

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Romona Janine Wafer v. Lakeside Village Apartments, et al.

Wafer · No. 2:25-cv-03355 CKD · Decided January 15, 2026

SUMMARY

The United States District Court for the Eastern District of California vacated the hearing on defendants’ motion to dismiss after the pro se plaintiff failed to timely file an opposition. The court granted plaintiff a final opportunity to file an opposition or statement of non-opposition by February 4, 2026, warning that further failure could support dismissal under Federal Rule of Civil Procedure 41(b).

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	January 15, 2026
DOCKET	2:25-cv-03355 CKD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff proceeding pro se failed to timely oppose defendants' motion to dismiss. The magistrate judge vacated the scheduled hearing, allowed one final opportunity to file an opposition or statement of non-opposition, and warned that further failure could support dismissal under Federal Rule of Civil Procedure 41(b).
STANDARD OF REVIEW	Dismissal under Federal Rule of Civil Procedure 41(b) for failure to prosecute or failure to comply with court rules or orders is discretionary.
PRECEDENTIAL VALUE	Nonprecedential district court order

TOPICS

- motions to dismiss
- sanctions
- civil procedure

PRACTICE AREAS

- civil procedure
- federal civil litigation
- pro se litigation

QUESTIONS PRESENTED

1. Whether plaintiff's failure to timely oppose defendants' motion to dismiss subjected the action to dismissal or other sanctions under the court's local rules and Federal Rule of Civil Procedure 41(b).
2. Whether the court should vacate the scheduled hearing and provide plaintiff one final opportunity to respond to the motion.

HOLDINGS

1. A pro se litigant's failure to comply with the Federal Rules of Civil Procedure, the court's local rules, or a court order may support sanctions, including involuntary dismissal under Federal Rule of Civil Procedure 41(b). Plaintiff's failure to file an opposition violated Local Rules 110, 183(a), and 230(c), making the claims subject to dismissal.
2. Immediate dismissal was not ordered at this time because plaintiff was proceeding without counsel; instead, the court granted one final opportunity to respond. Failure to respond by February 4, 2026 would be construed as non-opposition and could provide an additional basis for recommending involuntary dismissal with prejudice under Rule 41(b).

KEY QUOTATIONS

“Pro se litigants must follow the same rules of procedure that govern other litigants” (1)

“However, given plaintiff has been proceeding without counsel, the court will not recommend dismissal at this time.” (2)

“Accordingly, the hearing on the motion is vacated, and after the expiration of the deadlines below, the court will decide the motion on the record and written briefing only.” (2)

FACTUAL BACKGROUND

Plaintiff, proceeding without counsel, filed claims against defendants in November 2025, paid the filing fee, and executed service. Defendants filed a motion to dismiss on December 17, 2025. Plaintiff did not file the opposition required by Local Rule 230(c) within fourteen days, although the initial scheduling order warned that failure to oppose could result in loss of the right to be heard and could be treated as consent to granting the motion.

PROCEDURAL HISTORY

Plaintiff filed the action in November 2025, paid the filing fee, and executed service. Defendants moved to dismiss on December 17, 2025, but plaintiff did not timely file an opposition under Eastern District of California Local Rule 230(c). The court declined to recommend dismissal immediately, vacated the January 28, 2026 hearing, and ordered plaintiff to respond by February 4, 2026.

DISPOSITION

other

CASES CITED

- King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987)
- Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)
- Hells Canyon Preservation Council v. U.S. Forest Service, 403 F.3d 683, 689 (9th Cir. 2005)
- Trice v. Clark County School District, 376 Fed. App'x 789, 790 (9th Cir. 2010) (unpublished)
- Warnken v. County of Solano, 2024 WL 4754200, at *1 (E.D. Cal. Nov. 12, 2024)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ROMONA JANINE WAFER, No. 2:25-cv-03355 CKD 12 Plaintiff,
ORDER 13 v. 14 LAKESIDE VILLAGE APARTMENTS, et al., 15 Defendants. 16 17 18 In
November 2025, plaintiff, who is proceeding without counsel, filed her claims against 19
defendants, paid the filing fee, and executed service.

On December 17, 2025, defendants filed a 20 motion to dismiss, noticing the motion for a January
28, 2026 hearing before the undersigned.¹ 21 (ECF No. 13.) Under the Court's Local Rules,
plaintiff was obligated to respond to defendants' 22 motion no later than fourteen (14) days after
the motion was filed. See E.D. Cal. L.R. 230(c); see 23 also "Initial Scheduling Order," ECF No. 3
at ¶¶ 5-6 (citing L.R.

230(c), noting the deadline to 24 file opposition, and cautioning that failure to do so "may result in
the loss of a right to be heard at 25 oral arguments, and may be taken as consent to granting of the
motion."). A review of the court's 26 docket reveals plaintiff failed to do so by the deadline. 27 1
This action proceeds before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and E.D.

Cal. 28 Local Rule 302(c)(21). 1 "Failure of counsel or of a party to comply with these Rules or
with any order of the Court 2 may be grounds for imposition by the Court of any and all sanctions
authorized by statute or Rule 3 or within the inherent power of the Court." E.D. Cal. Local Rule
110.

Moreover, Local Rule 4 183(a) provides in relevant part: 5 Any individual representing himself or
herself without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, these 6
Rules, and all other applicable law. All obligations placed on "counsel" by these Rules apply to
individuals appearing [without 7 counsel]. Failure to comply therewith may be ground for
dismissal, judgment by default, or any other sanction appropriate under these 8 Rules.

9 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the 10
same rules of procedure that govern other litigants") (overruled on other grounds). A district 11
court may impose sanctions, including involuntary dismissal of a plaintiff's case under Federal 12
Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to 13
comply with the court's orders, the Federal Rules of Civil Procedure, or the court's local rules.² 14

See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (recognizing that a court “may act sua sponte to dismiss a suit for failure to prosecute”); *Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir.

2005) (stating that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or the court’s orders).

The Ninth Circuit Court of Appeals had held that under certain circumstances a district court does not abuse its discretion by dismissing a plaintiff’s case pursuant to Federal Rule of Civil Procedure 41(b) for failing to file an opposition to a motion to dismiss. See, e.g., *Trice v. Clark County Sch. Dist.*, 376 Fed. App’x. 789, 790 (9th Cir. 2010) (unpublished); see also *Warnken v. County of Solano*, 2024 WL 23 4754200, *1 (E.D.

Cal. Nov. 12, 2024) (collecting cases). Plaintiff’s failure to file opposition to the pending motion is in violation of Local Rules 110, 183(a), and 230(c), as noted above. Thus, plaintiff’s claims are subject to dismissal. The Ninth Circuit Court of Appeals had held that under certain circumstances a district court does not abuse its discretion by dismissing a plaintiff’s case pursuant to Federal Rule of Civil Procedure 41(b) for failing to file an opposition to a motion to dismiss.

See, e.g., *Trice v. Clark County Sch. Dist.*, 376 Fed. App’x. 789, 790 (9th Cir. 2010) (unpublished). However, given plaintiff has been proceeding without counsel, the court will not recommend dismissal at this time. Instead, the court provides one final opportunity for plaintiff to respond to the pending motion (or to file a statement of non-opposition thereto).

Any further failure to respond to the motion will be construed as non-opposition and will constitute additional grounds for dismissal under Rule 41(b). Finally, Local Rule 230(c) states “[n]o party will be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party....” Accordingly, the hearing on the motion is vacated, and after the expiration of the deadlines below, the court will decide the motion on the record and written briefing only.

Accordingly, IT IS HEREBY ORDERED that: 1. The January 28, 2026 hearing on defendants’ motion (ECF No. 13) is VACATED; 2. Plaintiff shall file a written opposition (or a statement of non-opposition) to the motion to dismiss on or before February 4, 2026. Failure to do so will be deemed a statement of non-opposition and consent to the granting of the motion, and may constitute an additional ground for the imposition of appropriate sanctions, including a recommendation that plaintiff’s entire case be involuntarily dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b); and 3.

Defendants may file a written reply to plaintiff's opposition within one week of 19 plaintiffs filing. The court will take this matter under submission after this date. 20 | Dated: January 15, 2026 / ae / a ly. ae 22 UNITED STATES MAGISTRATE JUDGE 23 24 25 26 || 2/wate3355.no opp Q—_ xo dad > On January 13, 2026, plaintiff filed request to substitute an attorney as counsel in this action.

28 | (ECF No. 18.)