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6 Attorneys for Defendant
7 California Delta Mechanical, Inc.

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**
11 **CENTRAL DIVISION**

12 DANNY COHEN, individually and on behalf
of all others similarly situated,

13
14 Plaintiffs,

15 v.

16 CALIFORNIA DELTA MECHANICAL,
INC., a California Corporation; and DOES 1-
17 100,

18 Defendants.
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CASE NO. 37-2011-001 00174-CU-BT-CTL

*[Assigned for all purposes to Hon. Ronald S.
Prager; Dept. C-71]*

**DEFENDANT CALIFORNIA DELTA
MECHANICAL, INC.'S ANSWER TO
COMPLAINT**

Action Filed: 10/27/11

Trial Date: None

ANSWER

1 Defendant California Delta Mechanical, Inc. (“Defendant”) hereby answers the Class
2 Action Complaint (the “Complaint”) of Plaintiff Danny Cohen (“Plaintiff”) as follows:

3 ANSWER TO COMPLAINT

4 1. Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant
5 denies generally and specifically each and every allegation contained in Plaintiff’s Class Action
6 Complaint. Defendant, without admitting any allegation of the Complaint or conceding it bears
7 the burden of proof or persuasion as to any of them, also alleges affirmative defenses as follows:

8 AFFIRMATIVE DEFENSES

9 FIRST AFFIRMATIVE DEFENSE

10 (Failure To State A Claim For Relief)

11 2. The Complaint, and each of the purported claims for relief alleged therein, fails to
12 state facts sufficient to constitute any claim for relief against Defendant.

13 SECOND AFFIRMATIVE DEFENSE

14 (Lack Of Standing)

15 3. The Complaint, and each of the purported claims for relief alleged therein, is
16 barred in whole or in part, because Plaintiff does not have standing to assert the claims alleged in
17 the Complaint, and to represent any purported class.

18 THIRD AFFIRMATIVE DEFENSE

19 (Advertisements Are Substantiated)

20 4. The Complaint, and each of the purported claims for relief alleged therein, is
21 barred in whole or in part because Defendant’s advertisements are substantiated.

22 FOURTH AFFIRMATIVE DEFENSE

23 (Statute Of Limitations)

24 5. The Complaint, and each of the purported claims for relief alleged therein, is
25 barred in whole or in part by applicable statutes of limitations.

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

6. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

7. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Consent, Acquiescence, Laches)

8. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part by the doctrines of consent, acquiescence, and laches.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

9. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part because of and to the extent of Plaintiff's failure to mitigate damages.

NINTH AFFIRMATIVE DEFENSE

(Adequate Remedy At Law)

10. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part to the extent there is an adequate remedy at law.

TENTH AFFIRMATIVE DEFENSE

(Lack Of Willfulness)

11. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part because the alleged wrongful conduct on Defendant's part was not willful.

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ELEVENTH AFFIRMATIVE DEFENSE

(Justification)

12. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part because the alleged wrongful conduct on Defendant's part was justified.

TWELFTH AFFIRMATIVE DEFENSE

(Lack Of Scienter Or Knowledge)

13. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part because Defendant lacked scienter or knowledge of the facts and circumstances giving rise to the claims asserted in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

(Uncertain/Unmanageable Damages)

14. The Complaint, and each of the purported claims for relief alleged therein, is barred because the requested monetary relief is too speculative, remote, and/or impossible to prove and/or allocate.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Right To Restitution)

15. Defendant denies that Plaintiff has stated a valid claim for relief, but in any case denies that Plaintiff is entitled to restitution under any of the claims alleged in the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Damage Or Injury Suffered)

16. Plaintiff has suffered no cognizable damage or injury attributable to Defendant as a result of the matters alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Compliance With Laws)

17. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part because the conduct alleged therein complies with applicable law.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Safe Harbor)

18. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part by California’s safe harbor doctrine because Defendant’s actions, at all relevant times and places, were in compliance with applicable law.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Causation)

19. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part because the alleged wrongdoing did not proximately cause Plaintiff’s injury.

NINTEENTH AFFIRMATIVE DEFENSE

(Improper Class Representative)

20. As to each and every claim for relief contained in the Complaint, Plaintiff does not constitute a proper representative of the purported class, is not qualified to protect and represent fairly and adequately the interests of every member of the purported class, and does not have claims typical of other class members.

TWENTIETH AFFIRMATIVE DEFENSE

(Failure To State A Class Action)

21. The Complaint, and each claim for relief purportedly alleged against Defendant, fails to set forth facts sufficient to constitute a class action, among other things, members of the class have divergent interests, and questions of law and fact affecting only individual members of the purported class predominate over questions of law or fact common to members of the purported class and class action is not superior to other available methods for the fair and efficient adjudication of this controversy and counsel for the purported class is not suitable.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Reliance)

22. The Complaint, and each of the purported claims for relief alleged therein, is barred in whole or in part because Plaintiff did not rely on any of the statements complained of in the Complaint or any advertising or other representation by Defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Action Controlled Entirely By Attorneys)

23. The Complaint, and each claim for relief purportedly alleged against Defendant, fails because Plaintiff is simply lending his name to the instant litigation, which is entirely controlled by purported "class" counsel, thereby making the maintenance of this action as a class action improper.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Unconstitutional)

24. The Complaint, and each claim for relief purportedly alleged against Defendant, is barred because California Business & Professions Code sections 17200 and 17500 and the Consumer Legal Remedies Act section 1770 are unconstitutional to the extent they are applied in a manner that violates any constitutional protection, including:

- a. The excessive fines clauses of the Eighth Amendment to the United States Constitution;
- b. The due process clause of the Fourteenth Amendment to the United States Constitution;
- c. The constitutional prohibition against grossly excessive punishment;
- d. The constitutional prohibition against vague, standardless, and overbroad laws;
- and
- e. The constitutional rights of free speech and free association.

1 TWENTY-FOURTH AFFIRMATIVE DEFENSE

2 (Unjust Enrichment)

3 25. Plaintiff is barred from recovering against Defendant because any recovery in
4 favor of Plaintiff would result in Plaintiff's unjust enrichment.

5 TWENTY-FIFTH AFFIRMATIVE DEFENSE

6 (Conduct Not Illegal, Unfair, Or Fraudulent)

7 26. Plaintiff's Complaint fails to state a claim for misleading, illegal, unfair, or
8 fraudulent business practices under California Business & Professions Code sections 17200 and
9 17500 because Defendant's practices were not misleading, illegal, unfair, or fraudulent.

10 TWENTY-SIXTH AFFIRMATIVE DEFENSE

11 (Reservation)

12 27. Defendant hereby gives notice that it intends to rely upon any additional
13 affirmative defenses that become available or apparent during the pendency of this action and
14 thus reserve the right to amend the Answer to assert such additional defenses.

15 WHEREFORE, having fully answered the Complaint, Defendant prays for judgment on
16 the Complaint as follows:

- 17 1. That certification of the putative class be denied;
18 2. That Plaintiff's Complaint be dismissed and that Plaintiff take nothing from
19 Defendant by virtue of the Complaint;
20 3. That judgment be entered in favor of Defendant and against Plaintiff;
21 4. That Defendant be awarded its costs of suit; and
22 5. For such other and further relief as the Court may deem just and proper.

23 Dated: February 23, 2012

VENABLE LLP

24
25 By: 

26 Daniel S. Silverman
27 Attorney for Defendant
28 CALIFORNIA DELTA MECHANICAL, INC.

