Action.

RESPONSE TO NO. 10:

G&E objects to this Interrogatory on the basis that it seeks information not protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Interrogatory on the basis that the terms of 8 *Del. C.* § 262(j), the terms of the Court's April 10, 2014 Consolidation Order, and the discussion by the Court during the April 10, 2014 teleconference¹ are equally available to the Magnetar Funds.

G&E will not further respond to Interrogatory No. 10.

INTERROGATORY NO. 11: Please Identify and describe all Communications (and Documents related to those Communications) between You and any other Person, including internal personnel and Persons at T. Rowe Price, regarding the Non-G&E Shareholders, including but not limited to any Communications regarding the allocation of expenses to such Shareholders.

¹ Telephone Status Conference (Apr. 10, 2014), Tr. at 24:23:-25:1 ("The fees and expenses at the end under 262(j) can be taxed against the entire appraisal class pro rata because that's what's fair.").

RESPONSE TO NO. 11:

G&E objects on the basis that this Interrogatory seeks information not relevant to any issue before the Court. G&E further objects to the extent that the Interrogatory seeks information protected by the attorney-client privilege and the attorney work product doctrine.

G&E will not further respond to Interrogatory No. 11.

INTERROGATORY NO. 12: Please Identify and describe all Communications (and Documents related to those Communications) between You and any other Person, including internal personnel and Persons at T. Rowe Price, regarding how expenses would be allocated to the T. Rowe Price shares in the Court determined that those shares were not entitled to appraisal.

RESPONSE TO NO. 12:

G&E objects on the basis that this Interrogatory seeks information not relevant to any issue before the Court. G&E further objects to the extent that the Interrogatory seeks information protected by the attorney-client privilege and the attorney work product doctrine.

G&E will not further respond to Interrogatory No. 12.

INTERROGATORY NO. 13: Please Identify and describe all monies that have been paid or will be paid to You by T. Rowe Price for any fees and expenses incurred by You in connection with the Action.

RESPONSE TO NO. 13:

G&E objects on the basis that this Interrogatory seeks information not relevant to any issue before the Court. G&E further objects to the extent that the

Interrogatory seeks information protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objection, G&E confirms that it will provide the Magnetar Funds with access to the complete backup of all expenses incurred during the prosecution of this case. In addition, G&E confirms that neither T. Rowe Price nor any other person or entity has reimbursed G&E for any of the expensed incurred during the prosecution of this case, nor will anyone do so except through the pending motion.

G&E will not further respond to Interrogatory No. 11.

INTERROGATORY NO. 14: Please Identify and describe Your knowledge or awareness of, and investigation into, the Entitlement issue, including but not limited to when you first became aware of the Entitlement issue.

RESPONSE TO NUMBER 14:

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E further objects on the basis that the Interrogatory seeks information protected by the attorney-client privilege or the attorney work product doctrine.

G&E will not further respond to Interrogatory No. 14.

INTERROGATORY NO. 15: Please Identify and describe all Communications (and Documents related to those Communications) between You and any Non-G&E Shareholder or counsel to any Non-G&E Shareholder concerning tax issues relevant to the Valuation issue, including but not limited to the appropriate tax rate to be applied to Dell, Inc.'s cash flows during the projection period or the terminal period, deferred tax deductions, or contingent tax deductions.

RESPONSE TO NO. 15:

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E further objects on the basis that the Interrogatory seeks information protected by the attorney-client privilege or the attorney work product doctrine.

G&E will not further respond to Interrogatory No. 15.

Dated: June 13, 2016

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry

Stuart M. Grant (Del. #2526)

Michael J. Barry (Del. #4368)

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF DELL, INC.)
) Consolidated
) C.A. No. 9322-VCL

ORDER GRANTING THE MAGNETAR FUNDS' MOTION TO COMPEL

AND NOW, this _____ day of _____, 2016, this Court having considered The Magnetar Funds' Motion to Compel (the "Motion"),

IT IS HEREBY ORDERED that the Motion is GRANTED.

Vice Chancellor