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**Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse**

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Maher

Plaintiff/Petitioner(s)

VS.

Ideal Computer Services, Inc.

Defendant/Respondent(s)  
(Abbreviated Title)

No. RG07348498

Order

Motion for Summary Judgment/Adjudication  
Denied

The Motion for Summary Judgment/Adjudication filed for Paul Lawrence and Ideal Computer Services, Inc. was set for hearing on 03/18/2009 at 09:30 AM in Department 21 before the Honorable Jon S. Tigar. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

The court rules on the Motion of Defendant Ideal Computer Services ("Defendant") for Summary Judgment or in the alternative Summary Adjudication as follows:

Defendant has conceded the first cause of action for rescission, and Plaintiff James Maher ("Plaintiff") has withdrawn his third cause of action for intentional interference with prospective economic advantage. Additionally, Plaintiff has dismissed all claims against Defendant Paul Lawrence. These claims are no longer before the court.

As to the second cause of action for age discrimination, summary adjudication is **DENIED**. Triable issues of fact exist as to whether or not Defendant's proffered legitimate nondiscriminatory reason for terminating Plaintiff's employment was pretextual. (See *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 353-354; Plaintiff's Response to Defendant's Separate Statement, Facts Nos. 21, 22, 24, 29, 31, 33, 47, 48, and evidence cited in support thereof.)

As to plaintiff's claim for punitive damages, summary adjudication is also **DENIED**. If plaintiff succeeds in proving his age discrimination case - i.e., if the plaintiff satisfies a jury that the defendants intentionally terminated the plaintiff's employment because of his age, and not for a proper reason - then a jury would be within its rights to find defendants liable also for punitive damages. Pretextual employment termination shows extreme indifference to a plaintiff employee's rights. (*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 428.) "The purpose of punitive damage awards is punishment and deterrence of like conduct." (*Stephens v. Coldwell Banker Commercial Group, Inc.* (1988) 199 Cal.App.3d 1394, overruled on other grounds, *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 574 fn.4.)

Defendant's objections are all **OVERRULED** on the grounds asserted, except Objection No. 3 (personal knowledge); Objections No. 6 and 7 (hearsay); and Objections No. 62 and 63 (relevance), which are **SUSTAINED**.

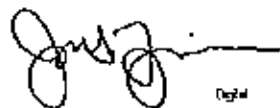
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Order

The court considers statements in the parties' Memoranda of Points and Authorities only as argument. The court can determine the existence of a triable issue of material fact only on the basis of the "evidence set forth in the papers," with particular reference to the evidence set forth in the separate statements of the parties. (See C.C.P. §§ 437c(b) and (c).)

Plaintiff's Response to Defendant's Separate Statement did not comply with Rule of Court 3.1354(b), which requires, among other things, that written objections to evidence be filed separately from the other papers in support of or in opposition to the motion, state the exhibit, title, page and line number of the material objected to, and quote or set forth the objectionable statement or material. Moreover, Defendant's objections are to Plaintiff's characterizations or assertions of material facts, rather than to specific evidence cited in support thereof. The facts (rather than supporting evidence) listed in parties' separate statements are not themselves evidence.

Dated: 06/09/2009



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Judge Jon S. Tigar