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12 *Counsel for Defendants Computer Sciences Corporation, DXC Technology Company, and ServiceMesh, Inc.*

13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15
 16 BRADLEY TWYNHAM, an individual,
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 18 Plaintiff,
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 20 v.
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 22 COMPUTER SCIENCES
 23 CORPORATION, a Nevada corporation,
 24 DXC TECHNOLOGY COMPANY, a
 25 Nevada corporation, and SERVICEMESH,
 26 INC., a Delaware corporation,
 27
 28 Defendants.

Case No. 2:17-cv-08107-SVW-JEM

**DEFENDANTS' ANSWER TO
 THE SECOND AMENDED
 COMPLAINT**

Action Filed: November 6, 2017

1 Defendants Computer Sciences Corporation (“CSC”), DXC Technology
2 Company (“CSC”), and ServiceMesh, Inc.¹ (“ServiceMesh,” and collectively with
3 CSC and DXC, “Defendants”), by and through their undersigned counsel, hereby
4 submit their Answer to the allegations in the Second Amended Complaint (“SAC”)
5 filed by Plaintiff Bradley Twynham on August 14, 2018.

6 Except as expressly admitted herein, Defendants deny the allegations in the
7 SAC.

8 The SAC contains section titles and other organizational headings to which
9 no response is required. To the extent any such section titles or other
10 organizational headings in the SAC are construed to contain substantive allegations
11 to which a response is required, they are denied.

12 To the extent Defendants use certain terms from the SAC in this Answer,
13 such use is not an acknowledgment or admission of any characterization that
14 Twynham seeks to associate with any such terms.

15 **THE PARTIES**

16 1. Defendants admit the allegations in Paragraph 1.
17 2. Defendants admit the allegations in Paragraph 2.
18 3. Defendants admit that DXC is a Nevada corporation with its principal
19 place of business in Tysons Corner, Virginia. Defendants deny all other
20 allegations in Paragraph 3.

21 4. Defendants admit that ServiceMesh was a Delaware corporation
22 whose previous principal place of business was in Santa Monica, California.
23 Defendants admit that ServiceMesh was acquired by CSC on November 15, 2013
24 (the “Acquisition”) pursuant to an agreement that was entered into on October 29,
25 2013. Defendants admit that all of ServiceMesh’s equity was acquired by CSC.
26 Defendants admit that after the Acquisition, CSC conducted business from
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28 ¹ ServiceMesh, Inc. is now known as CSC Agility Platform, Inc.

1 ServiceMesh’s former location in Santa Monica, and certain ServiceMesh
2 employees became CSC employees. Defendants admit that Twynham was
3 involved in procuring contracts from the Commonwealth Bank of Australia
4 (“CBA”) after the Acquisition. Defendants deny all other allegations in Paragraph
5 4.

6 **JURISDICTION AND VENUE**

7 5. Paragraph 5 contains characterizations of claims and conclusions of
8 law to which no response is required.

9 6. Paragraph 6 contains conclusions of law to which no response is
10 required. To the extent a response is required, Defendants admit that Twynham is
11 an alien subject of a foreign state, Defendants are citizens of different states, and
12 the amount in controversy exceeds \$75,000.

13 7. Paragraph 7 contains conclusions of law to which no response is
14 required. To the extent a response is required, Defendants deny that a substantial
15 part of the events or omissions on which Twynham’s claims are based occurred in
16 Los Angeles County, California. Defendants also deny that Twynham was ever
17 employed by ServiceMesh or a ServiceMesh affiliate in Los Angeles County,
18 California, before on or about March 15, 2014. Defendants admit that Twynham
19 was employed by CSC or a CSC affiliate in Los Angeles County from on or about
20 March 15, 2014 until on or about August 7, 2015.

21 8. Paragraph 8 contains conclusions of law to which no response is
22 required. To the extent a response is required, Defendants deny that a substantial
23 part of the events or omissions on which Twynham’s claims are based occurred in
24 Los Angeles County, California. Defendants admit that Twynham was employed
25 by CSC or a CSC affiliate in Los Angeles County from on or about March 15,
26 2014 until on or about August 7, 2015.

BACKGROUND

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A. Mr. Twynham’s Employment with ServiceMesh and Computer Sciences Corporation (“CSC”).

9. Defendants admit that Twynham was a consultant for ServiceMesh or a ServiceMesh affiliate beginning on or about December 21, 2009. Defendants admit that as of November 13, 2013, Twynham was employed by ServiceMesh or a ServiceMesh affiliate. Defendants deny all other allegations in Paragraph 9.

10. Defendants deny the allegations in Paragraph 10.

11. Defendants admit that Eric Pulier principally worked in the Santa Monica office of ServiceMesh before the Acquisition, which became the Santa Monica office of CSC after the Acquisition. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 11, and therefore deny them.

12. Defendants deny the allegations in Paragraph 12.

13. Defendants admit that Twynham had close relationships with Keith Hunter and Jon Waldron, senior CBA executives. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 14, and therefore deny them.

14. To the extent Paragraph 14 purports to characterize the contents of a document—namely, the Equity Purchase Agreement (“EPA”) between CSC, ServiceMesh, ServiceMesh’s equityholders, and Shareholders Representative Services LLC (“SRS”), as the equityholders’ representative—Defendants respectfully refer the Court to such document for its contents and deny any allegations that are inconsistent with the contents or legal effect of that document. Defendants admit that Twynham became an employee of CSC Australia Pty Ltd. (“CSC Australia”)² on November 15, 2013 and had the position of “Senior

² CSC Australia is now known as DXC Technology Australia Pty Limited.

1 Principal: Complex Deals.” Defendants deny that Twynham became an employee
2 or “Senior Principal: Complex Deals” of CSC on November 13, 2013. Defendants
3 deny that at that time CSC requested that Twynham work permanently in CSC’s
4 Santa Monica office as soon as he could make arrangements to do so, and that
5 Twynham agreed. Defendants deny that Twynham subsequently temporarily
6 returned to Australia to make arrangements to move to Santa Monica with his
7 family. Defendants deny that Twynham was in constant contact with Jeff Drake
8 and Eric Pulier in February 2014 for the purposes of CBA’s performance pursuant
9 to what the SAC defines as the CBA Contract. Defendants lack knowledge or
10 information sufficient to form a belief about the truth of the remaining allegations
11 contained in Paragraph 14, and therefore deny them.

12 **B. Mr. Twynham’s RSU Agreements with CSC**

13 15. Defendants admit that on or about November 15, 2013, Twynham and
14 CSC entered into the 2011 Omnibus Incentive Plan International Service Based
15 Restricted Stock Unit Award Agreement (“RSU Agreement”). Paragraph 15
16 purports to characterize the contents of the RSU Agreement. Defendants
17 respectfully refer the Court to the RSU Agreement for its contents and deny any
18 allegations that are inconsistent with the contents or legal effect of that document.

19 16. Defendants lack knowledge or information sufficient to form a belief
20 about the truth of the allegations contained in Paragraph 16, and therefore deny
21 them.

22 17. Defendants admit the allegations in Paragraph 17.

23 **C. The Equity Purchase Agreement Between CSC and ServiceMesh.**

24 18. Defendants admit that on or about October 29, 2013, CSC,
25 ServiceMesh, the equityholders of ServiceMesh, and SRS, as the equityholders’
26 representative, entered into the EPA. Paragraph 18 purports to characterize the
27 contents of the EPA. Defendants respectfully refer the Court to the EPA for its
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1 contents and deny any allegations that are inconsistent with the contents or legal
2 effect of that document. Defendants deny that CSC assumed all of ServiceMesh’s
3 liabilities, that ServiceMesh had any obligations to Twynham, and that CSC
4 assumed any such obligations.

5 19. Defendants lack knowledge or information sufficient to form a belief
6 about the truth of the allegations contained in Paragraph 18, and therefore deny
7 them.

8 20. Paragraph 20 purports to characterize the contents of the EPA.
9 Defendants respectfully refer the Court to the EPA for its contents and deny any
10 allegations that are inconsistent with the contents or legal effect of that document.
11 Defendants admit that after the earnout period, in February 2014, CSC calculated
12 \$29.7 million in Measurement Revenue, which resulted in \$9.7 million of
13 Measurement Revenue in excess of the \$20 million floor, and an approximately
14 \$98 million Earnout Payment Amount.

15 21. Defendants admit the allegations in Paragraph 21.

16 **D. The ServiceMesh-McAfee Contract with Commonwealth Bank of**
17 **America.**

18 22. Defendants admit that Twynham was involved in securing an
19 agreement pursuant to which CBA would purchase security technology products
20 manufactured by McAfee, Inc. from ServiceMesh (the “CBA Contract”), but
21 Defendants deny that there were any negotiations between CBA and ServiceMesh
22 or that any such negotiations occurred before CSC and ServiceMesh entered into
23 the EPA on October 29, 2013. Defendants lack knowledge or information
24 sufficient to form a belief about the truth of the remaining allegations contained in
25 Paragraph 22, and therefore deny them.

26 23. Defendants lack knowledge or information sufficient to form a belief
27 about the truth of the allegation in Paragraph 23 that Twynham met with CBA
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1 executives in California on at least four occasions in 2014 under direction from
2 Eric Pulier and therefore deny that allegation. Defendants deny all other
3 allegations in Paragraph 23.

4 24. Defendants deny the allegations in Paragraph 24.

5 25. Defendants admit that on March 19, 2014, approximately \$5.6 million
6 was transferred from the exchange agent account to a bank account associated with
7 TechAdvisors LLC. Defendants admit that Eric Pulier was the founder and part
8 owner of ServiceMesh before the Acquisition, and was the sole signatory on the
9 TechAdvisors bank account. Defendants deny that Twynham was unaware of the
10 transfer to TechAdvisors.

11 26. Defendants admit that from April to September 2014, approximately
12 \$4.85 million was transferred from the TechAdvisors bank account to accounts in
13 the name of Ace, Inc. and Andrew Goldstein. Defendants admit that Andrew
14 Goldstein was a longtime friend of Pulier and was associated with Ace.

15 27. Defendants admit that Jon Waldron, Keith Hunter, and Hans
16 Gyllstrom received approximately \$2,633,647.41 in transfers from the Ace bank
17 account. Defendants admit that Waldron and Hunter were IT executives at CBA,
18 and that Gyllstrom was an IT consultant to CBA. Defendants deny that Twynham
19 was unaware of the transfers from the Ace bank account to Waldron, Hunter, and
20 Gyllstrom. Defendants deny all other allegations in Paragraph 26.

21 28. Defendants admit that CBA discovered the transfers from Ace to
22 Hunter and Waldron in October 2014, and that Waldron and Hunter were both
23 terminated. Defendants lack knowledge or information sufficient to form a belief
24 about the truth of the remaining allegations contained in Paragraph 28, and
25 therefore deny them.

26 29. Defendants deny the allegations in Paragraph 29.

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1 **E. Twynham is Falsely Accused of Being Involved with Pulier’s**
2 **Wrongdoing Based on His Involvement with the CBA Contract, Both**
3 **Before and After it was Executed.**³

4 30. Defendants deny the allegations in Paragraph 30.

5 31. Defendants admit that Twynham moved to California in March 2014.
6 Defendants admit that during this time period, Twynham sent and received emails
7 and texts from Pulier and Waldron. Defendants deny all other allegations in
8 Paragraph 31.

9 32. Defendants admit that multiple criminal investigations and civil
10 lawsuits resulted from the fraudulent scheme described in part in the SAC.
11 Defendants deny all other allegations in Paragraph 32.

12 **F. United States of America v. Twynham Civil Forfeiture Lawsuit.**

13 33. Defendants admit the allegations in Paragraph 33.

14 34. Paragraph 34 purports to characterize the contents of documents—
15 namely, pleadings filed in the Forfeiture Action. Defendants respectfully refer the
16 Court to such documents for their contents and deny any allegations that are
17 inconsistent with the contents or legal effect of those documents.

18 35. Defendants admit that according to the docket entries from the
19 Forfeiture Action, the United States Government seized cash in one of Twynham’s
20 account. Defendants deny that Twynham had no knowledge or involvement with
21 the Pulier and other payments at issue.

22 36. Defendants admit that Twynham’s attorneys filed a motion to dismiss
23 and served discovery responses in the Forfeiture Action, and that the Forfeiture
24 Action was stayed. Paragraph 36 purports to characterize the contents of a
25 document—namely, the Consent Judgment filed in the Forfeiture Action.
26 Defendants respectfully refer the Court to that document for its contents and deny
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28 ³ Defendants deny the allegations stated in this heading.

1 any allegations that are inconsistent with the contents or legal effect of that
2 document. Defendants deny that Twynham settled the Forfeiture Action because
3 he was unable to sustain the cost and risk of litigation.

4 **FIRST CAUSE OF ACTION**

5 **BREACH OF CONTRACT**

6 **(Against Defendants CSC and DXC)**

7 37. Defendants repeat and incorporate each and every response to the
8 foregoing paragraphs as though set forth fully herein.

9 38. Paragraph 38 purports to characterize the content of the RSU
10 Agreement. Defendants respectfully refer the Court to the RSU Agreement for its
11 contents and deny any allegations that are inconsistent with the contents or legal
12 effect of that document.

13 39. Paragraph 39 purports to characterize the content of the RSU
14 Agreement. Defendants respectfully refer the Court to the RSU Agreement for its
15 content and deny any allegations that are inconsistent with the contents or legal
16 effect of that document.

17 40. Paragraph 40 purports to characterize the content of the RSU
18 Agreement. Defendants respectfully refer the Court to the RSU Agreement for its
19 content and deny any allegations that are inconsistent with the contents or legal
20 effect of that document.

21 41. Defendants deny the allegations in Paragraph 41.

22 42. Defendants admit that CSC terminated Twynham's employment on or
23 about August 7, 2015. Defendants deny all other allegations in Paragraph 42.

24 43. Defendants deny the allegations in Paragraph 43.

25 44. Defendants deny the allegations in Paragraph 44.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 2802

(Against All Defendants)

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4 45. Defendants repeat and incorporate each and every response to the
5 foregoing paragraphs as though set forth fully herein.

6 46. In part because some of the dates in Paragraph 46 are incorrect,
7 Defendants deny the allegations in Paragraph 46.

8 47. Paragraph 47 purports to characterize the contents of a statute.
9 Defendants respectfully refer the Court to that statute for its contents and deny any
10 allegations that are inconsistent with the contents or legal effect of that statute.

11 48. Paragraph 48 purports to characterize the contents of case law.
12 Defendants respectfully refer the Court to that case law for its contents and deny
13 any allegations that are inconsistent with the contents or legal effect of that case
14 law.

15 49. Defendants deny that it is illegal for any employer to attempt to obtain
16 a waiver of California Labor Code Section 2802. Paragraph 49 purports to
17 characterize case law. Defendants respectfully refer the Court to that case law for
18 its contents and deny any allegations that are inconsistent with the contents or legal
19 effect of that case law.

20 50. Defendants lack knowledge or information sufficient to form a belief
21 about the truth of Twynham's allegations regarding the amount of his legal fees
22 and costs and therefore deny those allegations. Defendants deny all other
23 allegations in Paragraph 50.

24 51. Defendants admit that Twynham moved from Australia to California
25 in March 2014. Defendants deny all other allegations in Paragraph 51.

26 52. Paragraph 52 purports to characterize the content of the Consent
27 Judgment from the Forfeiture Action. Defendants respectfully refer the Court to
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1 that document for its contents and deny any allegations that are inconsistent with
2 the contents or legal effect of document. Defendants deny that Twynham's acts
3 were not unlawful and that he did not believe them to be unlawful.

4 53. Defendants deny the allegations in Paragraph 53.

5 54. Defendants deny the allegations in Paragraph 54.

6 55. Paragraph 55 contains conclusions of law to which no response is
7 required. To the extent a response is required, Defendants deny the allegations in
8 Paragraph 55.

9 56. Defendants deny the allegations in Paragraph 56.

10 **THIRD CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE**

13 **§ 17200, ET SEQ.**

14 **(Against All Defendants)**

15 57. Defendants repeat and incorporate each and every response to the
16 foregoing paragraphs as though set forth fully herein.

17 58. Defendants deny the allegations in Paragraph 58.

18 59. Defendants deny the allegations in Paragraph 59.

19 60. Defendants deny the allegations in Paragraph 60.

20 61. Defendants deny the allegations in Paragraph 61.

21 62. Defendants deny the allegations in Paragraph 62.

22 **PRAYER FOR RELIEF**

23 63. Defendants deny the allegations contained in the Prayer for Relief and
24 further deny that Twynham is entitled to the relief alleged in the Complaint.

25 **DEFENSES**

26 Defendants assert the following defenses. By doing so, Defendants do not
27 assume the burden of proof for any issue as to which the law places the burden of
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1 proof on Twynham. Defendants reserve the right to assert any other defenses or
2 claims if and when they become available.

3 FIRST DEFENSE

4 Twynham's claims are barred in whole or in part by the applicable statutes
5 of limitations.

6 SECOND DEFENSE

7 Twynham's claims against DXC are barred because no contract exists
8 between DXC and Twynham, and Twynham was never an employee of DXC.

9 THIRD DEFENSE

10 Twynham's claim for breach of contract is barred because the conditions
11 precedent that were required for Twynham to receive the unvested restricted stock
12 units were not performed or did not occur.

13 FOURTH DEFENSE

14 Twynham asserted his claim for breach of contract in the wrong jurisdiction.

15 FIFTH DEFENSE

16 Twynham's claim for breach of contract is barred because he was terminated
17 for Cause and therefore was not entitled to any portion of the unvested restricted
18 stock units.

19 SIXTH DEFENSE

20 Twynham's claims for violation of California Labor Code Section 2802 and
21 California Business & Professions Code Section 17200 are barred because
22 Twynham is not entitled to the benefits of those laws. Twynham was not a
23 California employee when his underlying conduct occurred.

24 SEVENTH DEFENSE

25 Twynham's claims for violation of California Labor Code Section 2802 and
26 California Business & Professions Code Section 17200 are barred because
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1 Twynham was not an employee of any of the Defendants when his underlying
2 conduct occurred.

3 EIGHTH DEFENSE

4 Twynham’s claims for violation of California Labor Code Section 2802 and
5 California Business & Professions Code Section 17200 are barred in whole or in
6 part because the legal expenses he incurred were not based on any employment in
7 California, but rather were based on his status as a former ServiceMesh
8 equityholder who received funds traceable to the fraudulent scheme described in
9 part in the SAC.

10 NINTH DEFENSE

11 Twynham’s claims for violation of California Labor Code Section 2802 and
12 California Business & Professions Code Section 17200 are barred because
13 Twynham did not incur fees or expenses in direct consequence of the discharge of
14 his duties to any of the Defendants or his obedience to any of the Defendants’
15 directions, but rather in pursuit of his own ends for his own personal purposes.

16 TENTH DEFENSE

17 Twynham’s claims for violation of California Labor Code Section 2802 and
18 California Business & Professions Code Section 17200 are barred because
19 Twynham knew his actions were unlawful.

20 ELEVENTH DEFENSE

21 Twynham’s claims for violation of California Labor Code Section 2802 and
22 California Business & Professions Code Section 17200 are barred in part because
23 Twynham is not entitled to indemnification for his fees and expenses incurred in
24 connection with the lawsuit styled *Computer Sciences Corporation v. Eric Pulier,*
25 *et al.*, C.A. No. 11011-CB, in the Court of Chancery of the State of Delaware. An
26 employee sued by his employer is not entitled to reimbursement for the costs of
27 defending against the lawsuit because the reimbursement obligation in Section
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1 2802 is phrased in terms of indemnity, which implies an obligation to pay a
2 judgment entered or expenses incurred in a lawsuit by a third party.

3 TWELFTH DEFENSE

4 Twynham’s claims for violation of California Labor Code Section 2802 and
5 California Business & Professions Code Section 17200 are barred in part because
6 Twynham is not entitled to indemnification for his fees and expenses incurred in
7 connection with any criminal investigation.

8 THIRTEENTH DEFENSE

9 Twynham’s claims for violation of California Labor Code Section 2802 and
10 California Business & Professions Code Section 17200 are barred in part because
11 Twynham did not tender the defense of the Forfeiture Action to Defendants or
12 tender a reasonable defense.

13 FOURTEENTH DEFENSE

14 Twynham’s claims are barred in whole or in part by the doctrine of unclean
15 hands.

16 FIFTEENTH DEFENSE

17 Twynham’s claims are barred in whole or in part by the doctrines of accord
18 and satisfaction, estoppel, payment, release, and waiver. In his Letter of
19 Transmittal, Twynham “fully, forever, irrevocably and unconditionally waive[d],
20 release[d] and discharge[d]” ServiceMesh and CSC and each of their successors
21 from “any and all actions, causes of action, suits, debts, covenants, contracts,
22 controversies, agreements, promises, damages, judgments, orders, liabilities,
23 obligations, executions, claims and demands whatsoever . . . based upon any theory
24 of federal, state, or local statutory, regulatory or common law, or in equity, and any
25 and all claims and demands of whatever kind or character . . . that may be or could
26 have been asserted . . . with respect to or arising during or in connection with . . .
27 the period commencing at the beginning of time and continuing through
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1 [November 15, 2013] relating to [ServiceMesh] and its Affiliates and arising from
2 or relating to [Twynham’s] ownership of securities of [ServiceMesh] . . . or [his]
3 employment by [ServiceMesh].”

4 **DEFENDANTS’ PRAYER FOR RELIEF**

5 WHEREFORE, Defendants pray that:

- 6 1. The SAC be dismissed in its entirety;
- 7 2. Judgement be awarded in favor of Defendants and against Twynham
8 on each claim set forth in the SAC;
- 9 3. Defendants be awarded their reasonable attorney’s fees and costs
10 incurred with their defense of this action; and
- 11 4. Defendants be awarded any other such relief that the Court may deem
12 just and proper.

13 **DEFENDANTS’ DEMAND FOR JURY TRIAL**

14 Defendants respectfully request a jury trial on all issues for which they have
15 a right to a jury trial under the Federal Rules of Civil Procedure.
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1 Dated: August 28, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2018, I electronically filed the above document with the U.S. District Court for the Central District of California by using the CM/ECF system. All participants in the case are registered CM/ECF users who will be served by the CM/ECF system.

/s/ Bryant C. Boren
Bryant C. Boren