

**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

OPINION

Regina Brewer v. LoanCare, LLC

PER CURIAM.

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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 13 court's local rules, or any order of the court. Fed. R. Civ. P. 41(b); see also *Ghazali v. 14 Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (approving dismissal under Rule 41(b) for a party's 15 failure to follow the district court's local rules). This court's Local Rules are in accord. 16 See E.D. Cal. Local Rule 110 ("Failure of counsel or of a party to comply with these 17 Rules or with any order of the Court may be grounds for imposition by the Court of any 18 and all sanctions authorized by statute or Rule or within the inherent power of the 19 Court."); E.D. Cal. Local Rule 183(a) (providing that a pro se party's failure to comply 20 with the federal rules, local rules, or other applicable law may support dismissal of that 21 party's action). The court may act on its own accord in exercising this authority. *Hells 22 Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) 23 (approving sua sponte dismissals under Rule 41(b)). 24 The Ninth Circuit has found the following factors relevant in determining whether a 25 case should be dismissed under Rule 41(b): 26 (1) the public's interest in expeditious resolution of litigation; 27 (2) the court's need to manage its docket;

(3) the risk of prejudice to the defendant(s);

28 (4) the availability of less drastic alternatives; and 1 (5) the public policy favoring disposition of cases on their merits. 2 *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019). 3

II. DISCUSSION

4 Applying the factors for involuntary dismissal, the Court finds this action should be 5 dismissed. See *Applied Underwriters*, 913 F.3d at 890. The first two factors weigh in 6 favor of dismissal because the public has a strong interest in expeditious resolution of 7 litigation, and Plaintiff has failed to take the steps necessary to move this case forward 8 by failing to file an opposition or statement of non-opposition to the motion to dismiss. In 9 addition, this district court in particular has a strong need and interest in managing its 10 docket given the extremely high caseload in the Eastern District of California. While the 11 risk of prejudice to Defendant is somewhat minimal, there is some prejudice given the 12 impact on resources of stale litigation. 13 As to the fourth factor, the Court has already tried less drastic alternatives. 14 Specifically, the Court issued an order notifying the parties of the briefing schedule on 15 the motion to dismiss, including the deadline for Plaintiff's opposition or statement of 16 non-opposition. 4/30/2025 Order. Aside from Plaintiff filing a motion for temporary 17 restraining order on June 6, 2025 (ECF No. 10), which was denied without prejudice as 18 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 IS 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

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18 UNITED STATES MAGISTRATE JUDGE

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