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**FRANCIS E D**  
Clerk of the Superior Court

MAR 10 2008

By: M. GARLAND, Deputy

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO  
NORTH COUNTY JUDICIAL DISTRICT**

**BY FAX**

SEAN RYAN, an individual,  
Plaintiff,

v.

VERIZON DIRECTORIES SALES -  
WEST, INC., a Delaware corporation,  
and IDEARC DIRECTORIES SALES-  
WEST, INC., a Delaware corporation,  
Defendant.

CASE NO. GIN 054512

<sup>mg</sup>  
~~PROPOSED~~ JUDGMENT

Judge: Hon. Lisa Guy-Schall  
Dept.: 31

This case concludes following a jury verdict and a decision reached during a court trial. Plaintiff Sean Ryan ("Plaintiff") began this action on August 2, 2006, when he filed his Verified Complaint against Verizon Directories Sales - West Inc. ("Defendant") (now known as Idearc Media Sales - West Inc. as a result of a name change that occurred in October 2006) in the above-mentioned matter. Plaintiff's verified complaint alleged eight causes of action:

- FIRST CAUSE OF ACTION for Failure to Pay Wages Upon Discharge according to Labor Code sections 201 and 203
- SECOND CAUSE OF ACTION for Failure to Compensate for Work Expenditures according to Labor Code section 2802

- 1           •    THIRD CAUSE OF ACTION for Conversion
- 2           •    FOURTH CAUSE OF ACTION for Wrongful Termination in Violation of
- 3           Public Policy
- 4           •    FIFTH CAUSE OF ACTION for Breach of Contract
- 5           •    SIXTH CAUSE OF ACTION for Breach of Implied Covenant of Good Faith
- 6           and Fair Dealing
- 7           •    SEVENTH CAUSE OF ACTION for Employment Discrimination,
- 8           Government Code section 12940(a)
- 9           •    EIGHTH CAUSE OF ACTION for Unfair Competition according to Business
- 10          and Professions Code section 17200

11                    On October 20, 2006, Defendant served its Verified Answer to Plaintiff's  
12 Verified Complaint in Case No. GIN 054512.

13                    On October 9, 2007, the parties appeared for trial. During the course of the  
14 trial Plaintiff was represented by Scott A. McMillan, and Bethsaida C. Obra, of The  
15 McMillan Law Firm, A Professional Corporation, and Shawn A. McMillan, of the Law  
16 offices of Shawn A. McMillan, A Professional Corporation. Michael G. McGuinness and  
17 Adam J. Karr of O'Melveny & Myers, LLP appeared on behalf of Defendant. The Court  
18 heard argument on motions in limine on October 9, 2007.

19                    On October 10, 2007, the Court summoned jurors, and the court and counsel  
20 conducted voir dire, resulting in an impaneled jury.

21                    On October 18, 2007, Defendant moved for nonsuit on the First Cause of  
22 Action for Withholding Wages on Discharge, which the Court denied. Defendant moved  
23 for nonsuit on the Second Cause of Action for Failure to Compensate for Work  
24 Expenditures, which the Court granted. Defendant moved for nonsuit on the Third Cause  
25 of Action for Conversion, which the Court denied. Defendant moved for nonsuit on the  
26 Fourth Cause of Action for Wrongful Termination, which the Court granted. Defendant  
27 moved for nonsuit upon the Seventh Cause of Action for Employment Discrimination,  
28 which the Court denied.

1 On October 24, 2007, proceedings were resumed before the Court, outside  
2 the presence of the jury. Counsel for the parties stipulated that the Court would determine  
3 the reasonable compensation for expenses incurred and time lost by Plaintiff as damages  
4 recoverable according to the Third Cause of Action for Conversion.

5 On October 29, 2007, counsel for Plaintiff and Defendant delivered their  
6 closing arguments, and the Court submitted the cause to the jury.

7 On October 31, 2007, the jury rendered a verdict as follows:

8 I. FAILURE TO PAY WAGES UPON DISCHARGE

9 1. Did the Defendant willfully fail to pay all the wages due to the  
10 Plaintiff by March 21, 2006?

11 Answer: Yes

12 2. What was the Plaintiff's daily wage rate at the time his employment  
13 ended?

14 Answer: \$245.76 per day

15 3. For how many calendar days following the Plaintiff's last day of  
16 employment did the Defendant fail to pay the full amount of the Plaintiff's wages?

17 Answer: 30 days

18 II. BREACH OF CONTRACT

19 4. Did the Plaintiff and the Defendant enter into a contract?

20 Answer: Yes

21 5. Did the Plaintiff do all or substantially all of the significant things  
22 that the contract required him to do?

23 Answer: No

24 III. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

25 10. Did the Plaintiff and the Defendant enter into a contract?

26 Answer: Yes.

27 11. Did the Plaintiff do all or substantially all of the significant things  
28 that the contract required him to do?

1 Answer: No.

2 IV. CONVERSION

3 16. Did the Plaintiff have an immediate right to possess the monies owed  
4 to him through his paycheck and commissions earned on sales?

5 Answer: Yes

6 17. Did the Defendant intentionally retain possession of these monies  
7 owed to the Plaintiff?

8 Answer: Yes

9 18. Did the Plaintiff consent?

10 Answer: No

11 19. Was the Plaintiff harmed?

12 Answer: Yes

13 20. Was the Defendant's conduct a substantial factor in causing the  
14 Plaintiff harm?

15 Answer: Yes

16 21. The amount of the Plaintiff's damages \$464.00 (economic damages)  
17 and \$47,000.00 (non-economic damages). Do not include any amounts previously  
18 awarded for the same damages.

19 V. GENDER DISCRIMINATION

20 22. Was the Defendant an employer of the Plaintiff?

21 Answer: Yes

22 23. Was the Plaintiff an employee of the Defendant?

23 Answer: Yes

24 24. Did the Defendant discharge the Plaintiff?

25 Answer: Yes

26 25. Was the Plaintiffs gender a motivating reason for the discharge?

27 Answer: No

28 Signed: Presiding Juror; David Tiller

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Dated: 10/31/2007.

The clerk of the Court entered the verdict on October 31, 2007.

On February 11, 2008, counsel for the parties, and Plaintiff, reconvened for the equitable portion of the trial, and that portion of the trial relating to the conversion claim and the reasonable expenditures incurred by Plaintiff with respect to his efforts to recover the converted funds. After hearing testimony from Plaintiff, the Court awarded him \$675.12 under California Civil Code Section 3336 as fair compensation for the time and money expended in pursuit of his litigation, and his property under his third cause of action for conversion. The Court denied Plaintiff's claim for an injunction according to Business and Professions Code section 17200.

IT IS ORDERED, ADJUDGED AND DECREED:

As to the First Cause of Action for failure to pay wages on discharge, the court awards waiting time penalties in the amount of \$7,372.80, to wit: \$245.76 per day for thirty days, according to the verdict rendered by the jury. Pursuant to Labor Code section 218.6, Plaintiff is entitled to prejudgment interest in the amount of \_\_\_\_\_, to be determined by post trial motion following entry of judgment.

As to the Second Cause of Action for Failure to Compensate for Work Expenditures according to Labor Code section 2802, Plaintiff shall recover nothing.

As to the Third Cause of Action for Conversion, Plaintiff is awarded \$48,139.12.

As to the Fourth Cause of Action for Wrongful Termination in Violation of Public Policy, Plaintiff shall recover nothing.

As to the Fifth Cause of Action for Breach of Contract, Plaintiff shall recover nothing.

As to the Sixth Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing, Plaintiff shall recover nothing.

As to the Seventh Cause of Action for Employment Discrimination,

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Government Code section 12940(a), Plaintiff shall recover nothing.


As to the Eighth Cause of Action pursuant to Business and Professions Code section 17200, Plaintiff shall receive no relief.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the computation of prejudgment interest and an award, if any, shall be made according to California Rules of Court Rule 3.1802.

The parties shall make any applications for costs and/or attorneys' fees in compliance with applicable court rules.

IT IS SO ORDERED.

Dated: 3/10/08

  
\_\_\_\_\_  
Hon. Lisa Guy-Schall  
JUDGE OF THE SUPERIOR COURT