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6 VERIZON DIRECTORIES SALES - WEST INC.

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO - NORTH COUNTY JUDICIAL DISTRICT**

10
11 SEAN RYAN,
12 Plaintiff,
13 v.
14 VERIZON DIRECTORIES SALES -
WEST, INC., a Delaware Corporation, and
15 DOES 1 through 50,
16 Defendant.

Case No. GIN 054512
ASSIGNED FOR ALL PURPOSES TO:
Judge: Hon. Jacqueline M. Stern
Dept.: 27
**DEFENDANT VERIZON DIRECTORIES
SALES - WEST INC.'S VERIFIED
ANSWER TO PLAINTIFF'S VERIFIED
COMPLAINT**
Trial Date: None Set

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1 NOW COMES Defendant Verizon Directories Sales – West Inc. (“Verizon” or
2 “Defendant”), incorrectly identified in the Complaint as “Verizon Directories Sales – West, Inc.,”
3 for itself alone and for no other defendant, through its counsel, O’Melveny & Myers LLP, and
4 answers Plaintiff Sean Ryan’s (“Plaintiff”) Complaint as follows:

5 **GENERAL ALLEGATIONS**

6 1. Defendant admits the allegation in paragraph 1 of the Complaint that venue is
7 proper.

8 2. Defendant admits the allegations in paragraph 2 of the Complaint that Defendant is
9 a Delaware Corporation and at all times relevant herein was engaged in business in the County of
10 San Diego, California, with its principal place of business in Texas. As to all allegations in the
11 Complaint, Defendant can make no representations and has no knowledge with respect to
12 unidentified Doe Defendants.

13 3. Defendant admits that Defendant maintains various offices and conducts business
14 in the State of California, County of San Diego, and within the jurisdiction of this Court.

15 4. Defendant avers and alleges that each of the allegations contained in Paragraph 4
16 of the Complaint asserts principles of law, not fact, and that no answer is therefore required.

17 5. Defendant admits that Plaintiff was an employee of Defendant and performed
18 some of his work duties within the jurisdiction of this Court, in the State of California, County of
19 San Diego.

20 6. Defendant admits that this matter is properly within the jurisdiction of this Court.
21 Defendant denies each and every remaining allegation set forth in paragraph 6 of the Complaint.

22 7. Defendant denies each and every allegation contained in paragraph 7 of the
23 Complaint for want of knowledge or information.

24 8. Defendant denies each and every allegation contained in Paragraph 8 of the
25 Complaint for want of knowledge or information.

26 **FACTUAL ALLEGATIONS**

27 9. Defendant admits that Plaintiff has brought this action against Defendant and
28 DOES 1 though 50 alleging various causes of action. Defendant denies each and every remaining

1 allegation set forth in paragraph 9 of the Complaint for want of knowledge or information.

2 10. Defendant admits that Plaintiff was employed by Defendant as a salesperson for
3 telephone directory advertising. Defendant denies each and every remaining allegation set forth
4 in paragraph 10 of the Complaint.

5 11. Defendant admits the allegation in paragraph 11 of the Complaint that starting in
6 August 2005, Plaintiff was employed by Defendant as a salesperson. Defendant admits that
7 Plaintiff worked at times out of an office located at 2701 Loker Avenue West #250, Carlsbad, CA
8 92010. Defendant admits that Plaintiff held the job title of Advertising Sales Consultant.
9 Defendant admits that Plaintiff was responsible for, among other duties, contacting businesses to
10 sell advertising space within telephone directories that Defendant published. Defendant admits
11 that in addition to a base pay, Plaintiff was paid a commission on certain sales that he made.

12 12. Defendant admits the allegations set forth in paragraph 12 of the Complaint.

13 13. Defendant denies each and every allegation contained in paragraph 13 of the
14 Complaint for want of knowledge or information.

15 14. Defendant admits that on or about March 13, 2006, Plaintiff spoke with Robin
16 Bulster about alleged concerns he had regarding Greg High. Defendant denies each and every
17 remaining allegation contained in paragraph 14 of the Complaint for want of knowledge or
18 information.

19 15. The allegations in paragraph 15 of the Complaint that "Plaintiff sold around
20 \$463.00 worth of advertising for the week in question and would have sold an additional \$232.00,
21 but for an administrative issue" and "[t]his \$232.00 worth of advertising was counted toward
22 Plaintiff's quota for the next week" are vague and ambiguous as to the "week in question" and the
23 term "quota," and therefore, Defendant denies these allegations for want of knowledge or
24 information. Defendant denies each and every remaining allegation contained in paragraph 15 of
25 the Complaint for want of knowledge or information.

26 16. Defendant admits that on or about March 21, 2006, Plaintiff had a meeting with
27 Greg High and Marlon McLendon during which time Plaintiff was informed that his employment
28 with Defendant was being terminated. Defendant admits that during that meeting Plaintiff was

1 given a letter to sign regarding his termination and that Plaintiff refused to sign the letter.
2 Defendant denies each and every remaining allegation set forth in paragraph 16 of the Complaint.

3 17. Defendant denies the allegation in paragraph 17 of the Complaint that "Jennifer
4 [Lebherz] told Greg High that Plaintiff had reported his misconduct to management." Defendant
5 admits the allegation in paragraph 17 of the Complaint that Jennifer Lebherz's employment with
6 Defendant has not been terminated. The allegations in paragraph 17 of the Complaint that
7 "Jennifer [Lebherz] failed to meet her quota for many weeks in a row and was not sanctioned,"
8 and that "many other of Defendant Verizon's employees routinely failed to meet their sales
9 quotas and were not disciplined or terminated" are vague and ambiguous as to the term "quota,"
10 and therefore, Defendant denies these allegations for want of knowledge or information.
11 Defendant admits that, after the termination of his employment, Plaintiff reported alleged
12 misconduct by Greg High through a Verizon hotline. Defendant denies each and every remaining
13 allegation in paragraph 17 of the Complaint for want of knowledge or information.

14 18. Defendant admits that Plaintiff did not earn commissions for any sales that were
15 completed after Plaintiff's employment was terminated. Defendant denies each and every
16 remaining allegation in paragraph 18 of the Complaint.

17 19. Defendant denies each and every allegation in paragraph 19 of the Complaint.

18 20. Defendant denies each and every allegation in paragraph 20 of the Complaint.

19 **FIRST CAUSE OF ACTION**

20 21. Defendant hereby incorporates by reference its responses to paragraphs 1-20 of the
21 Complaint herein, as if set forth in full.

22 22. Defendant avers and alleges that each of the allegations contained in paragraph 22
23 of the Complaint asserts principles of law, not fact, and that no answer is therefore required.

24 23. Defendant denies each and every allegation in paragraph 23 of the Complaint.

25 24. Defendant denies each and every allegation in paragraph 24 of the Complaint.

26 25. Defendant denies each and every allegation in paragraph 25 of the Complaint.

1 **SECOND CAUSE OF ACTION**

2 26. Defendant hereby incorporates by reference its responses to paragraphs 1-25 of the
3 Complaint herein, as if set forth in full.

4 27. Defendant avers and alleges that the allegation in paragraph 27 of the Complaint
5 that "Plaintiff was a non-exempt employee under California law, entitled to the benefits and
6 protections of California Labor Code § 2802" asserts principles of law, not fact, and that no
7 answer is therefore required. The allegations in paragraph 27 of the Complaint that "Defendant
8 Verizon was to indemnify Plaintiff for all incurred expenses" is vague and ambiguous as to the
9 term "all incurred expenses," and therefore, Defendant denies this allegation for want of
10 knowledge or information.

11 28. The allegation in paragraph 28 of the Complaint that "Plaintiff incurred
12 expenditures in direct consequence of the discharge of his duties while employed by Defendant"
13 is vague and ambiguous as to the time, place and specific expenditure or expenditures referred to,
14 and therefore, Defendant denies this allegation for want of knowledge or information. Defendant
15 denies each and every remaining allegation set forth in paragraph 28 of the Complaint.

16 29. Defendant avers and alleges that the allegation contained in paragraph 29 of the
17 Complaint that "Labor Code section 2802 requires employers to indemnify employees for all
18 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
19 of his or her duties" asserts principles of law, not fact, and that no answer is therefore required.
20 Defendant denies each and every remaining allegation in paragraph 29 of the Complaint.

21 30. Defendant avers and alleges that the allegation contained in paragraph 30 of the
22 Complaint that "Labor Code § 2802 provides for interest and reasonable attorney fees" asserts
23 principles of law, not fact, and that no answer is therefore required. Defendant denies each and
24 every remaining allegation in paragraph 30 of the Complaint.

25 **THIRD CAUSE OF ACTION**

26 31. Defendant hereby incorporates by reference its responses to paragraphs 1-30 of the
27 Complaint herein, as if set forth in full.

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1 32. The allegations in paragraph 32 of the Complaint are vague and ambiguous as to
 2 the phrases “monies attributed to him through his paycheck” and “held in trust on their behalf,”
 3 and therefore, Defendant denies each and every allegation in paragraph 32 of the Complaint for
 4 want of knowledge or information.

5 33. Defendant denies each and every allegation in paragraph 33 of the Complaint.

6 34. Defendant denies each and every allegation in paragraph 34 of the Complaint.

7 35. Defendant denies each and every allegation in paragraph 35 of the Complaint.

8 36. Defendant admits that Plaintiff purports to pray for various types of relief through
 9 his Complaint. Defendant denies that Plaintiff is entitled to any relief whatsoever and denies each
 10 and every remaining allegation in paragraph 36 of the Complaint.

11 **FOURTH CAUSE OF ACTION**

12 37. Defendant hereby incorporates by reference its responses to paragraphs 1-36 of the
 13 Complaint herein, as if set forth in full.

14 38. Defendant avers and alleges that each of the allegations contained in paragraph 38
 15 of the Complaint assert principles of law, not fact, and that no answer is therefore required.

16 39. Defendant admits the allegation in paragraph 39 of the Complaint that Defendant
 17 terminated Plaintiff's employment. Defendant denies for want of knowledge or information that
 18 Plaintiff's employment was terminated after he made an alleged complaint to his General Sales
 19 Manager regarding alleged “workplace violations.” Defendant denies each and every remaining
 20 allegation in paragraph 39 of the Complaint.

21 40. Defendant avers and alleges that the allegation contained in paragraph 40 of the
 22 Complaint that “[a] policy is ‘fundamental’ when it is carefully tethered to a policy delineated in
 23 constitutional or statutory provisions affecting the public at large” asserts principles of law, not
 24 fact, and that no answer is therefore required. Defendant denies the allegations in paragraph 40 of
 25 the Complaint that “Plaintiff filed a complaint with the General Sales Manager based on
 26 workplace violations” and “the complaint dealt with forgery of customer initials on order forms
 27 and was made in order to protect the public from this crime” for want of knowledge or
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1 information. Defendant denies each and every remaining allegation set forth in paragraph 40 of
2 the Complaint.

3 41. Defendant denies each and every allegation set forth in paragraph 41 of the
4 Complaint for want of knowledge or information.

5 42. The allegation in paragraph 42 of the Complaint that “[n]o portion of the
6 applicable statutory provisions alleged to be violated in this case exempts the Defendants from
7 the statutory provision” is vague and ambiguous as to the “statutory provisions” referred to, and
8 therefore, Defendant denies this allegation for want of knowledge or information. Defendant
9 alleges that each of the remaining allegations contained in paragraph 42 of the Complaint assert
10 principles of law, not fact, and that no answer is therefore required.

11 43. Defendant denies each and every allegation in paragraph 43 of the Complaint.

12 44. Defendant denies each and every allegation in paragraph 44 of the Complaint.

13 45. Defendant admits that Plaintiff purports to pray for various types of relief through
14 his Complaint. Defendant denies that Plaintiff is entitled to any relief whatsoever and denies each
15 and every remaining allegation in paragraph 45 of the Complaint.

16 **FIFTH CAUSE OF ACTION**

17 46. Defendant hereby incorporates by reference its responses to paragraphs 1-45 of the
18 Complaint herein, as if set forth in full.

19 47. Defendant admits that Plaintiff was employed by Defendant to sell advertising
20 space for telephone directories published by Defendant. Defendant admits that Plaintiff's
21 compensation as an employee of Defendant included a base pay, commissions on certain sales,
22 and a type of car allowance. Defendant admits that Plaintiff was entitled to reimbursement for
23 certain expenses as an employee of Defendant. The allegations in paragraph 47 of the Complaint
24 that “[t]he commission for new sales was equal to 130% of the value of the sales, plus an
25 additional 100% ‘growth accelerator’ bonus if the sale was not cancelled” and “[t]he commission
26 for reoccurring sales was equal to 45% of the value of the sale” are vague and ambiguous as to
27 the canvas, customer and particular advertising product referred to, and therefore, Defendant
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1 denies these allegations for want of knowledge or information. Defendant denies each and every
2 remaining allegation in paragraph 47 of the Complaint.

3 48. Defendant denies each and every allegation in paragraph 48 of the Complaint.

4 49. Defendant denies each and every allegation in paragraph 49 of the Complaint.

5 50. Defendant denies each and every allegation in paragraph 50 of the Complaint.

6 **SIXTH CAUSE OF ACTION**

7 51. Defendant hereby incorporates by reference its responses to paragraphs 1-50 to the
8 Complaint herein, as if set forth in full.

9 52. Defendant admits that Plaintiff was employed by Defendant to sell advertising
10 space for telephone directories published by Defendant. Defendant admits that Plaintiff's
11 compensation as an employee of Defendant included a base pay, commissions on certain sales,
12 and a type of car allowance. Defendant admits that Plaintiff was entitled to reimbursement for
13 certain expenses as an employee of Defendant. Defendant avers and alleges that the allegation in
14 paragraph 52 of the Complaint that "[a]ll contracts have an implied covenant of good-faith and
15 fair dealing" asserts principles of law, not fact, and that no answer is therefore required.
16 Defendant denies each and every remaining allegation in paragraph 52 of the Complaint.

17 53. Defendant admits that Plaintiff was provided a copy of the "Equal Employment
18 Opportunity & Zero Tolerance Policy" by Verizon and that the policy states that "Verizon is
19 committed to a workplace free from discrimination and harassment" and will "provide equal
20 employment opportunity to all persons without regard to," among other traits, gender and that it
21 states that the policy "applies to all employment decisions." Defendant denies each and every
22 remaining allegation in paragraph 53 of the Complaint.

23 54. Defendant admits that the policy referred to in paragraph 53 of the Complaint
24 states that "Verizon prohibits any form of retaliation against applicants or employees for filing a
25 complaint, reporting alleged violations or for cooperating in Company Investigations."
26 Defendant denies each and every remaining allegation in paragraph 54 of the Complaint.

27 55. Defendant denies each and every allegation in paragraph 55 of the Complaint for
28 want of knowledge or information.

1 56. Defendant denies each and every allegation in paragraph 56 of the Complaint.

2 57. Defendant denies each and every allegation in paragraph 57 of the Complaint.

3 **SEVENTH CAUSE OF ACTION**

4 58. Defendant hereby incorporates by reference its responses to paragraphs 1-57
5 herein, as if set forth in full.

6 59. Defendant avers and alleges that the allegations in paragraph 59 of the Complaint
7 assert principles of law, not fact, and that no answer is therefore required.

8 60. Defendant avers and alleges that the allegations in paragraph 60 of the Complaint
9 assert principles of law, not fact, and that no answer is therefore required.

10 61. Defendant denies each and every allegation in paragraph 61 of the Complaint for
11 want of knowledge or information.

12 62. Defendant denies each and every allegation in paragraph 62 of the Complaint.

13 63. Defendant denies each and every allegation in paragraph 63 of the Complaint.

14 **EIGHTH CAUSE OF ACTION**

15 64. Defendant hereby incorporates by reference its responses to paragraphs 1-63 of the
16 Complaint herein, as if set forth in full.

17 65. Defendant denies each and every allegation in paragraph 65 of the Complaint.

18 66. Defendant denies each and every allegation in paragraph 66 of the Complaint.

19 WHEREFORE, Defendant denies that Plaintiff is entitled to any damages,
20 penalties, or other relief, including but not limited to the relief requested in sections I through IX
21 of the prayer for relief in the Complaint and respectfully requests that the Court enter an Order
22 and Judgment that Plaintiff take nothing as to his allegations and claims against this Defendant,
23 dismissing Plaintiff's allegations and claims with prejudice and awarding to Defendant its costs
24 and attorney fees.

25

26 **AS AND FOR ITS AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION**
27 **PURPORTED TO BE SET FORTH AGAINST IT IN THE COMPLAINT HEREIN,**
28 **DEFENDANT ALLEGES AS FOLLOWS:**

1 **FIRST AFFIRMATIVE DEFENSE**

2 1. Plaintiff's causes of action, and each of them, fail to state facts sufficient to
3 constitute a cause of action.

4 **SECOND AFFIRMATIVE DEFENSE**

5 2. Said causes of action, and each of them, fail to state facts sufficient to constitute a
6 cause of action as against Defendant.

7 **THIRD AFFIRMATIVE DEFENSE**

8 3. Said causes of action, and each of them, are barred, in whole or in part, by the
9 defense of accord and satisfaction.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 4. Said causes of action, and each of them, are barred, in whole or in part, by the
12 defense of payment.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 5. Plaintiff's causes of action, and each of them, are barred, because Plaintiff's
15 employment was terminable at will under California Labor Code § 2922, such that Plaintiff's
16 employment could be terminated at any time for any or no reason, with or without notice, and
17 with or without cause.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 6. To the extent that Defendant took any of the actions alleged in the Complaint, and
20 to the extent that such actions are attributable to Defendant, those actions were the true and
21 privileged acts of management taken in good faith for lawful business reasons and were not
22 arbitrary or capricious.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 7. Said causes of action, and each of them, are barred in whole or in part, by the
25 applicable statute of limitations.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 8. If Plaintiff suffered any economic injury as a result of Defendant's actions,
28 although such is not admitted hereby or herein, Plaintiff had a duty to mitigate such damages and

1 failed to do so.

2 **NINTH AFFIRMATIVE DEFENSE**

3 9. Plaintiff's claims of damages for physical, mental and/or emotional distress are
4 barred by California Labor Code §§ 3600 et seq., which provide that workers' compensation is
5 Plaintiff's exclusive remedy.

6 **TENTH AFFIRMATIVE DEFENSE**

7 10. If Defendant did subject Plaintiff to any wrongful or unlawful conduct resulting in
8 mental, physical or emotional harm, although such is not admitted hereby or herein, Plaintiff had
9 a duty to mitigate any damages Plaintiff may have suffered by seeking medical and psychological
10 treatment and Plaintiff has failed to do so.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 11. If Plaintiff is entitled to recover damages arising from his claim for emotional
13 distress damages, although no liability or damages are admitted hereby or herein, such damages
14 shall be reduced in proportion to the amount of negligence attributable to Plaintiff and which
15 negligence directly and proximately contributed to Plaintiff's loss or damage herein alleged.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 12. Third party individuals and entities willfully, or by want of ordinary care,
18 proximately caused or contributed to the damages sustained, if any, by Plaintiff. Accordingly,
19 any damages to which Plaintiff might be entitled should be apportioned by the amount of fault
20 attributable to such third parties.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 13. To the extent that any breach, act, omission, representation, or course of conduct
23 of persons and/or entities other than Defendant directly and proximately caused and contributed
24 to the damages allegedly sustained by Plaintiff, said persons or entities, other than Defendant,
25 were acting without the consent, authorization, knowledge, and/or ratification of Defendant.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 14. If Plaintiff were employed by Defendant pursuant to a contract of employment,
28 although such is not admitted hereby or herein, any failure of Defendant to perform the conditions

1 of the contract resulted from Plaintiff's failure to perform and such performance by Plaintiff was
2 a condition precedent to or concurrent with performance by Defendant.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 15. If Plaintiff were employed by Defendant pursuant to a contract of employment,
5 although such is not admitted hereby or herein, any failure of Defendant to perform the conditions
6 of the contract was excused by Plaintiff's breach of the terms and conditions of the contract.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 16. If Plaintiff were employed by Defendant pursuant to a contract of employment,
9 although such is not admitted hereby or herein, any failure of Defendant to perform the conditions
10 of the contract was excused by Plaintiff's breach of the terms and conditions of the contract.

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

12 17. Plaintiff's causes of action, and each of them, fail to state facts sufficient to allow
13 recovery of exemplary or punitive damages.

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 18. California's laws regarding the alleged conduct in question in this action are too
16 vague to permit the imposition of punitive damages and, because California's laws, rules and
17 procedures regarding punitive damages deny due process and impose criminal penalties without
18 the requisite protections, they violate the Fourteenth Amendment of the United States
19 Constitution and place an unreasonable burden on interstate commerce.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 19. Plaintiff's prayers for punitive damages are barred by the Contract Clause (Article
22 I, Section 10), the Due Process Clause (Fifth Amendment; Fourteenth Amendment, Section 1),
23 and the Excessive Fines Clause (Eighth Amendment) of the United States Constitution and
24 corresponding provisions of the California Constitution.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 20. Each and every cause of action in Plaintiff's Complaint is frivolous, unreasonable,
27 and/or groundless, and, accordingly, Defendant should recover all costs and attorneys' fees
28 incurred herein under applicable federal and state law.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 21. Defendant is informed and believes and on such basis alleges that there may be
3 additional defenses available to Defendant, which are not now fully known and of which
4 Defendant is not now aware. Defendant reserves the right to raise and assert such additional
5 defenses once such additional defenses have been ascertained.

6
7 WHEREFORE, Defendant prays for judgment as follows:

- 8 (1) That Plaintiff's complaint and each cause of action thereof be dismissed with
9 prejudice;
- 10 (2) That Plaintiff take nothing by Plaintiff's complaint;
- 11 (3) That Defendant be awarded its costs incurred herein, including attorneys' fees; and
- 12 (4) That the Court order such other and further relief for Defendant as the Court may
13 deem just and proper.

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15 Dated: October 20, 2006.

O'MELVENY & MYERS LLP
MICHAEL G. MCGUINNESS
BRYAN S. WESTERFELD
LAURIE M. ADAMS

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20 By: 

Bryan S. Westerfeld

21 Attorneys for Defendant
22 VERIZON DIRECTORIES SALES - WEST
23 INC.
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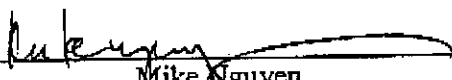
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VERIFICATION

I have read the foregoing **VERIFIED ANSWER OF DEFENDANT VERIZON DIRECTORIES SALES - WEST INC.** and know its contents. I am a General Sales Manager at Verizon Directories Sales - West Inc., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at CARLSBAD, California this 20th day of October, 2006.



Mike Nguyen

NBI:6957742

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PROOF OF SERVICE

I, Joanne Armstrong, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 610 Newport Center Drive, 17th Floor, Newport Beach, California 92660-6429. On October 20, 2006, I served the within documents:

**DEFENDANT VERIZON DIRECTORIES SALES - WEST
INC.'S ANSWER TO PLAINTIFF'S VERIFIED
COMPLAINT**

by transmitting via facsimile machine the document(s) listed above to the fax number(s) set forth below on this date at approximately 9:42 AM. The outgoing facsimile machine telephone number in this office is (949) 823-6994. The facsimile machines used in this office create a transmission report for each outgoing facsimile transmitted. A copy of the transmission report(s) for the service of this document, properly issued by the facsimile machine(s) that transmitted this document and showing that such transmission was (transmissions were) completed without error, is attached hereto.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

by putting a true and correct copy thereof, together with an unsigned copy of this declaration, in a sealed envelope designated by the carrier, with delivery fees paid or provided for, for delivery the next business day to the person(s) listed above, and placing the envelope for collection today by the overnight courier in accordance with the firm's ordinary business practices. I am readily familiar with this firm's practice for collection and processing of overnight courier correspondence. In the ordinary course of business, such correspondence collected from me would be processed on the same day, with fees thereon fully prepaid, and deposited that day in a box or other facility regularly maintained by Federal Express, which is an express carrier.

by putting a true and correct copy thereof, together with an unsigned copy of this declaration, in a sealed envelope, with Express Mail postage fully prepaid to the person(s) listed above, and placing the envelope for collection and mailing today with the United States Postal Service as an Express Mail item in accordance with the firm's ordinary business practices. I am readily familiar with this firm's practice for collection and processing of Express Mail correspondence for mailing with the United States Postal Service. In the ordinary course of business, Express Mail correspondence collected from me would be processed on the same day, with Express Mail postage thereon fully prepaid, and placed for deposit that day with the United States Postal Service by depositing it that same day in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail.

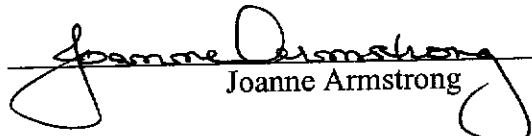
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Scott A. McMillan, Esq.
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Phone: (619) 464-1500
Fax: (206) 600-5095

Attorneys for Plaintiff
Sean Ryan

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 20, 2006, at Newport Beach, California.


Joanne Armstrong