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9 Attorneys for Defendant
DST OUTPUT OF CALIFORNIA, INC.
10

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SACRAMENTO
13
14

15 MICHAEL MUIR, an individual, on behalf of
16 himself and all others similar situated,

17 Plaintiff,

18 v.

19 DST OUTPUT OF CALIFORNIA, INC., a
California corporation; and DOES 1 through 50,
20 inclusive,

21 Defendants.
22

Case No.: 2007-00540655

**DEFENDANT DST OUTPUT OF
CALIFORNIA, INC.'S ANSWER TO
COMPLAINT**

Complaint Filed: November 9, 2007
Trial Date: None

23
24 Defendant DST Output of California, Inc., by and through its counsel, answers
25 Plaintiff Michael Muir's unverified Complaint as follows:

26 **GENERAL DENIAL**

27 Pursuant to California Code of Civil Procedure Section 431.30, Defendant DST
28 Output of California, Inc. ("Defendant") generally denies each and every allegation contained

1 in the Complaint, and further specifically denies that Plaintiff has been damaged in any sum
2 whatsoever, or at all, by Defendant or any of its agents, employees or anyone else acting on
3 its behalf.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

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

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

9 **SECOND AFFIRMATIVE DEFENSE**

10 **(Exemption)**

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

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Statutes of Limitations)**

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

21 **FOURTH AFFIRMATIVE DEFENSE**

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

23 Plaintiff's claims, including his unfair competition claims, are barred, in whole or in
24 part, by Plaintiff's failure to properly assert class allegations pursuant to California Code of
25 Civil Procedure section 382 and because he cannot establish the elements necessary to certify
26 a class.

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FIFTH AFFIRMATIVE DEFENSE

(Individual Issues Predominate)

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

SIXTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

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

SEVENTH AFFIRMATIVE DEFENSE

(No Right to Jury Trial)

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

EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

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

NINTH AFFIRMATIVE DEFENSE

(State of Mind Defenses)

Plaintiff's claims are barred in whole or in part, because Defendant's conduct was not "willful," "knowing," or "intentional" within the meaning of Labor Code Sections 203, 226.1, and related statutes, and was based on good faith and reasonableness.

TENTH AFFIRMATIVE DEFENSE

(Vagueness and Subjectivity)

Defendant is informed and believes, and on that basis alleges, that any finding of liability pursuant to California Business and Professions Code Sections 17200, *et seq.* would violate Due Process and Equal Protection Clauses of the United States and California

///

1 Constitutions because the standards of liability under those statutes are unduly vague and
2 subjective.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 **(Equitable Defenses)**

5 The Complaint and each purported cause of action therein are barred by the doctrines
6 of waiver, estoppel, laches, and unclean hands.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 **(Lack of Standing)**

9 The Complaint and each purported cause of action therein are barred because Plaintiff
10 lacks standing.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **(California Labor Code §§ 2856-2869)**

13 Defendant is informed and believes and, based upon such information and belief
14 alleges, that Plaintiff's Complaint and each and every cause of action therein are barred by
15 Plaintiff's failure to comply with his employee obligations pursuant to California Labor Code
16 Sections 2856 through 2859, inclusive.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

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

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

27 Plaintiff's claim for punitive damages fails to state facts sufficient to obtain such
28 damages against Defendant. See Cal. Civil Code § 3294. To the extent Plaintiff's claims for

1 punitive damages rely upon alleged acts by Defendant's alleged agents purportedly imputed to
2 Defendant, the limitations inherent in general agency principles prohibit such recovery.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

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

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 **(Lack of Causation)**

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

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

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

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NINETEENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

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

TWENTIETH AFFIRMATIVE DEFENSE

(Reservation of Rights to Assert Additional Affirmative Defenses)

Defendant expressly reserves the right to amend its answer and to assert additional affirmative defenses and to supplement, alter, or change its answer and affirmative defenses upon revelation of more definitive facts by Plaintiff and upon Defendant's undertaking of discovery and investigation of this matter. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE, DST Output of California, Inc., prays for judgment as follows:

1. That Plaintiff take nothing by way of back pay, damages, penalties, interest, restitution, injunctive relief, trust, or any other form of recovery, from DST Output of California, Inc., by reason of his Complaint and that judgment be rendered in favor of DST Output of California, Inc.;
2. That DST Output of California, Inc., be awarded its costs of suit and attorneys' fees incurred in defense of this action, if appropriate; and
3. For such other and further relief as this Court may deem just and proper.

Dated: 12/21/07

FISHER & PHILLIPS LLP

By: Jennifer K. Achtert
Jennifer K. Achtert
Attorneys for Defendant
DST OUTPUT OF CALIFORNIA, INC.

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PROOF OF SERVICE

I am a citizen of the United States and a resident of San Mateo County. I am over 18 years of age and not a party to this action. My business address is One Embarcadero Center, Suite 2340,m San Francisco, CA 94111-3712. On this date I served the foregoing

**DEFENDANT DST OUTPUT OF CALIFORNIA, INC.'S
ANSWER TO COMPLAINT**

on the following individuals:

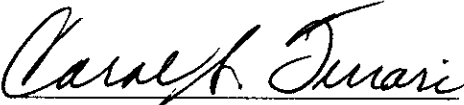
✓ (by mail) on the parties in said action identified below in accordance with Code of Civil Procedure Section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Fisher & Phillips, mail placed in that 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.

<p>Michael L. Tracy Megan Ross Hutchins Law Offices of Michael Tracy 2030 Main Street, Suite 1300 Irvine, CA 92614</p>	<p><u>Plaintiff's Attorneys</u> Telephone: (949) 260-9171 Facsimile: (866) 365-3051</p>
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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 December 21, 2007, at San Francisco, California.



Carol S. Ferrari