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20 Attorneys for Defendant
21 DST OUTPUT WEST, LLC

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 IN AND FOR THE COUNTY OF EL DORADO

24 GLEN GRAHAM, an individual, on behalf of
25 himself and others similarly situated,
26
27 Plaintiff,
28
29 v.
30 DST OUTPUT WEST, LLC, a Delaware
31 limited liability company; and DOES 1 through
32 10, inclusive,
33
34 Defendants.

Case No. PC 20080109
**DEFENDANT DST OUTPUT WEST,
LLC'S ANSWER TO FIRST AMENDED
CLASS ACTION COMPLAINT**

Complaint Filed: February 25, 2008
Trial Date: None

35 Defendant DST Output West, LLC, by and through its counsel, answers Plaintiff Glen
36 Graham's unverified First Amended Class Action Complaint as follows:

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1 **GENERAL DENIAL**

2 Pursuant to California Code of Civil Procedure Section 431.30, Defendant DST
3 Output West, LLC, ("Defendant") generally denies each and every allegation contained in the
4 Complaint, and further specifically denies that Plaintiff has been damaged in any sum
5 whatsoever, or at all, by Defendant or any of its agents, employees or anyone else acting on
6 its behalf.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 **(Failure to State a Cause of Action)**

10 The Complaint and each and every cause of action therein fail to state a claim for
11 which relief can be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Exemption)**

14 Plaintiff's claims are barred in whole or in part, because Plaintiff was an "exempt"
15 employee, under the administrative or other exemptions, as defined by statute, regulations and
16 Industrial Welfare Commission wage orders, including without limitation, California Labor
17 Code section 515, *et seq.* and IWC Wage Order 4.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Statutes of Limitations)**

20 The Complaint and each and every cause of action therein are barred, in whole or in
21 part, by the applicable statutes of limitation, including, but not limited to, California Code of
22 Civil Procedure sections 337(1), 338(a), 339, 340 and 343, California Labor Code section
23 203, and California Business and Professions Code section 17208.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Failure to Assert Class Allegations)**

26 Plaintiff's claims, including his unfair competition claims, are barred, in whole or in
27 part, by Plaintiff's failure to properly assert class allegations pursuant to California Code of

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1 Civil Procedure section 382 and because he cannot establish the elements necessary to certify
2 a class.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Individual Issues Predominate)**

5 Plaintiff's claims, including his unfair competition claims, are barred, in whole or in
6 part, because individual issues predominate over issues common to the alleged class.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **(Failure to Exhaust Administrative Remedies)**

9 Plaintiff's claims are limited or barred, in whole or in part, by Plaintiff's failure to
10 exhaust his administrative remedies and/or internal grievance procedures.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(Failure to Timely Appeal)**

13 Plaintiff's claims are limited or barred, in whole or in part, by Plaintiff's failure to file
14 this lawsuit within 10 days of the service of the Order, Decision or Award of the Labor
15 Commissioner denying his recovery, pursuant to California Labor Code section 98.2.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 **(No Right to Jury Trial)**

18 Plaintiff's right to jury trial is barred on his claims under the Business and Professions
19 Code and any and all other equitable claims alleged in the Complaint.

20 **NINTH AFFIRMATIVE DEFENSE**

21 **(Good Faith)**

22 Plaintiff's claims are barred, in whole or in part, because Defendant acted in good faith,
23 with honesty of purpose, without any improper motive, purpose or means, and without any
24 hatred, ill will, malice, or intent to injure.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Conduct Beyond the Course and Scope of Employment/Lack of Agency)**

3 If any alleged improper conduct occurred, which Defendant denies, Defendant is not
4 liable because (a) any persons allegedly engaging in any such conduct were not acting as an
5 employee or agent of Defendant, (b) such conduct was outside the scope, course and/or
6 authority of any employee or agent, (c) Defendant was not negligent or reckless with respect to
7 any such conduct, and/or (d) such conduct was expressly contrary to and in disregard for
8 Defendant's interests, rules, policies and/or procedures.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(Failure to State A Claim for Punitive Damages)**

11 Plaintiff's claim for punitive damages fails to state facts sufficient to obtain such
12 damages against Defendant. See Cal. Civil Code § 3294. To the extent Plaintiff's claims for
13 punitive damages rely upon alleged acts by Defendant's alleged agents purportedly imputed to
14 Defendant, the limitations inherent in general agency principles prohibit such recovery.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 **(Constitutional Defenses to Punitive Damage Claims)**

17 Plaintiff's claims for punitive damages are barred, in whole or in part, by the United
18 States and California Constitutions, because (a) the asserted standard for entitlement to
19 punitive damages is vague and arbitrary and the procedure for the assessment of punitive
20 damages violates Defendant's rights to due process of law, to equal protection of the law, the
21 right to be free from the unlawful taking of property, the right to be free of excessive fines and
22 all other substantive and procedural protections of the Constitutions applicable to punitive
23 damages, (b) such claims discriminate against Defendant on the basis of wealth, (c) such
24 claims violate the Separation of Powers Doctrine since this Court would be usurping the
25 exclusive power of the legislature to define crimes and establish punishment, and/or (d) such
26 claims operated as an *ex post facto* law in that any such award would effectively be
27 criminalizing conduct after it has occurred and without appropriate advance notice to
28 Defendant that such conduct may subject it to such punishment.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Lack of Causation)**

3 If any loss, injury, damage or detriment occurred as alleged in the Complaint, the loss,
4 injury, damage or detriment was caused and contributed to by the actions of Plaintiff, or by
5 some other party, entity or individual, or by other factors outside of Plaintiff's employment
6 relationship with Defendant.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

8 **(No Entitlement to Attorneys' Fees)**

9 Plaintiff has not stated a valid claim for attorneys' fees, and even if he could, such a
10 claim is barred, in whole or in part, because it violates the rights of Defendant to protection
11 from procedural "due process" and/or "excessive fines" as provided in the United States
12 Constitution, as amended, and in the Constitution of the State of California.

13 **TWENTIETH AFFIRMATIVE DEFENSE**

14 **(Adequate Remedy at Law)**

15 Plaintiff has not stated a valid claim for injunctive relief, because he has an adequate
16 remedy at law.

17 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

18 **(Another Action Pending)**

19 When this Complaint was filed and at all times thereafter, an action has been pending
20 between the same parties and alleging the same causes of action. Accordingly, this action
21 should be abated.

22 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

23 **(Reservation of Rights to Assert Additional Affirmative Defenses)**

24 Defendant expressly reserves the right to amend its answer and to assert additional
25 affirmative defenses and to supplement, alter, or change its answer and affirmative defenses
26 upon revelation of more definitive facts by Plaintiff and upon Defendant's undertaking of
27 discovery and investigation of this matter. Accordingly, the right to assert additional

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1 affirmative defenses, if and to the extent that such affirmative defenses are applicable, is
2 hereby reserved.

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4 WHEREFORE, DST Output West, LLC, prays for judgment as follows:

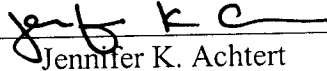
5 1. That Plaintiff take nothing by way of back pay, damages, penalties, interest,
6 restitution, injunctive relief, trust, or any other form of recovery, from DST Output West,
7 LLC, by reason of his Complaint and that judgment be rendered in favor of DST Output
8 West, LLC;

9 2. That DST Output West, LLC, be awarded its costs of suit and attorneys' fees
10 incurred in defense of this action, if appropriate; and

11 3. For such other and further relief as this Court may deem just and proper.

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13 Dated: August 5, 2008

FISHER & PHILLIPS LLP

14
15 By:  _____
16 Jennifer K. Achart
17 Attorneys for Defendant
18 DST OUTPUT WEST, LLC
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PROOF OF SERVICE

I am a citizen of the United States and a resident of Contra Costa County. I am over 18 years of age and not a party to this action. My business address is One Embarcadero Center, Suite 2340, San Francisco, CA 94111-3712. On this date I served the foregoing **DEFENDANT DST OUTPUT WEST, LLC'S ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT** on the following individuals:

- ✓ _____ (by mail) on the parties in said action identified below in accordance with Code of Civil Procedure Section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Fisher & Phillips, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the County of San Francisco, California.
- _____ (by Federal Express) on all parties in said action by depositing a true and correct copy thereof in a sealed packet for overnight mail delivery, with charges thereon fully paid, in a Federal Express collection box, at San Francisco, California, and addressed as set forth below.
- _____ (by facsimile transmission) on all parties in said action, by transmitting a true and correct copy thereof from our office facsimile machine, (415) 490-9001, to the facsimile machine number(s) shown below. Following transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

Michael L. Tracy Megan Ross Hutchins Law Offices of Michael Tracy 2030 Main Street, Suite 1300 Irvine, CA 92614	<u>Attorneys for Plaintiff</u> Telephone: (949) 260-9171 Facsimile: (949) 365-3051
Jose R. Garay Jose Garay, APLC 2030 Main Street, Suite 1300 Irvine, CA 92614	<u>Attorneys for Plaintiff</u> Telephone: (949) 260-9193 Facsimile: (949) 260-9194
Roger Carter The Carter Law Firm 2030 Main Street, Suite 1300 Irvine, CA 92614	<u>Attorneys for Plaintiff</u> Telephone: (949) 260-4737 Facsimile: (949) 260-4754
Scott B. Cooper The Cooper Law Firm, P.C. 2030 Main Street, Suite 1300 Irvine, CA 92614	<u>Attorneys for Plaintiff</u> Telephone: (949) 724-9200 Facsimile: (949) 724-9255

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Daniel S. Newman
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Defendant Co-Counsel

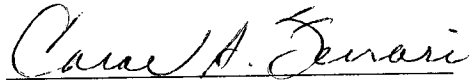
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 11, 2008, at San Francisco, California.


Carol S. Ferrari