

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 16, 2023

MARIA E. CONTRERAS,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00055
)	
CAVCO INDUSTRIES, INC., D/B/A)	
FLEETWOOD HOMES,)	
Respondent.)	
_____)	

Appearances: Maria E. Contreras, pro se Complainant
Kevin Cloutier, Esq., Victoria Wojciechowski Hubona, Esq., and Denise Giraudó,
Esq., for Respondent

ORDER DENYING RESPONDENT’S MOTION TO TREAT AS CONCEDED ITS MOTION
FOR SUMMARY DECISION

I. INTRODUCTION

On November 1, 2022, the Court received Respondent’s Motion to Treat as Conceded its Motion for Summary Decision.¹ In the Motion, Respondent asserts that “[p]rovided Complainant’s failure to respond to Respondent’s Motion for Summary Decision, this Court may treat the Motion for Summary Decision as conceded and grant such Motion.” Mot. to Treat as Conceded its Mot. for Summ. Dec. 2 (citing *United States v. Ortiz*, 6 OCAHO no. 905 (1996), and then citing *United States v. Rosas*, 4 OCAHO no. 702 (1994)).²

¹ On September 20, 2022, Respondent filed a Motion for Summary Decision. Complainant has not filed a response.

² Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw

In support of this motion, Respondent attaches proof of service of its Motion for Summary Decision on Complainant via FedEx, and notes that Complainant failed to respond to the Motion by the October 17, 2022 deadline. *Id.* at 1; *id.* Exs. A, A.1.

Complainant did not respond to this Motion, just as she did not respond to Respondent’s Motion for Summary Decision.

II. LAW & ANALYSIS

Respondent moves the Court to grant its Motion for Summary Decision based only on Complainant’s declination to provide a response filing.³

Such a request is not grounded in law. Indeed, the Court is under no obligation to grant a motion for summary decision simply because it is unopposed. Courts must remain mindful of their obligation to hold a moving party to its burden and must evaluate motions based on the sufficiency of the moving papers. *See, e.g., Pinder v. Emp. Dev. Dep’t*, 227 F. Supp. 3d 1123, 1135 (E.D. Cal. 2017).⁴

database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

³ In its Motion, Respondent cites to several OCAHO cases in support of its position; however, cases upon which Respondent relies are not directly on point. As one such case explains, “[a]fter the moving party has met its burden, the opposing party must then come forward with specific facts showing that there is a genuine issue for trial.” *See Ortiz*, 6 OCAHO no. 905, at 4–5 (noting that “when a party supports a motion for summary decision with affidavits, the party opposing the motion must present specific facts, by its own affidavits or other extrinsic evidence, showing that a genuine issue of material fact exists for trial”); *Rosas*, 4 OCAHO no. 702, at 990 (finding only that the facts submitted by the movant were not in dispute when the non-movant had not responded to its motion for summary decision).

⁴ “A [] court ‘cannot base the entry of summary judgment on the mere fact that the motion is unopposed, but, rather must consider the merits of the motion.’” (citation omitted); *see also Reed v. Corizon, LLC*, 859 F. App’x 778, 779 (9th Cir. 2021) (finding the district court erred by granting summary decision “based solely on [the non-movant’s] failure to file a timely opposition” to the motion) (citation omitted); *Lopez-Gomez v. Sessions*, 693 F. App’x 729, 731 (9th Cir. 2017) (“Even when a motion for summary judgment is unopposed, as here, the moving party retains its burden to demonstrate the absence of any issue of material fact . . . Trial courts resolving unopposed summary judgment motions have an obligation to evaluate independently the sufficiency of the moving papers.” (citations omitted)).

The allegations in this case occurred in California; the Court may look to the case law of the Ninth Circuit. *See* 28 C.F.R. § 68.57.

The Court declines to grant summary decision for Respondent on the basis proposed by Respondent. Respondent's Motion to Treat as Conceded its Motion for Summary Decision is DENIED. However, consistent with Fed. R. Civ. P. 56(e)(2), all reliable and probative evidence attached to the motion may be accepted as true. *See, e.g., Brown v. Pilgrim's Pride Corp.*, 14 OCAHO no. 1379a, 3 (2022). The Court is actively considering the evidence and arguments made by Respondent in its Motion for Summary Decision, and parties can anticipate a ruling on that motion in due course.

III. CONCLUSION

For the reasons outlined above, the Motion to Treat as Conceded the Motion for Summary Decision is DENIED.

SO ORDERED.

Dated and entered on November 16, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge