

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Regina Brewer v. LoanCare, LLC

Brewer · No. 2:25-cv-01157-DC-CSK · Decided September 8, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Regina Brewer’s action for failure to prosecute under Federal Rule of Civil Procedure 41(b). The court further recommends denying the defendants’ motion to dismiss as moot and closing the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 8, 2025
DOCKET	2:25-cv-01157-DC-CSK
DISPOSITION	other
PROCEDURAL POSTURE	After removal from Sacramento County Superior Court, Defendants moved to dismiss. Plaintiff did not oppose the motion or file a statement of non-opposition. The magistrate judge issued findings and recommendations recommending sua sponte dismissal for failure to prosecute and denial of the motion to dismiss as moot.
STANDARD OF REVIEW	The court applied the Ninth Circuit's five-factor test for involuntary dismissal under Federal Rule of Civil Procedure 41(b): the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the availability of less drastic alternatives, and the public policy favoring disposition on the merits.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- civil procedure
- motions to dismiss
- sanctions

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed sua sponte for failure to prosecute under Federal Rule of Civil Procedure 41(b).
2. Whether Defendants' pending motion to dismiss should be denied as moot following dismissal of the action.

HOLDINGS

1. A federal court may sua sponte dismiss an action under Rule 41(b) when a plaintiff fails to prosecute the action or comply with the Federal Rules of Civil Procedure, local rules, or a court order. Applying the Ninth Circuit's five-factor test, dismissal was appropriate because Plaintiff failed to oppose the motion to dismiss, the court had already provided a briefing schedule and warning, and the factors favoring dismissal outweighed the policy favoring adjudication on the merits.
2. Defendants' motion to dismiss should be denied as moot because the action itself should be dismissed for failure to prosecute.

KEY QUOTATIONS

“The court may act on its own accord in exercising this authority.” (at 1)

“Finally, as to the public policy favoring disposition of cases on their merits, that factor is outweighed here.”
(at 3)

FACTUAL BACKGROUND

Regina Brewer, proceeding pro se, filed this action in Sacramento County Superior Court, and Defendants removed it to federal court. Defendants served their motion to dismiss, but Brewer did not file an opposition or statement of non-opposition by the court-ordered deadline and did not request additional time. Although Brewer later filed a motion for a temporary restraining order, she otherwise failed to respond to the motion to dismiss or take steps to advance the case.

PROCEDURAL HISTORY

Plaintiff filed the action in Sacramento County Superior Court on February 3, 2025. Defendants removed the action to the Eastern District of California on April 21, 2025, and filed a motion to dismiss on April 28, 2025. After the court ordered clarification of service and established a briefing schedule, Plaintiff failed to file an opposition or statement of non-opposition by the May 16, 2025 deadline. The court submitted the motion without appearance or argument and recommended dismissal under Federal Rule of Civil Procedure 41(b), denial of the motion to dismiss as moot, and closure of the case.

DISPOSITION

other

CASES CITED

- Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995)
- Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)
- Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 890 (9th Cir. 2019)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153, 1156-57 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 REGINA BREWER, Case No. 2:25-cv-01157-DC-CSK 12 Plaintiff,
FINDINGS AND RECOMMENDATIONS ON DEFENDANT’S MOTION TO DISMISS 13 v.
AND SUA SPONTE DISMISSAL FOR FAILURE TO PROSECUTE 14 LOANCARE, LLC,
(ECF No. 4) 15 Defendant. 16 17 Plaintiff Regina Brewer, proceeding without the aid of counsel,
filed this action in 18 Sacramento County Superior Court on February 3, 2025.1 Compl.

(ECF No. 1-1). On 19 April 21, 2025, Defendants LoanCare, LLC and Lakeview Loan Servicing,
LLC removed 20 this action to this Court. Removal (ECF No. 1). On April 28, 2025, Defendants
filed the 21 pending motion to dismiss and noticed it for a hearing for June 10, 2025. Defs. Mot.
22 (ECF No. 4).

On April 30, 2025, the Court issued an order directing Defendants to file a 23 proof of service
because the motion documents did not indicate whether and when 24 Plaintiff was served with the
motion. 4/30/2025 Order (ECF No. 5).

The Court also 25 notified the parties that Plaintiff’s opposition or statement of non-opposition
shall be filed 26 within fourteen (14) days from the date of Defendants’ service of the motion and
the 27 1 This action proceeds before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and 28
E.D. Cal. Local Rule 302(c)(21). 1 reply brief from Defendants, if any, was due ten (10) days
thereafter.

Id. On May 3, 2025, 2 Defendants filed a proof of service of the motion to dismiss indicating
Plaintiff had been 3 served on May 2, 2025, making Plaintiff’s opposition or statement of non-
opposition due 4 May 16, 2025. See ECF No. 6. Plaintiff did not file an opposition or statement of
non- 5 opposition to the motion. See Docket.

On May 23, 2025, the Court submitted the motion 6 without appearance and without argument
pursuant to Local Rule 230(c) and (g). For the 7 reasons that follow, the Court recommends this
action be dismissed for failure to 8 prosecute pursuant to Federal Rule of Civil Procedure 41(b)
and Defendants’ motion to 9 dismiss (ECF No. 4) be DENIED as moot. 10 I. LEGAL
STANDARDS 11 Under Federal Rule of Civil Procedure 41, a court may dismiss an action for 12

failure to prosecute or failure to comply with the Federal Rules of Civil Procedure, the court's local rules, or any order of the court.

Fed. R. Civ. P. 41(b); see also *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (approving dismissal under Rule 41(b) for a party's failure to follow the district court's local rules). This court's Local Rules are in accord. See E.D. Cal. Local Rule 110 ("Failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court."); E.D.

Cal. Local Rule 183(a) (providing that a pro se party's failure to comply with the federal rules, local rules, or other applicable law may support dismissal of that party's action). The court may act on its own accord in exercising this authority. *Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (approving sua sponte dismissals under Rule 41(b)).

The Ninth Circuit has found the following factors relevant in determining whether a case should be dismissed under Rule 41(b): (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendant(s); (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.

Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 890 (9th Cir. 2019). II. DISCUSSION 4 Applying the factors for involuntary dismissal, the Court finds this action should be dismissed. See *Applied Underwriters*, 913 F.3d at 890.

The first two factors weigh in favor of dismissal because the public has a strong interest in expeditious resolution of litigation, and Plaintiff has failed to take the steps necessary to move this case forward by failing to file an opposition or statement of non-opposition to the motion to dismiss.

In addition, this district court in particular has a strong need and interest in managing its docket given the extremely high caseload in the Eastern District of California. While the risk of prejudice to Defendant is somewhat minimal, there is some prejudice given the impact on resources of stale litigation. As to the fourth factor, the Court has already tried less drastic alternatives.

Specifically, the Court issued an order notifying the parties of the briefing schedule on the motion to dismiss, including the deadline for Plaintiff's opposition or statement of non-opposition. 4/30/2025 Order. Aside from Plaintiff filing a motion for temporary restraining order on June 6, 2025 (ECF No. 10), which was denied without prejudice as moot on July 22,

2025 (ECF No. 13), Plaintiff has otherwise not responded to 19 Defendants' motion and has not requested additional time to do so.

See Docket. 20 Finally, as to the public policy favoring disposition of cases on their merits, that 21 factor is outweighed here. Indeed, it is Plaintiff's own failure to prosecute the case and 22 comply with the rules that precludes a resolution on the merits. 23 Therefore, after careful consideration, the Court concludes dismissal for failure to 24 prosecute is appropriate.

See Hells Canyon, 403 F.3d at 689 (approving court's sua 25 sponte dismissal under Rule 41(b) for a plaintiff's failure to prosecute or comply with the 26 Federal Rules of Civil Procedure or the court's orders). 27 / / / 28 1 RECOMMENDATIONS 2 Accordingly, IT |S HEREBY RECOMMENDED that: 3 1. Plaintiff's action be DISMISSED; 4 2. Defendant's motion to dismiss (ECF No. 4) be DENIED as moot; and 5 3.

The Clerk of Court be directed to CLOSE this case. 6 These findings and recommendations are submitted to the United States District 7 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 8 | 14 days after being served with these findings and recommendations, any party may file 9 || written objections with the Court and serve a copy on all parties.

This document should 10 | be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any 11 | reply to the objections shall be served on all parties and filed with the Court within 14 12 || days after service of the objections. Failure to file objections within the specified time 13 || may waive the right to appeal the District Court's order.

Turner v. Duncan, 158 F.3d 449, 14 | 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 15 16 | Dated: September 8, 2025 C iy S \U 7 CHI SOO KIM 18 UNITED STATES MAGISTRATE JUDGE 19 || 4, brew1157.25 20 21 22 23 24 25 26 27 28