

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Angel Garcia v. Greg's Auto Body, Inc.

No. 2:25-cv-02872-MAR, United States District Court for the Central District of California (August 1, 2025)

SUMMARY

This document is an order to show cause addressing Plaintiff Angel Garcia’s failure to prosecute after Defendants failed to timely answer, had default entered, and later filed an answer without first moving to set aside the default. The Court states that Defendants’ answer must be stricken and orders Plaintiff to request entry of default or explain the delay by August 22, 2025, warning that failure to respond may result in dismissal without prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Margo A. Rocconi
DECIDED	August 1, 2025
DOCKET	2:25-cv-02872-MAR
DISPOSITION	other
PROCEDURAL POSTURE	After Defendants failed to answer within the prescribed time, the Clerk entered default. Defendants subsequently filed an answer without first moving to set aside the default. The Court struck the answer and issued an order to show cause why the action should not be dismissed for failure to prosecute, because Plaintiff had not moved for default judgment.
STANDARD OF REVIEW	A court may sua sponte dismiss an action for failure to prosecute or failure to comply with court orders under Federal Rule of Civil Procedure 41(b); a plaintiff must prosecute with reasonable diligence to avoid dismissal.
PRECEDENTIAL VALUE	Unknown
PARTIES	Angel Garcia v. Greg's Auto Body, Inc., Gregory R. Gunter, Does 1 through 10

TOPICS

- default
- default judgment
- civil procedure
- pleadings

PRACTICE AREAS

Civil procedure

Default and default judgment

Failure to prosecute

QUESTIONS PRESENTED

1. Whether Defendants' answer filed after entry of default, without a prior motion to set aside the default, should be stricken.
2. Whether Plaintiff's failure to seek default judgment warranted an order to show cause and possible dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b).

HOLDINGS

1. After default is entered, a defendant may not appear by filing an answer without first moving to set aside the default; Defendants' answer was therefore stricken.
2. A plaintiff must prosecute the action with reasonable diligence, and the Court may sua sponte require an explanation and warn of dismissal when the plaintiff fails to pursue default judgment after entry of default.

KEY QUOTATIONS

"After default was entered, Mr. Webb filed an untimely answer to the Complaint. ...Because Mr. Webb no longer had standing to appear following entry of default, his answer to the Complaint is hereby STRICKEN."

FACTUAL BACKGROUND

Plaintiff served Defendants with the summons and complaint, but Defendants did not timely answer or otherwise challenge service. After the Clerk entered default, Defendants filed an answer without first seeking to set aside the default. Plaintiff had not filed a motion for default judgment nearly two months after the default was entered.

PROCEDURAL HISTORY

Plaintiff filed the complaint on April 2, 2025, and served Defendants on May 10, 2025. Defendants' time to answer expired on June 2, 2025, and the Clerk entered default on June 4, 2025. Defendants filed an answer on June 11, 2025, which the Court struck because they had not moved to set aside the default. The Court then ordered Plaintiff to request entry of default or show cause by August 22, 2025, warning that failure to respond could result in dismissal without prejudice under Rule 41(b).

DISPOSITION

other

CASES CITED

- iBASEt v. Exacore, LLC, No. SACV 13-01781-CJCD-FMX, 2014 WL 12576816, at *1 (C.D. Cal. Mar. 24, 2014)
- Wolff v. California, 318 F.R.D. 627, 630 (C.D. Cal. 2016)

- *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976)

OPINION

CIVIL MINUTES – GENERAL Case No. 2:25-cv-02872-MAR Date: August 1, 2025 Title: Present: The Honorable: MARGO A. ROCCONI, UNITED STATES MAGISTRATE JUDGE VALERIE VELASCO N/A Deputy Clerk Court Reporter / Recorder Attorneys Present for Plaintiff: Attorneys Present for Defendants: N/A N/A Proceedings: (In Chambers) ORDER TO SHOW CAUSE WHY ACTION SHOULD NOT BE DISMISSED FOR FAILURE TO PROSECUTE On April 2, 2025, Plaintiff Angel Garcia (“Plaintiff”) filed a complaint against Greg’s Auto Body, Inc. and Gregory R. Gunter (“Defendants”) and Does 1 through 10.

ECF Docket No. 1 (“Complaint”). Plaintiff served Defendants with the summons and Complaint on May 10, 2025—accordingly, Defendants’ answer was due on June 2, 2025. Dkts. 7–8. The time for Defendants to answer the Complaint passed, and they did not challenge service in any way or otherwise respond to the Complaint. See Fed. R. Civ. P. 12(a)(2), (b).

Accordingly, the Clerk entered a default against Defendants on June 4, 2025. Dkts. 11. On June 11, 2025, Defendants filed an Answer. Dkt. 12. However, Defendants did not first file a motion to set aside the default; accordingly, they did not have standing to appear, and the Court must STRIKE Defendants’ answer. See, e.g., *iBASEt v. Exacore, LLC*, No. SACV 13-01781-CJCD-FMX, 2014 WL 12576816, at *1 (C.D.

Cal. Mar. 24, 2014) (“After default was entered, Mr. Webb filed an untimely answer to the Complaint. ...Because Mr. Webb no longer had standing to appear following entry of default, his answer to the Complaint is hereby STRICKEN.”).

In any case, Plaintiff has not filed a motion for default judgment. See Fed. R. Civ. P. 55(b). Federal Rule of Civil Procedure 41(b) grants the Court authority to sua sponte dismiss actions for failure to prosecute or failure to comply with court orders. See Fed. R. Civ. P. 41(b); *Wolff v. California*, 318 F.R.D. 627, 630 (C.D. Cal. 2016). A plaintiff must prosecute her case with “reasonable diligence” to avoid dismissal pursuant to Rule 41(b).

Anderson v. Air W., Inc., 542 F.2d 522, 524 (9th Cir. 1976). CIVIL MINUTES – GENERAL Case No. 2:25-cv-02872-MAR Date: August 1, 2025 Title: Here, it appears that Plaintiff has failed to prosecute the case with reasonable diligence because they have failed to file a motion for default judgment for nearly two months.

Accordingly, the Court, on its own motion, orders Plaintiff to request an entry of default, or to show cause in writing as to why he has not done so, on or before August 22, 2025. Plaintiff is expressly warned that failure to timely file a response to this Order will result in this action being dismissed without prejudice as to one or more defendant(s) for failure to prosecute and comply with court orders.

See Fed. R. Civ. P. 41(b). IT IS SO ORDERED. Initials of vv Preparer

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