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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION
 13

14 ROBERT A. BROWN, an individual,
 15 Plaintiff,
 16 v.
 17 GOOGLE, INC.; PAYROLLING.COM;
 18 MARISSA MAYER; and DOES 1 through
 19 20,
 20 Defendants.

Case No. C05 01779 PVT

**DEFENDANT MARISSA MAYER'S
 ANSWER TO PLAINTIFF ROBERT
 BROWN'S COMPLAINT**

21
 22 Defendant Marissa Mayer ("Defendant") hereby answers the complaint filed by Plaintiff Robert
 23 A. Brown ("Complaint") as follows:

24 **I. INTRODUCTION**

25 1. Defendant admits that Plaintiff purports to have brought this Complaint as alleged.
 26 Except as expressly so admitted, Defendant denies each and every allegation in Paragraph 1 of the
 27 Complaint.
 28

II. THE PARTIES

2. Defendant admits that Plaintiff is a natural person. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of the Complaint and, on that basis, denies each and every allegation contained therein.

3. Paragraph 3 states a legal conclusion only, to which no response is required. To the extent that Paragraph 3 requires a response, Defendant denies each and every allegation contained therein.

4. Paragraph 4 states a legal conclusion only, to which no response is required. To the extent that Paragraph 4 requires a response, Defendant denies each and every allegation contained therein.

5. Defendant admits that Google maintains an office at 1600 Amphitheatre Parkway, in Mountain View, California. Except as expressly so admitted, Defendant denies each and every allegation in Paragraph 5.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and, on that basis, denies each and every allegation contained therein.

7. Defendant admits that she is a natural person, that she resides in Palo Alto, California, and that Google employs her as a Product Manager. Except as expressly so admitted, Defendant denies each and every allegation in Paragraph 7.

8. Paragraph 8 states a legal conclusion only, to which no response is required. To the extent that Paragraph 8 requires a response, Defendant denies each and every allegation contained therein.

9. Defendant denies each and every allegation contained in Paragraph 9 of the Complaint.

10. Defendant admits that Google employed her during Plaintiff's assignment at Google. Except as expressly so admitted, Defendant denies each and every allegation in Paragraph 10.

11. Defendant denies each and every allegation contained in Paragraph 11 of the Complaint.

12. Defendant denies each and every allegation contained in Paragraph 12 of the Complaint.

1 40. Defendant denies each and every allegation contained in Paragraph 40 of the
2 Complaint.

3 41. Defendant is without knowledge or information sufficient to form a belief as to the truth
4 of the allegations contained in Paragraph 41 of the Complaint and, on that basis, denies each and every
5 allegation contained therein.

6 42. Defendant denies each and every allegation contained in Paragraph 42 of the
7 Complaint.

8 43. Defendant denies each and every allegation contained in Paragraph 43 of the
9 Complaint.

10 **VII. FOURTH CAUSE OF ACTION**

11 44. In answering Paragraph 44 of the Complaint, Defendant realleges and incorporates
12 herein by reference as though set forth in full Paragraphs 1-24 of this Answer.

13 45. Paragraph 45 states a legal conclusion only, to which no response is required. To the
14 extent that Paragraph 45 requires a response, Defendant denies each and every allegation contained
15 therein.

16 46. Defendant admits that she informed Plaintiff that his assignment at Google would end
17 on May 14, 2004. Except as expressly so admitted, Defendant denies each and every allegation
18 contained in Paragraph 46 of the Complaint.

19 47. Defendant denies each and every allegation contained in Paragraph 47 of the
20 Complaint.

21 48. Defendant denies each and every allegation contained in Paragraph 48 of the
22 Complaint.

23 **VIII. FIFTH CAUSE OF ACTION**

24 49. In answering Paragraph 49 of the Complaint, Defendant realleges and incorporates
25 herein by reference as though set forth in full Paragraphs 1-24 of this Answer.

26 50. Defendant is without knowledge or information sufficient to form a belief as to the truth
27 of the allegations contained in Paragraph 50 of the Complaint and, on that basis, denies each and every
28 allegation contained therein.

1 51. Defendant denies each and every allegation contained in Paragraph 51 of the
2 Complaint.

3 52. Defendant denies each and every allegation contained in Paragraph 52 of the
4 Complaint.

5 53. Defendant denies each and every allegation contained in Paragraph 53 of the
6 Complaint.

7 54. Defendant denies each and every allegation contained in Paragraph 54 of the
8 Complaint.

9 55. Defendant denies each and every allegation contained in Paragraph 55 of the
10 Complaint.

11 56. Defendant denies each and every allegation contained in Paragraph 56 of the
12 Complaint.

13 57. Defendant denies each and every allegation contained in Paragraph 57 of the
14 Complaint.

15 **IX. SIXTH CAUSE OF ACTION**

16 58. In answering Paragraph 58 of the Complaint, Defendant realleges and incorporates
17 herein by reference as though set forth in full Paragraphs 1-24 of this Answer.

18 59. Defendant is without knowledge or information sufficient to form a belief as to the truth
19 of the allegations contained in Paragraph 59 of the Complaint and, on that basis, denies each and every
20 allegation contained therein.

21 60. Defendant admits that Plaintiff expressed concern that his temporary assignment at
22 Google would end, and that he asked her if Google would hire him as a Google employee. Except as
23 expressly so admitted, Defendant denies each and every allegation contained in Paragraph 60 of the
24 Complaint.

25 61. Defendant admits that Candy Hamill was temporarily assigned to work at Google, and
26 that her assignment at Google ended in the spring of 2003. Except as expressly so admitted, Defendant
27 denies each and every allegation contained in Paragraph 61 of the Complaint.

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1 62. Defendant denies each and every allegation contained in Paragraph 62 of the
2 Complaint.

3 63. Defendant denies each and every allegation contained in Paragraph 63 of the
4 Complaint.

5 64. Defendant denies each and every allegation contained in Paragraph 64 of the
6 Complaint.

7 65. Defendant denies each and every allegation contained in Paragraph 65 of the
8 Complaint.

9 66. Defendant denies each and every allegation contained in Paragraph 66 of the
10 Complaint.

11 67. Defendant denies each and every allegation contained in Paragraph 67 of the
12 Complaint.

13 68. Defendant denies each and every allegation contained in Paragraph 68 of the
14 Complaint.

15 69. Defendant denies each and every allegation contained in Paragraph 69 of the
16 Complaint.

17 70. Defendant admits that Plaintiff asked her if she needed any additional information from
18 him to complete the process of applying to become a Google employee. Except as expressly so
19 admitted, Defendant denies each and every allegation contained in Paragraph 70 of the Complaint.

20 71. Defendant denies each and every allegation contained in Paragraph 71 of the
21 Complaint.

22 72. Defendant denies each and every allegation contained in Paragraph 72 of the
23 Complaint.

24 73. Defendant denies each and every allegation contained in Paragraph 73 of the
25 Complaint.

26 74. Defendant admits that she met with Plaintiff on May 10, 2004 to notify him that his
27 assignment at Google was ending effective May 14, 2004. Except as expressly so admitted, Defendant
28 denies each and every allegation contained in Paragraph 74 of the Complaint.

1 75. Defendant denies each and every allegation contained in Paragraph 75 of the
2 Complaint.

3 76. Defendant denies each and every allegation contained in Paragraph 76 of the
4 Complaint.

5 77. Defendant denies each and every allegation contained in Paragraph 77 of the
6 Complaint.

7 78. Defendant denies each and every allegation contained in Paragraph 78 of the
8 Complaint.

9 79. Defendant denies each and every allegation contained in Paragraph 79 of the
10 Complaint.

11 80. Defendant denies each and every allegation contained in Paragraph 80 of the
12 Complaint.

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14 81. Defendant denies each and every allegation contained in Paragraph 81 of the
15 Complaint.

16 82. Defendant denies each and every allegation contained in Paragraph 82 of the
17 Complaint.

18 83. Defendant denies each and every allegation contained in Paragraph 83 of the
19 Complaint.

20 84. Defendant denies each and every allegation contained in Paragraph 84 of the
21 Complaint.

22 **X. SEVENTH CAUSE OF ACTION**

23 85. In answering Paragraph 85 of the Complaint, Defendant realleges and incorporates
24 herein by reference as though set forth in full Paragraphs 1-24, 59-64 and 69-74 of this Answer.

25 86. Defendant denies each and every allegation contained in Paragraph 86 of the
26 Complaint.

27 87. Defendant denies each and every allegation contained in Paragraph 87 of the
28 Complaint.

1 88. Defendant denies each and every allegation contained in Paragraph 88 of the
2 Complaint.

3 89. Defendant denies each and every allegation contained in Paragraph 89 of the
4 Complaint.

5 90. Defendant denies each and every allegation contained in Paragraph 90 of the
6 Complaint.

7 **XI. EIGHTH CAUSE OF ACTION**

8 91. Defendant is filing a motion to dismiss Plaintiff's Eighth Cause of Action because it
9 fails to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6)
10 and because Plaintiff failed to exhaust the applicable administrative remedies. Accordingly, Defendant
11 is not required to respond to Paragraphs 91-106 of the Complaint at this time.

12 **XII. NINTH CAUSE OF ACTION**

13 92. In answering Paragraph 107 of the Complaint, Defendant realleges and incorporates
14 herein by reference as though set forth in full Paragraphs 1-24 and 61-81 of this Answer.

15 93. Defendant denies each and every allegation contained in Paragraph 108 of the
16 Complaint.

17 94. Defendant denies each and every allegation contained in Paragraph 109 of the
18 Complaint.

19 95. Defendant denies each and every allegation contained in Paragraph 110 of the
20 Complaint.

21 96. Defendant admits that Plaintiff asked Defendant if Google would hire him as a Google
22 employee, and that she agreed to initiate the application process. Except as expressly so admitted,
23 Defendant denies each and every allegation contained in Paragraph 111 of the Complaint.

24 97. Defendant denies each and every allegation contained in Paragraph 112 of the
25 Complaint.

26 98. Defendant denies each and every allegation contained in Paragraph 113 of the
27 Complaint.

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1 99. Paragraph 114 states a legal conclusion only, to which no response is required. To the
2 extent that Paragraph 114 requires a response, Defendant denies each and every allegation contained
3 therein.

4 100. Defendant denies each and every allegation contained in Paragraph 115 of the
5 Complaint.

6 101. Defendant denies each and every allegation contained in Paragraph 116 of the
7 Complaint.

8 102. Defendant denies each and every allegation contained in Paragraph 117 of the
9 Complaint.

10 **XIII. TENTH CAUSE OF ACTION**

11 103. Defendant is filing a motion to dismiss Plaintiff's Tenth Causes of Action because it
12 fails to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6)
13 because it is wholly duplicative of Plaintiff's Second, Third and Fourth Causes of Action. Accordingly,
14 Defendant is not required to respond to Paragraphs 118-120 of the Complaint at this time.

15 **XIV. ELEVENTH CAUSE OF ACTION**

16 104. In answering Paragraph 121 of the Complaint, Defendant realleges and incorporates
17 herein by reference as though set forth in full in each of the foregoing Paragraphs of this Answer.

18 105. Paragraph 122 states a legal conclusion only, to which no response is required. To the
19 extent that Paragraph 122 requires a response, Defendant denies each and every allegation contained
20 therein.

21 106. Defendant denies each and every allegation contained in Paragraph 123 of the
22 Complaint.

23 107. Defendant denies each and every allegation contained in Paragraph 124 of the
24 Complaint.

25 108. Defendant denies each and every allegation contained in Paragraph 125 of the
26 Complaint.

27 109. Defendant denies each and every allegation contained in Paragraph 126 of the
28 Complaint.

1 110. Defendant denies each and every allegation contained in Paragraph 127 of the
2 Complaint.

3 111. Defendant denies each and every allegation contained in Paragraph 128 of the
4 Complaint.

5 112. Defendant denies that Plaintiff is entitled to any of the relief sought in the Prayer for
6 Relief on page 23 of the Complaint.

7 Further answering the Complaint, Defendant pleads the following separate and additional
8 defenses:

9 **DEFENSES**

10 **FIRST DEFENSE**

11 1. The Complaint, and each cause of action alleged therein, fails to state a claim upon
12 which relief may be granted.

13 **SECOND DEFENSE**

14 2. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitation,
15 including, but not limited to, California Code of Civil Procedure §§ 335.1, 338, 339 and 340 and
16 California Business and Professions Code § 17208.

17 **THIRD DEFENSE**

18 3. Plaintiff's claims are barred in whole or in part as preempted or exclusively governed
19 by the Employee Retirement Income Security Act ("ERISA") of 1974, 29 U.S.C. § 1001, *et seq.*

20 **FOURTH DEFENSE**

21 4. Plaintiff's claims are barred in whole or in part to the extent Plaintiff failed to exhaust
22 the applicable administrative remedies.

23 **FIFTH DEFENSE**

24 5. Plaintiff's claims are barred in whole or in part to the extent that Defendant is not a
25 proper party herein.
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1 **SIXTH DEFENSE**

2 6. Plaintiff's claims are barred in whole or in part to the extent that Plaintiff has failed to
3 discharge its contractual and legal obligations to submit the present dispute to non-judicial arbitration.

4 **SEVENTH DEFENSE**

5 7. Plaintiff's claims are barred in whole or in part because Defendant was not Plaintiff's
6 employer.

7 **EIGHTH DEFENSE**

8 8. Plaintiff's claims are barred in whole or in part to the extent that Plaintiff lacks standing
9 to assert these matters against Defendant.

10 **NINTH DEFENSE**

11 9. This action does not meet the requirements for class action treatment under Code of
12 Civil Procedure section 382, and Plaintiff cannot prosecute it on behalf of the putative class he purports
13 to represent or on behalf of the general public.

14 **TENTH DEFENSE**

15 10. Plaintiff's claims are barred in whole or in part because there was no offer and
16 acceptance with respect to the purported contract alleged in the Complaint.

17 **ELEVENTH DEFENSE**

18 11. Defendant is not liable for any damages allegedly sustained by Plaintiff as a result of the
19 agreement alleged in the Complaint and each purported cause of action therein because any alleged
20 oral representations were too uncertain and indefinite for Plaintiff to rely upon.

21 **TWELFTH DEFENSE**

22 12. Plaintiff is precluded from asserting his fraud claim to the extent it is entirely
23 duplicative of his breach of contract claim.

24 **THIRTEENTH DEFENSE**

25 13. Plaintiff is barred from recovering on his purported fraud claims because he has failed
26 to plead the alleged misrepresentations with the requisite particularity.

FOURTEENTH DEFENSE

14. Plaintiff's claims are barred in whole or in part because Defendant acted in good faith at all times.

FIFTEENTH DEFENSE

15. Plaintiff's claims are barred in whole or in part to the extent that Plaintiff consented to the alleged conduct of Defendants.

SIXTEENTH DEFENSE

16. Plaintiff's claims are barred in whole or in part by the doctrines of waiver, release, payment, accord and satisfaction, estoppel, unclean hands and/or laches.

SEVENTEENTH DEFENSE

17. Plaintiff's claims are barred in whole or in part to the extent that Plaintiff has failed to mitigate the injury or damages alleged in the Complaint.

Defendant reserves the right to amend her Answer to allege any additional defenses as may later become available or apparent. Further, Defendant reserves the right to withdraw any defenses that she subsequently determines to be inapplicable. Nothing stated in the foregoing defenses constitutes a concession that Defendant bears any burden of proof on any issue on which she would not otherwise bear such burden.

WHEREFORE, Defendant prays for judgment as follows:

1. That all relief requested in the Complaint be denied;
2. That Plaintiff take nothing by virtue of this action;
3. That the Complaint be dismissed;
4. For costs of suit and attorney's fees incurred herein; and

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5. For such other and further relief as the Court may deem proper.

Dated: May 6, 2005

AKIN GUMP STRAUSS HAUER & FELD LLP

By  _____
Heather Burror

Attorneys for Defendant
MARISSA MAYER

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San Francisco, CA 94104. On May 6, 2005, I served the foregoing document(s) described as: DEFENDANT MARISSA MAYER'S ANSWER TO PLAINTIFF ROBERT BROWN'S COMPLAINT on the interested party(ies) below, using the following means:

Gregory M. Sheffer
The Sheffer Law Firm
160 Sansome Street, 2nd Floor
San Francisco, CA 94104

Ronald H. Blumberg
Aniko M. Felsen
Blumberg Lorber Nelson LLP
137 N. Acacia Avenue
Solana Beach, CA 92075

BY PERSONAL SERVICE I delivered such envelope(s) by hand to the offices of the addressee(s).

BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at San Francisco, California.

BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed to the respective address(es) of the party(ies) stated above and providing them to a professional messenger service for service.


BY FAX Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the respective fax number(s) of the party(ies) as stated above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission(s), which I printed out, is attached.

BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 6, 2005 at San Francisco, California.

Marva Seaton
[Print Name of Person Executing Proof]


[Signature]