

## **TENTATIVE RULINGS—MAY 22, 2009**

**To request a hearing on any matter on this calendar, you must call the Court at (209) 257-2692 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.**

**LUCUS V. CALIFORNIA DEPARTMENT OF CORRECTIONS: 09CV5883**

### ***Defendant's Demurrer to Complaint***

Preliminarily, the defendant's request for permission to file a late brief is hereby granted.

The demurrer is sustained in part and overruled in part.

The demurrer on the grounds of uncertainty is overruled. The complaint is not so uncertain that the defendant cannot respond to the same. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616; *Williams v. Beechnut Nutrition* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

The demurrer is overruled as to the first and second causes of action. The plaintiff has pled causes of action for discrimination based upon race and age, respectively, sufficient to withstand a demurrer.

The demurrer to the third cause of action for harassment under FEHA is hereby sustained with leave to amend. The plaintiff has failed to adequately plead facts demonstrating severe and pervasive harassment.

The demurrer to the fourth cause of action for retaliation in violation of FEHA is hereby sustained with leave to amend. The plaintiff fails to sufficiently plead facts demonstrating the plaintiff was engaged in protected activity.

The fifth cause of action alleging violation of Labor Code §132a is hereby sustained without leave to amend. The Worker's Compensation Appeals Board is the exclusive forum to adjudicate said claims. (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143; Labor Code §5300.)

Plaintiff is to file and serve an amended complaint within 15 days of the date of this order.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**WEATHERBY REYNOLDS CONSULTING ENGINEERS V. WESTERN HEALTH CARE INDUSTRIES: 09CV5845**

### ***Defendant's Motion to Set Aside Default and Default Judgment***

Defendant's motion to set aside default and default judgment is hereby granted. Defendant is to file and serve a responsive pleading within 15 days of the date of this order.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.