

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Norco Corporation,)	Docket No. CAA-09-2024-0025
)	
Respondent.)	

**COMPLAINANT’S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL
ACCELERATED DECISION ON LIABILITY**

Pursuant to the Prehearing Order and 40 C.F.R. §§ 22.16(b) and 22.20(a), the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 9 (“Complainant”) offers the following reply to Norco Corporation’s (“Respondent” or “Norco”) response to Complainant’s Motion for Partial Accelerated Decision on Liability (“Motion”). Complainant respectfully requests that the Presiding Officer grant Complainant’s Motion because no genuine issue of material fact exists, and Complainant is entitled to judgment as a matter of law. 40 C.F.R. § 22.20(a).

I. Standard of Review

40 C.F.R. § 22.20(a) allows the Presiding Officer to “render an accelerated decision in favor of a party as to any or all parts of the proceeding . . . if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.” In considering Complainant’s Motion, this Tribunal is guided by Federal Rules of Civil Procedure (“FRCP”) Rule 56 and its associated jurisprudence because “the standard for granting an accelerated decision is ‘similar to the summary judgment standard set forth in [FRCP] Rule 56.’” *Consumers Scrap Recycling*,

Inc., 11 E.A.D. 269, 285 (EAB 2004) (quoting *Clarksburg Casket Co.*, 8 E.A.D. 496, 501-02 (EAB 1999)).

Summary judgment is warranted if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A reviewing court should grant a motion for summary judgment when the evidence, viewed in the light most favorable to the nonmoving party, presents no genuine issue of material fact. *Commander Oil Corp. v. Advance Food Serv. Equip.*, 991 F.2d 49, 51 (2nd Cir. 1993). The governing substantive law determines which facts are material for summary judgment, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* When reasonable minds cannot differ as to the import of evidence before the court, then there is no material factual issue. *Commander Oil Corp.*, 991 F.2d at 51 (citing *Anderson*, 447 U.S. at 250-51).

The party moving for summary judgment bears the initial responsibility of informing the Court of the basis for its motion and identifying items in the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In opposing a properly supported motion, the nonmoving party may not rest upon mere allegations or denials in its pleadings to demonstrate a genuine issue of material fact. *Anderson*, 447 U.S. at 248-49. The nonmovant must present more than “a scintilla of evidence in support of [its] position” and must set forth specific facts showing that there is a genuine issue for trial. *Id.* at 250, 252. Conclusory allegations or unsubstantiated speculation are insufficient to defeat a

properly supported motion for summary judgment. *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 428 (2nd Cir. 2001), cert. denied, 534 U.S. 891. “When the moving party has carried its burden . . . its opponent must do more than simply show that there is some metaphysical doubt as to material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986). “[T]he nonmoving party must come forward with specific facts showing that there is a genuine issue for trial.” *Id.* at 587 (citing Fed. R. Civ. P. 56(e)).

II. Argument

There is no genuine issue of material fact in this matter and Complainant is entitled to judgment as a matter of law. In its Motion, filed on May 22, 2024, Complainant establishes that Respondent violated Section 2025(x)(2) of the California Truck and Bus Regulation (“TBR”) because it failed to verify compliance of 77 fleets it hired or dispatched between January 1, 2018, and May 20, 2021, inclusive.

In its response to the Motion, Respondent fails to offer specific facts showing the presence of a genuine issue of material fact. Rather, Respondent argues that Complainant used “flawed data” as the basis for the Motion, fails to counter Complainant’s arguments, and addresses immaterial or unnecessary subjects. *See Phillips v. Calhoun*, 956 F.2d 949, 951 (10th Cir. 1992) (“Unsubstantiated allegations carry no probative weight in summary judgment proceedings.”); *Celotex Corp.*, 477 U.S. at 322 (Rule 56 mandates the entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case”). Therefore, there is no genuine issue of material fact in this matter and Complainant is entitled to judgment as a matter of law.

A. Complainant shows that Respondent violated TBR Section 2025(x)(2) based on the information Respondent provided

In its Motion, Complainant establishes by a preponderance of the evidence that Respondent violated TBR Section 2025(x)(2). Respondent argues that Complainant used “flawed data” as a basis for its Motion and that Complainant has not proven that Respondent violated TBR Section 2025(x)(2). Response at 1. Respondent’s assertions are factually inaccurate and unsupported by evidence; therefore, they cannot defeat Complainant’s Motion.

1. Complainant did not use “flawed data” as the basis for its Motion

Complainant based its Motion on the information Respondent submitted; that information is contained in CX 7-7g and it reflects Respondent’s August 10, 2023 response to the May 20, 2021 Information Request (the “Information Request”). Complainant reviewed all of the documentation that Respondent submitted as part of its August 10, 2023 response to the Information Request. *See* Motion at 15-16. After reviewing Respondent’s August 10, 2023 response to the Information Request, Complainant subsequently confirmed its understanding of the contents of Respondent’s submission with Respondent. *Id.* Complainant’s analysis of Respondent’s August 10, 2023 response to the Information Request is included in CX 46. *Id.* at 14. As described in its Motion, Complainant used the information Respondent confirmed to be correct;¹ it did not base the Motion on flawed data, as Respondent now asserts.

2. Complainant established that Respondent violated TBR Section 2025(x)(2)

In its Motion, Complainant establishes that the following undisputed facts are in the record: (a) Respondent is an out-of-state motor carrier; (b) Respondent operated or directed the operation of a vehicle subject to the TBR; and (c) Respondent did not verify that each hired or

¹ See Motion at 16. “[T]he worksheet that Respondent asserts to be incorrect is merely a spreadsheet from Respondent’s earlier submissions that Respondent annotated to corroborate the information contained in the Texas IRP information and cab cards that Respondent asserts absolves it from liability.”

dispatched vehicle was in compliance with the TBR. *See* TBR § 2025(x)(2); Motion at 8-14. In its response to the Motion, Respondent did not provide any evidence to support its argument that Complainant failed to demonstrate that it violated TBR Section 2025(x)(2). Thus, there remains no genuine issue of material fact as to any of the elements necessary to prove that a violation of TBR Section 2025(x)(2) occurred. Given the information in the record, Complainant respectfully requests that the Presiding Officer grant its Motion. *See* 40 C.F.R. § 22.20(a).

B. Respondent's remaining statements are immaterial to this Motion

Respondent makes two statements in its response that are insufficient to form the bases for denying Complainant's Motion for Partial Accelerated Decision on Liability. First, Respondent states that it "requested complainant to file their opposition to file an amended motion to dismiss." Response at 1. Complainant filed its opposition to Respondent's Motion to Dismiss on May 22, 2024. Respondent subsequently served upon Complainant its reply to Complainant's opposition on June 3, 2024.

Second, Respondent states that it invited a member of Complainant's staff to review records at its office and that it furnished many records to Complainant. The information Respondent provided as part of its August 10, 2023 response to the Information Request, which is contained in CX 7-7g, is the information upon which Complainant based its Motion and Respondent has not provided any additional evidence that demonstrates that information is inaccurate. As described above, Complainant maintains that Respondent violated Section 2025(x)(2) of the TBR based on the information it has provided to Complainant. Respondent's statements described in this section are immaterial to this Motion and therefore they should not prevent the Presiding Officer from granting Complainant's request for partial accelerated decision on liability.

III. Conclusion

For the reasons stated above, Complainant hereby respectfully requests that the Presiding Officer grant Complainant's Motion for Partial Accelerated Decision on Liability because there is no genuine issue of material fact and Complainant is entitled to judgment as a matter of law. As elaborated upon in Complainant's Motion, on the basis of the information Respondent provided in response to the Information Request, Respondent violated TBR Section 2025(x)(2) during the period of January 1, 2018 through May 20, 2021. Respondent has not introduced any evidence that could lead a reasonable trier of fact to conclude otherwise. *Anderson*, 477 U.S. at 248 (a factual dispute is only genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."); *Matsushita*, 475 U.S. at 587 ("where the record taken as a whole cannot lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial."). Therefore, there are no genuine issues of material fact and Complainant is entitled to judgment as a matter of law.

Respectfully Submitted,

June 14, 2024

Date

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CERTIFICATE OF SERVICE

I certify that an electronic copy of the foregoing “Complainant’s Reply in Support of Its Motion for Partial Accelerated Decision on Liability” *In the Matter of Norco Corporation*, Docket No. CAA-09-2024-0025, was filed and served on the Presiding Officer this day through the Office of Administrative Law Judges’ E-Filing System. I certify that an electronic copy of this “Complainant’s Reply in Support of Its Motion for Partial Accelerated Decision on Liability” was sent this day by e-mail to the following e-mail address for service on Respondent: A.G. Hollenstein at ag@norcocorp.com.

June 14, 2024

Date

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