

**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).

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 15 sponte to dismiss a suit for failure to prosecute”); *Hells Canyon Preservation Council v. U.S.* 16 *Forest Serv.*, 403 F.3d 683, 689 (9th Cir.

2005) (stating that courts may dismiss an action 17 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute 18 or comply with the rules of civil procedure or the court’s orders).

The Ninth Circuit Court of 19 Appeals had held that under certain circumstances a district court does not abuse its discretion by 20 dismissing a plaintiff’s case pursuant to Federal Rule of Civil Procedure 41(b) for failing to file 21 an opposition to a motion to dismiss. See, e.g., *Trice v. Clark County Sch. Dist.*, 376 Fed. App’x. 22 789, 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). 24 Plaintiff’s failure to file opposition to the pending motion is in violation of Local Rules 25 110, 183(a), and 230(c), as noted above. Thus, plaintiff’s claims are subject to dismissal. 26 2 The Ninth Circuit Court of Appeals had held that under certain circumstances a district court 27 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 28 County Sch. Dist.*, 376 Fed. App’x. 789, 790 (9th Cir. 2010) (unpublished). 1 || However, given plaintiff has been proceeding without counsel’, the court will not recommend 2 || dismissal at this time. Instead, the court provides one final opportunity for plaintiff to respond to 3 || the pending motion (or to file a statement of non-opposition thereto).

Any further failure to 4 || respond to the motion will be construed as non-opposition and will constitute additional grounds 5 || for dismissal under Rule 41(b). 6 Finally, Local Rule 230(c) states “[n]o party will be entitled to be heard in opposition to a 7 || motion at oral arguments if opposition to the motion has not been timely filed by that party....” 8 || Accordingly, the hearing on the motion is vacated, and after the expiration of the deadlines 9 || below, the court will decide the motion on the record and written briefing only.

10 Accordingly, IT IS HEREBY ORDERED that: 11 1. The January 28, 2026 hearing on
defendants' motion (ECF No. 13) is VACATED; 12 2. Plaintiff shall file a written opposition (or a
statement of non-opposition) to the 13 motion to dismiss on or before February 4, 2026. Failure to
do so will be deemed 14 a statement of non-opposition and consent to the granting of the motion,
and may 15 constitute an additional ground for the imposition of appropriate sanctions, 16
including a recommendation that plaintiffs entire case be involuntarily dismissed 17 with
prejudice pursuant to Federal Rule of Civil Procedure 41(b); and 18 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.)