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 INTER-CON SECURITY SYSTEMS, INC.  
 13 and CARL CARELOCK

14 UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA

16 DEBORAH HUNTER,  
 17 Plaintiff,  
 18 vs.

19 CARL CARELOCK,  
 20 INTER-CON SECURITY SYSTEMS, INC.,  
 21 Defendants.

) Case No.: 2:08-CV-00370-JAM-GGH  
 )  
 ) **ORDER ON PLAINTIFF’S MOTION FOR**  
 ) **PARTIAL SUMMARY JUDGMENT**  
 )  
 )  
 ) Judge: The Honorable John A. Mendez  
 ) Date: 9:30am on April 7, 2010  
 ) Location: Courtroom 6, 14<sup>th</sup> Floor

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 23 Plaintiff Deborah Hunter brought this action against Defendants Inter-Con Security  
 24 Systems, Inc. (“Inter-Con”) and Carl Carelock alleging, among other things, sexual harassment  
 25 and retaliation in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et*  
 26 *seq.*) and the Fair Employment and Housing Act (Cal. Gov. Code § 12940 *et seq.*). Inter-Con  
 27 asserted in its defense that Ms. Hunter was terminated because she exhausted her medical leave  
 28 benefits pursuant to the California Family Rights Act (“CFRA”) and the Family Medical Leave

1 Act (“FMLA”). By motion filed on March 10, 2010, Plaintiff Deborah Hunter moved for partial  
2 summary judgment on her claims that Inter-Con interfered with her rights to medical leave by  
3 terminating her in violation of the CFRA (Cal. Govt. Code § 12945.2) (Eleventh Cause of  
4 Action) and the FMLA (29 U.S.C. § 2615) (Thirteenth Cause of Action).

5 Inter-Con claims that Ms. Hunter was terminated for exhausting her CFRA/FMLA leave,  
6 based on the rolling method of calculation. Pursuant to *Bachelder v. America West Airlines*, 259  
7 F.3d 1112, 1129-30 (9<sup>th</sup> Cir. 2001), employers are required to give notice to their employees of  
8 its selected method used to calculate FMLA leave. In the absence of such notice by the  
9 employer, the employee is entitled to use the method of calculation that is most favorable to him  
10 or her. *Bachelder, supra*, 259 F.3d at 1128-29. Inter-Con claims that it gave Ms. Hunter notice  
11 of the rolling method by way of its letter to her, dated February 9, 2007. However, the February  
12 9, 2007 letter is notably silent as to whether Ms. Hunter’s leave of absence taken in 2006 would  
13 count against her eligibility for CFRA/FMLA leave in 2007, it does not calculate the amount of  
14 CFRA/FMLA days used and/or remaining, and does not include any explicit reference to her  
15 exact date of exhaustion. As such, the February 9, 2007 letter improperly kept Ms. Hunter in the  
16 dark about the method used by the employer to calculate her CFRA/FMLA leave, in violation of  
17 the employer’s obligations pursuant to *Bachelder*.

18 Because Inter-Con failed to notify Ms. Hunter in the February 9, 2007 letter, or by way of  
19 any other document, that it used the rolling method to calculate her CFRA/FMLA leave, Ms.  
20 Hunter is entitled, as a matter of law, to use the calendar method to calculate her leave. Under  
21 the calendar method, Ms. Hunter had not exhausted her CFRA/FMLA leave at the time of her  
22 termination. Because Inter-Con terminated Ms. Hunter for exhausting her CFRA/FMLA leave,  
23 this Court finds, as a matter of law, that her termination was improper.

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