

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 23 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

PEGGY KEARNS, an individual,

Plaintiff - Appellant,

v.

KATHY COMBA, an individual; et al.,

Defendants - Appellees.

No. 05-16963

D.C. No. CV-03-00207-LRH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted October 18, 2007\*\*  
San Francisco, California

Before: BRUNETTI, W. FLETCHER, and CLIFTON, Circuit Judges.

Peggy Kearns appeals an order of the district court granting summary judgment in favor of Defendants Kathy Comba and Alan Rogers. We affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously granted Appellant's Stipulated Motion for Submission on the Briefs on September 21, 2007 upon finding this case suitable for decision without oral argument pursuant to Fed. R. App. P. 34(a)(2).

By failing to respond to Defendants' qualified immunity argument below, Kearns waived the opportunity to oppose it for the first time on appeal. We do not consider Kearns' argument because it was not "raised sufficiently for the trial court to rule on it." *Broad v. Sealaska Corp.*, 85 F.3d 422, 430 (9th Cir. 1996); *In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989). The district court properly exercised its authority to enforce its local rules, *see* 28 U.S.C. § 2071; Fed. R. Civ. P. 83; *Zambrano v. Tustin*, 885 F.2d 1473, 1479 (9th Cir. 1989), which provide that failure to respond to a motion constitutes consent to granting the motion, *see* D. Nev. Rule 7-2(d). Defendants' failure to cite *Saucier v. Katz*, 533 U.S. 194 (2001), in their moving papers did not render their qualified immunity argument a nullity and in no way excused Kearns' lack of response.

Kearns also cannot succeed with respect to her state law claim. Like the district court, we conclude that Kearns did not show that any of the actions allegedly taken by her employer violated the public policy of Nevada, *see Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 377 (1999); *Wayment v. Holmes*, 112 Nev. 232, 236 (1996), or that her working conditions were so intolerable that a reasonable person in her position would have felt compelled to resign, *Martin v. Sears, Roebuck & Co.*, 111 Nev. 923, 925-26 (1995).

**AFFIRMED.**