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12
13 **UNITED STATES DISTRICT COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 ROBERT FELTER, on his own behalf and on
17 behalf of all others similarly situated,

18 Plaintiff,

18 vs.

19 DELL TECHNOLOGIES, INC., a Texas
20 Corporation, and DOES 1-10 inclusive,

21 Defendants.

- 22 **1. BREACH OF CONTRACT AND WARRANTY**
- 23 **2. VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CIVIL CODE § 1750, et seq.**
- 24 **3. UNLAWFUL AND UNFAIR BUSINESS PRACTICES, CALIFORNIA CIVIL CODE § 17200, et seq.**
- 25 **4. FALSE ADVERTISING, CALIFORNIA CIVIL CODE § 17500, et seq.**

1 Plaintiff Robert Felter, individually and on behalf of all others similarly situated, complains and
2 alleges, by and through his attorneys, upon personal knowledge and information and belief, as
3 follows:

4 **NATURE OF THE ACTION**

5 1. This Complaint is necessary to redress the greed of Defendant, Dell Technologies
6 (“Dell”), practiced to the detriment of its consumers. Dell intentionally misled and deceived the
7 public in order to create a competitive advantage based on false representation to boost sales of
8 its flagship gaming laptop, the Alienware Area 51M R1 (“Area 51M R1”), in the intensely
9 competitive gaming laptop market segment.

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11 2. It did so by affirmatively and falsely misrepresenting characteristics and qualities
12 of the Area 51M R1 that it knew did not exist, to lure unsuspecting customers to pay a higher
13 price for the Area 51M R1 than it merited without the represented qualities and characteristics,
14 and to choose the Area 51M R1 over other competing products, which might have been chosen
15 had Dell accurately, and truthfully described the quality and characteristics of the Area 51M R1.

16
17 3. Most prominently, Dell falsely advertised to consumers that the Area 51M R1's
18 core hardware components, its Central Processing Unit (“CPU”), and its Graphics Processing
19 Unit (“GPU”) (CPU and GPU are at times collectively referred to as “Core Components”), were
20 fully upgradeable to future Intel CPUs and NVIDIA GPUs.

21
22 4. Core Components across different brands of gaming laptops are virtually identical
23 with all manufacturers offering the same Intel CPUs and the same NVIDIA GPUs. For this
24 reason, manufacturers are forced to differentiate and market their products based on other criteria
25 such as price, aesthetics, and/or other unique features.
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1 5. Core Components act as the central and graphics engines of a computer and are
2 responsible for gaming performance. Unlike desktop computers, laptops have traditionally been
3 built with permanently affixed CPUs and GPUs, making them impossible to remove and thus to
4 upgrade. As a result, consumers are unable to swap their laptop's existing Core Components for
5 faster, more powerful, next generation CPUs and GPUs. Rather, consumers must purchase an
6 entirely new laptop when seeking an upgrade to next generation Core Components powerful
7 enough to play the latest, and more technologically demanding, computer games. This quality,
8 in particular, limits the usable life, and consequently, the market value of gaming laptops. Dell's
9 representation that the Area 51M had "unprecedented upgradeability" appeared to remove this
10 limitation on product life and market value.

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13 6. To the gaming consumer, this "unprecedented upgradeability" as Dell described
14 it, i.e. a laptop that is upgradeable like a desktop, is the elusive holy grail of mobile computing.
15 Dell went as far as to call the Area 51M a "mobile desktop" to further cement its alleged material
16 capability that the Area 51M is upgradeable in the same way a desktop is upgradeable.

17
18 7. The Area 51M was released in Summer of 2019, about a year before the end of
19 the life cycle of its Core Component offerings. NVIDIA was set to release, and did release, its
20 updated, more powerful, mobile GPUs, the RTX 2060 *SUPER*, RTX 2070 *SUPER* and RTX
21 2080 *SUPER* in or about June 2020, and its highly anticipated next generation GPUs, the RTX
22 3000 series in the fall of 2020, which it released in September 2020. Additionally, INTEL was
23 set to release its 10th generation CPUs in or about the second quarter of 2020. As such, without
24 the represented "unprecedented upgradeability," consumers had little incentive to purchase the
25 Area 51M, which cost upwards of \$5000 when fully optioned, knowing that its Core
26 Components would become outdated in less than one year.
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1 19. Dell purchased Alienware in 2006 to gain a foothold in the computer gaming
2 market segment and retains control over its operations, design, manufacturing, sales, and
3 marketing of its products, including the Area 51M R1. Dell also distributes Alienware products,
4 to purchasers, resellers, and distributors in California, as well as throughout the country. Dell
5 sells the Area 51M R1 on its website as well as various traditional and online retail outlets. Dell's
6 gaming related products generated approximately \$3 Billion in sales in 2019.

8 20. Each reference made in this Complaint to any corporate Defendant includes its
9 predecessors, successors, parents, subsidiaries, affiliates, and divisions of the corporation for the
10 corresponding time period in any way involved in the design, manufacture, promotion,
11 distribution and/or sale of the Area 51M R1.

13 21. The true and precise names and capacities of Doe Defendants 1-20, inclusive, are
14 unknown to Plaintiff at this time, and therefore are designated and named as Defendant under
15 fictitious names. Plaintiff will amend this complaint when and if Plaintiff identifies their true
16 identities and involvement in the wrongdoing alleged herein. Plaintiff is informed, believes, and
17 alleges thereon that, at all times mentioned herein, each fictitiously named Defendant is
18 responsible in some manner or capacity for the occurrences alleged herein, and that the damages,
19 as alleged herein, were proximately caused by Doe Defendants.

21 22. Plaintiff is informed, believes, and alleges thereon, that at all times mentioned
22 here, each of the Defendants was the agent, representative, and/or employee of each of the other
23 Defendants. Moreover, that, in the conduct hereafter alleged, each of the Defendants was acting
24 within the course and scope of such alternative personality, capacity, identify, agency,
25 representation, and/or employment and was within the scope of their authority, whether actual or
26 apparent.
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1 buyers that the Area 51M R1 would, in fact, conform with such specifications and be
2 upgradeable.

3 32. Dell's representations of the upgradability of the Area 51M R1 also extended to
4 units that were equipped with the fastest, most advanced Core Components available to the
5 market, thus creating a reasonable expectation with consumers that the upgradability of the Area
6 51M R1 extended to yet to be released INTEL CPUs and NVIDIA GPUs, and did in fact create
7 such expectations with consumers.
8

9 33. Defendant's material representations regarding the upgradeability of the Area
10 51M R1's Core Components were categorically false. Dell itself has since admitted that the Area
11 51M R1's Core Components are not upgradeable.
12

13 34. Defendant intentionally omitted disclosing material facts to the public to conceal
14 the fact that the Area 51M R1's Core Components were not upgradeable to future versions of
15 Intel CPUs and NVIDIA GPUs. Consumers were misled by Dell's false and misleading
16 marketing campaign and paid a significant premium for the Area 51M R1 under the incorrect
17 belief that this "unprecedented upgradeability" would save them money in the long run by
18 allowing them to upgrade their laptop's Core Components rather than having to purchase an
19 entirely new upgraded laptop. Indeed, some paid approximately \$5,000 for the Area 51M R1,
20 specifically relying on Dell's material representations that it was upgradeable.
21

22 35. The above described "unprecedented upgradeability" were material statements to
23 Plaintiff and to the presumptive members of the Class. The rapid advancements to CPU and GPU
24 technology render gaming laptops obsolete in two to three years. Computer game developers are
25 quick to take advantage of the newest and latest graphical capabilities of new generation GPUs
26 and the processing power of new CPUs to create visually compelling titles, which older chipsets
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1 are unable to run at playable framerates. Dell's promise of upgradeability meant that Area 51M
2 R1 owners could extend the life of their devices by upgrading Core Components rather than by
3 purchasing a new laptop.

4 36. Dell knew or should have known that the Area 51M R1 was not and could not be
5 upgraded. Dell works closely with NVIDIA and INTEL and is provided detailed design
6 specifications for their chipsets well in advance of their release so that it can design, build, and
7 manufacture laptops that are compatible with these chipsets. Yet, despite being in possession of
8 such designs, and with the full knowledge that the design of the Area 51M R1 could not
9 accommodate future NVIDIA and INTEL chipsets, Dell launched a global campaign to mislead
10 the public that the Area 51M R1 was upgradeable.
11

12 37. Plaintiff and the presumptive Class members were exposed to Dell's false and
13 misleading marketing campaign for the Area 51M R1, as alleged herein, and purchased at least
14 one unit in response thereto. Plaintiff and the presumptive Class were sold a laptop that does not
15 comport, perform, or have the capabilities or characteristics Dell advertised it to possess, thus
16 they have not received the benefit of their bargain. Plaintiff and the purported Class members
17 who purchased the Area 51M R1 that supposedly was upgradeable to later generation INTEL
18 CPUs and NVIDIA GPUs, must now pay a significant premium to obtain a computer using the
19 later generation INTEL CPUs and NVIDIA GPUs, and thus have sustained an injury in fact or
20 have suffered damages as a result of Dell's false and misleading advertising campaign, as they
21 did not receive a product with the characteristics for which they paid.
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23 38. Plaintiff and/or the presumptive Class members he seeks to represent suffered
24 damages, injury and/or loss of money or property as a result of Dell's conduct as alleged herein.
25 Plaintiff thus seeks damages, injunctive relief, equitable relief, attorney's fees and costs and all
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1 other relief as permitted by law on behalf of themselves and all others similarly situated as
2 applicable to the causes of action set forth herein.

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4 **CLASS ALLEGATIONS**

5 39. The class claims all derive directly from a single course of conduct by Defendants:
6 their systematic and uniform refusal to provide upgrades to the Core Components as advertised
7 and marketed to Plaintiffs and members of the putative class.

8 40. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2) and/or
9 23(b)(3), as well as (23(c)(4), of the Federal Rules of Civil Procedure, individually and on behalf
10 of all others similarly situated. This action satisfies the numerosity, commonality, typicality,
11 adequacy, predominance, and superiority requirements of those provisions.

12 41. Plaintiff seeks to bring this action on behalf of himself and all other similarly
13 situated as members of both a regional class and California state class. Those Classes are defined
14 below.

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16 42. **Regional Class**

17 All individuals residing in the States of Alaska, Arizona, California, Hawaii, Idaho,
18 Montana, Nevada, Oregon, and Washington who purchased a Dell Alienware Area
19 51M R1 gaming laptop at retail for personal use and entertainment and not for
20 purposes of resale and/or distribution since the release of the Area 51M R1 in 2019.

21 This class is referred to as the “Regional Class.”

22
23 43. **California Subclass**

24 All individuals residing in the State of California who purchased a Dell Alienware
25 Area 51M R1 gaming laptop at retail for personal use and entertainment and not
26 for purposes of resale and/or distribution since the release of the Area 51M R1 in
27 2019. This class is referred to as the “California Subclass.”
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44. Unless otherwise specified, the Regional Class and California Subclass are referred to collectively as the “Class”.

45. Plaintiff reserves the right to amend the Class definitions and to seek recovery on behalf of additional persons as warranted as additional facts are learned in further investigation and discovery.

46. The following are excluded from the proposed Classes: (1) Defendant and their officers, directors, employees; (2) the legal representatives, successors or assigns of any such excluded person; (3) class counsel and their employees and immediate family members; (4) persons whose claims against Defendant have otherwise been fully and finally adjudicated and/or released.

47. This action has been brought and may properly be maintained on behalf of the Class as proposed herein under the numerosity, commonality, typicality, adequacy, predominance, and/or superiority criteria of Rule 23 of the Federal Rules of Civil Procedure.

48. This action satisfies the requirements of Fed R. Civ. P. 23(a)(1). The Class is sufficiently numerous such that individual joinder of all members is impracticable. The exact size of the Class is unknown and not available to Plaintiff at this time; however, Plaintiff believes that the Class includes thousands of individuals.

49. This action satisfies the requirements of Fed R. Civ. P. 23(a)(2) and 23(b)(3) because this action involves many common questions of law and fact which predominate over any questions that may affect individual members of the proposed Class. These common questions included, but are not limited to:

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- a. Whether Defendant’s statements and representations regarding the Area 51M R1 as alleged herein were false or misleading or reasonably likely to mislead consumers targeted and exposed to such statements;
- b. Whether Defendant had no factual basis for making such claims before making them, and at what time they became aware that that their claims were false and misleading;
- c. Whether Defendant’s failure to disclose that the Area 51M R1 did not possess the “unprecedented upgradeability” they advertised it to have was material and would likely mislead a reasonable consumer;
- d. Whether the Area 51M R1 performed as advertised in terms of its advertised upgradeable capabilities;
- e. Whether Defendant were able to charge a price premium for the Area 51M R1s and the amount of such premium;
- f. Whether Defendant entered into and breached express or implied agreements and warranties implied by law or by equity;
- g. Whether Defendant engaged in unfair, unlawful, and/or deceptive business practices regarding the Area 51M R1 in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*;
- h. Whether Defendant represented, through words or conduct, that the Area 51M R1 provided benefits that it did not have in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*; and § 17500, *et seq.*, as well as the Consumer Legal Remedies Act; and

1 i. Whether Plaintiff and the Class have been injured by the wrongs complained of
2 herein, whether Plaintiffs and the Class are entitled to injunctive and/or equitable
3 relief, including damages, restitution, disgorgement or other applicable remedies,
4 and if so, the nature and amount of such relief.

5 50. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because
6 Plaintiff's claims are typical of the claims of the other members of the class and arise from the
7 same course of conduct by Defendant.

8 51. Plaintiff and the Class members are similarly affected by Defendant's false and
9 misleading advertising campaign and, as a result, sustained damages due to Defendant's uniform
10 wrongful conduct.

11 52. Plaintiff's claims are based upon the same legal theories as those of the other
12 Class members and the relief sought by Plaintiff is typical of the relief sought for the absent
13 Class members.

14 53. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(4) because Plaintiff
15 will fairly and adequately represent and protect the interests of the Class and has retained counsel
16 competent and experienced in complex class actions involving consumer protection class action,
17 and Plaintiff.

18 54. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no
19 defenses that are unique to Plaintiff.

20 55. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(1) as Plaintiff seeks
21 class-wide adjudication as to all issues alleged herein, on grounds generally applicable to the
22 Class.

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1 of upgrading those parts, rather than buying an entire new laptop. Plaintiffs and the Class
2 members accepted this offer and purchased the Area 51M R1. Dell, approximately one year after
3 the release of the Area 51M R1, admitted that the laptop is in fact, not upgradeable to Intel's 10th
4 generation CPU, nor is it upgradeable to NVIDIA's RTX SUPER 2000 series GPUs, and that
5 consumers must purchase, at a significant premium, the Dell Alienware Area 51M R2 to have
6 access to the new, upgraded, core component offering by INTEL and NVIDIA.
7

8 61. Dell's statements as alleged herein that constitute an affirmative fact and/or
9 promise, and a description of the Area 51M R1 stating that Core Components were indeed
10 upgradeable. Dell's statements regarding the upgradability of the Area 51M R1 were material
11 and part of the basis of the bargain.
12

13 62. The express warranties and warranties implied by law and through Dell's
14 advertising that highlighted the Area 51M R1's core characteristic of "unprecedented
15 upgradeability" caused Plaintiff and Class to purchase these laptops.
16

17 63. Area 51M R1 was to conform to the promises and representations made by
18 Defendant, be merchantable and pass without objection in the trade and industry, and to perform
19 consistent with the specified represented purposed of being upgradeable.
20

21 64. As alleged herein, Defendant have breached these agreements and warranties and
22 are unable or unwilling to honor such agreements and warranties. Plaintiff and Class members
23 thus are unable to receive the benefit of their bargain.
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25 65. As a result of this breach, Plaintiff and the Class have been injured, and are
26 entitled to a laptop that conforms with Dell's original promises of upgradeability at no additional
27 cost, other than the cost of a replacement CPU and GPU or be given the opportunity to return
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1 their Area 51M R1s for repayment, or are entitled to damages to compensate then for the loss of
2 the benefit of their bargain.

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4 **SECOND CLAIM FOR RELIEF**
5 **Violation of California Consumer Legal Remedies Act, Civil Code § 1750, et seq.**
6 **By Plaintiff and the Class Against Defendant**
7 **(California Subclass only)**

8 66. Plaintiff, individually and on behalf of the California Subclass, re-alleges and
9 incorporates by reference all paragraphs set forth above.

10 67. Plaintiff and the California Subclass are consumers as defined by California's
11 Consumer Legal Remedies Act ("CLRA").

12 68. The Dell Alienware Area 51M R1 laptops are goods within the meaning of the
13 CLRA.

14 69. Dell violated Civil Code § 1770(a)(5) by representing that the Area 51M R1 had
15 certain characteristics, uses, and benefits that it did not have.

16 70. Dell violated Civil Code § 1770(a)(7) by representing that the Area 51M R1 was
17 of a particular standard or quality when in fact it was not.

18 71. Dell violated Civil Code § 1770(a)(9) by advertising goods or services with no
19 intent to sell them as advertised.

20 72. Plaintiff and the California Subclass relied on Dell's representations and
21 omissions in deciding whether to purchase the Area 51M R1.

22 73. As a direct and proximate result of Dell's conduct, Plaintiff and the California
23 Subclass have suffered injury and damage in an amount to be determined at trial.

24 74. At this time, Plaintiff disclaims damages under the CLRA, but seeks an order
25 from this Court enjoining the conduct alleged herein.
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1 Code § 17200, *et seq.*, in that the violations of CLRA also constitute unlawful and unfair
2 business practices under the UCL.

3 82. Defendant's conduct constitutes fraudulent business practices in violation of the
4 UCL, Business and Professions Code § 17200, *et seq.*, in that said conduct was calculated to
5 deceive, and did deceive a reasonable consumer.
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7 83. Plaintiff and the California Subclass seek an order for injunctive relief, and full
8 disgorgement and restitution of all monies wrongfully obtained from Plaintiff and the California
9 Subclass, and all other relief permitted under Business and Professions Code § 17200, *et seq.*
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11 **FOURTH CLAIM FOR RELIEF**
12 **False Advertising**
13 **By Plaintiff and the Class Against Defendant**
14 **(California Subclass only)**

15 84. Plaintiff, individual and on behalf of the California Subclass, re-alleges and
16 incorporates by reference all paragraphs set forth above.

17 85. Defendant, with the intent, directly or indirectly, to induce members of the public
18 to purchase the Area 51M R1, made or caused to be made statements to the public in California
19 that were untrue or misleading in violation of, Business and Professions Code § 17500, *et seq.*

20 86. Plaintiff and the California Subclass seek an order for injunctive relief, and full
21 disgorgement and restitution of all monies wrongfully obtained from Plaintiff and the California
22 Subclass, and all other relief permitted under Business and Professions Code § 17500, *et seq.*
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff request of this Court the following relief, on behalf of himself and of the

Proposed Class:

- a. An order certifying the proposed class pursuant to Rule 23 and appointing Plaintiff and his counsel to represent the class;
- b. Appropriate injunctive and/or declaratory relief, including an order requiring Defendant to cease the conduct alleged herein;
- c. Restitution;
- d. Punitive Damages;
- e. Attorneys' Fees and Costs of suit, including expert witness fees; and
- f. Such other relief and further relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all triable claims.

Respectfully submitted,

Dated: June 1, 2021

HOCHFELSEN & KANI, LLP

By. /s/ STEVEN I. HOCHFELSEN
Steven I. Hochfelsen
Attorney for Plaintiff
Robert Felter