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**SUPERIOR COURT OF CALIFORNIA**

9

**COUNTY OF EL DORADO**

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11 GLEN GRAHAM, et al.

12 Plaintiff,

13 vs.

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

16 Defendants.

) Case No. PC20080109

) **PLAINTIFF'S CASE MANAGEMENT  
CONFERENCES ISSUES STATEMENT**

) DATE: August 6, 2008

) TIME: 1:30 p.m.

) Complaint filed: October 12, 2007

) Trial Date: None

17

18 **I. INTRODUCTION**

19 This case is a class action case for unpaid overtime and various labor violations. Mr.  
20 Graham is also pursuing civil penalties under the Private Attorney General Act of 2004 ("PAGA").  
21 It is undisputed that class members were paid on a salary basis no matter how many hours in the  
22 week they worked. At issue is an affirmative defense raised by DST that the class members were  
23 exempt under the Administrative Exemption. In order to carry their burden of proving this defense,  
24 DST must show that class member exercised discretion and independent judgment on matters of  
25 significance relating to the management policies or general business operations of DST or DST's  
26 customers.

27 **II. RELATED CASES**

28 This case is similar to MUIR v. DST OUTPUT WEST, LLC (Case No. PC2008-0164)

1 which was filed on November 9, 2007. In MUIR, the Plaintiff worked as a computer programmer.  
2 Mr. Graham worked as a tester of computer programs. These cases will likely have similar factual  
3 and legal issues.

4 **III. DISCOVERY**

5 These cases will likely involve a significant amount of electronic discovery. The critical  
6 issues in the case are the job duties of the putative class members as well as the total number of  
7 hours worked.

8 In terms of the number of hours worked, the class members utilized security badges to  
9 swipe in and out of the various facilities. These records are available in electronic format and  
10 plaintiff will seek to have them disclosed.

11 The more difficult issues will relate to evidence that shows what work was performed by  
12 the class members. For the computer programmers, they kept detailed records of exactly what they  
13 did throughout the day in the form of change control logs. That is, each time a computer  
14 programmer made any change at all to computer code, the programmer would annotate in the log  
15 who made the change, the date and time of the change, the reason for making the change, and  
16 exactly what the code was changed from and what it was changed to. This information is crucial to  
17 Plaintiff to defeat DST's argument that these employees were engaged in high-level management  
18 policy and general business operation tasks. However, because the logs reflect changes to source  
19 code that DST contends is confidential, there will likely need to be some type of protective order  
20 and policy for discovering this information as well as presenting it for motions and at trial.  
21 Plaintiff will need to show the actual source code to the jury so that they can see the routine and  
22 mundane changes being made by class members. DST will likely oppose the disclosure of source  
23 code to the jury.

24 In terms of the computer testers, a detailed logging system was used to track all of the test  
25 that were run on the system and any defects that were found. These logs are stored in various  
26 computer databases that Plaintiff will need to get access to.

27 In addition to data stored by DST, Plaintiff will also likely need significant discovery from  
28 clients of DST. Essentially, DST is arguing that Plaintiffs made decisions on matters of

1 significance relating to the general business operations and management policies of DST's  
2 customers. Plaintiff will need to depose representatives from all of DST's major customers to  
3 determine whether any class members did indeed affect their management policies and whether the  
4 class members acted uniformly in affecting any such policies. DST will likely oppose any such  
5 depositions on the grounds that representatives of DST can better answer the questions.

6 **IV. MOTIONS**

7 Currently, there is a motion to compel production of the contact information for class  
8 members. This hearing is set for August 21, 2008.

9 DST plans on bringing a Motion for Summary Judgment on the named plaintiffs in these  
10 cases. Plaintiffs feel that a MSJ prior to certification is only appropriate if it cuts off the ability to  
11 bring such a motion after certification. That is, DST should not have two chances for the same  
12 motion. If the named plaintiffs survive a summary judgment and are certified as class  
13 representatives, then any MSJ after certification would simply be re-litigating the same issues that  
14 were already decided in the individual case. As such, allowing DST to bring a MSJ pre-  
15 certification should preclude them from bringing one post-certification.

16 **V. SCHEDULE**

17 The following dates are proposed as a framework for both the GRAHAM and MUIR cases:

18 Finish First Round of E-Discovery (source 19 code change logs, defect tracking system 20 information)	April 30, 2009
21 Finish depositions of DST's customers, 22 class members, PMKs of DST	June 30, 2009
23 MSJ heard by	August 1, 2009
24 Class certification heard by	October 31, 2009
25	

26 **VI. ADR**

27 The parties have discussed the issue of ADR and feel that any meaningful ADR can not be  
28 discussed until after MSJs have been heard. Plaintiffs also feel that significant discovery needs to

1 be conducted in order for them to properly outline all the routine and mundane tasks they  
2 performed that are well documented in the electronic systems that tracked nearly every detail of  
3 their daily work.

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5 DATED: August 4, 2008

LAW OFFICES OF MICHAEL L. TRACY

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By: \_\_\_\_\_

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MICHAEL TRACY, Attorney for  
Plaintiff GLEN GRAHAM

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of 18 years and not a  
4 party to this action. My business address is 2030 Main Street, Suite 1300, Irvine, CA 92614.

5 On August 4, 2008, I served the following document(s): **CASE MANAGEMENT CONERENCE**  
6 **ISSUE STATEMENT** on the interested parties in this action as follows and by the method listed below:

7 Brian J. Finucane, Esq.  
8 FISHER & PHILLIPS  
104 West 9<sup>th</sup> Street, Suite 400  
Kansas City, Missouri 64105

David Charles Becker, Esq.  
BECKER RUNKLE & LAURIE  
263 Main Street, Level 2  
Placerville, CA 95667

9 Timothy J. Murphy, Esq.  
10 Jennifer K. Aichert, Esq.  
11 FISHER & PHILLIPS LLP  
One Embarcadero Center, Suite 2340  
San Francisco, CA 94111

12 XX (Service by E-Mail)

13  
14 — (Service by overnight delivery) I caused such envelope to be placed for deposit at 2030 Main  
15 Street, Suite 1300, Irvine, CA 92614. I am familiar with the overnight delivery collection and  
16 processing practices of the Law Offices of Michael Tracy that the mail would be deposited with  
17 an overnight delivery service that same day in the ordinary course of business, and that the  
18 envelope was sealed and deposited for collection and mailing on the above date following  
19 ordinary business practices.

— (Personal Service) I caused such envelope to be delivered by hand to the addressee(s).

— (Via Facsimile) By faxing copies to the person(s) and fax numbers listed above named.

20 X (STATE) I declare under penalty of perjury, under the laws of the State of California and the  
21 United States of America, that the foregoing is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at  
22 whose direction the service was made.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and  
24 correct. Executed August 4, 2008 at Irvine, California.

25 \_\_\_\_\_  
26 JANELLE KLEIN  
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