

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

McBryde v. 1-800-PACK-RAT, LLC

McBryde · No. 2:25-cv-01474-DC-CSK · Decided July 15, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Tiffany McBryde’s action against 1-800-Pack-Rat, LLC for failure to prosecute under Federal Rule of Civil Procedure 41(b). The recommendation follows Plaintiff’s failure to oppose Defendant’s motion to dismiss or respond to an order to show cause. The Court vacates the scheduled hearing and recommends denying the 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	July 15, 2025
DOCKET	2:25-cv-01474-DC-CSK
DISPOSITION	dismissed
PROCEDURAL POSTURE	The plaintiff, proceeding pro se, failed to oppose the defendant's motion to dismiss and failed to respond to an order to show cause concerning that failure. The magistrate judge issued an order vacating the motion hearing and findings and recommendations that the action be dismissed for failure to prosecute.
STANDARD OF REVIEW	Involuntary dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b), evaluated under the Ninth Circuit's five-factor test.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Tiffany McBryde v. 1-800-PACK-RAT, LLC

TOPICS

- motions to dismiss
- sanctions
- civil procedure
- commercial litigation

PRACTICE AREAS

civil procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether the action should be dismissed sua sponte for plaintiff's failure to prosecute and failure to comply with the Federal Rules of Civil Procedure, local rules, and the court's order.
2. Whether defendant's pending motion to dismiss should be denied as moot if the action is dismissed for failure to prosecute.

HOLDINGS

1. A court may dismiss an action sua sponte under Federal Rule of Civil Procedure 41(b) when a party 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 participate in the litigation despite notice and an opportunity to respond.
2. Defendant's motion to dismiss should be denied as moot because the action should instead be dismissed for plaintiff's failure to prosecute.

KEY QUOTATIONS

“Under Federal Rule of Civil Procedure 41, a court may dismiss an action for 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.” (at 1)

“The Ninth Circuit has found the following factors relevant in determining whether a case should be dismissed under Rule 41(b):” (at 2)

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

FACTUAL BACKGROUND

Plaintiff Tiffany McBryde filed the action in state court, and defendant 1-800-Pack-Rat, LLC removed it to federal court. Defendant filed a motion to dismiss, but plaintiff failed to oppose the motion or file a statement of non-opposition. Plaintiff also failed to respond to the court's order to show cause explaining the missed deadline or why the case should not be dismissed for failure to prosecute.

PROCEDURAL HISTORY

Plaintiff filed the action in Sacramento County Superior Court on April 1, 2025, and defendant removed it to federal court on May 27, 2025. Defendant filed a motion to dismiss, but plaintiff did not file an opposition or statement of non-opposition. After the court ordered plaintiff to show cause, plaintiff again failed to respond. The magistrate judge recommended dismissal under Federal Rule of Civil Procedure 41(b), denial of the motion to dismiss as moot, and closure of the case, subject to objections and review by the assigned district judge.

DISPOSITION

dismissed

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

(PS) McBryde v. 1-800-PACK RAT LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 TIFFANY MCBRYDE, Case No. 2:25-cv-01474-DC-CSK 12 Plaintiff, ORDER AND
FINDINGS AND

RECOMMENDATIONS TO DISMISS FOR

13 v. FAILURE TO PROSECUTE

14 1-800-PACK-RAT, LLC,

15 Defendant. 16

17 Plaintiff Tiffany McBryde, proceeding without the aid of counsel, originally filed this 18 action
in Sacramento County Superior Court on April 1, 2025.¹ (ECF No. 1-1.) Defendant 19 1-800-
Pack-Rat, LLC removed this action to federal court on May 27, 2025. (ECF No. 1.) 20 On June
22, 2025, the district judge issued a related case order relating and reassigning 21 to District Judge
Dena Coggins and the undersigned the following cases: (1) this action, 22 (2) Peterman v. 1-800-
Pack-Rat, LLC, 2:25-cv-01489-DC-CSK (E.D. Cal. 2025), and 23 (3) McBryde v. 1-800-Pack-
Rat, LLC, 2:25-cv-01498-DC-CSK (E.D. Cal. 2025). (ECF
24 No. 8.)

25 On June 3, 2025, Defendant filed a motion to dismiss and set it for hearing before 26 the
undersigned. (ECF No. 3.) On the Court's own motion, on June 12, 2025, the 27 1 This matter
proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. 28 Civ. P. 72, and Local
Rule 302(c)(21). 1 hearing on Defendant's motion to dismiss was reset for July 22, 2025.² (ECF
No. 7.) 2 After Plaintiff's deadline to file an opposition or statement of non-opposition to 3
Defendant's motion passed, on June 27, 2025, the Court ordered Plaintiff to show cause 4 by July
7, 2025 why the Court should not construe Plaintiff's failure to file a timely 5 opposition as a non-
opposition to Defendant's motion to dismiss and why this case 6 should not be dismissed for

failure to prosecute. 6/27/2025 Order (ECF No. 9) (citing 7 E.D. Cal. L. R. 110 and Fed. R. Civ. P. 41(b)). The deadline has now passed without any 8 response from Plaintiff to the Order to Show Cause, or to Defendant's motion to dismiss. 9 See Docket. Accordingly, the Court recommends dismissal of this action for failure to 10 prosecute.

11 I. LEGAL STANDARDS

12 Under Federal Rule of Civil Procedure 41, a court may dismiss an action for 13 failure to prosecute or failure to comply with the Federal Rules of Civil Procedure, the 14 court's local rules, or any order of the court. Fed. R. Civ. P. 41(b); see also *Ghazali v. 15 Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (approving dismissal under Rule 41(b) for a party's 16 failure to follow the district court's local rules). This court's Local Rules are in accord. 17 See E.D. Cal. Local Rule 110 ("Failure of counsel or of a party to comply with these 18 Rules or with any order of the Court may be grounds for imposition by the Court of any 19 and all sanctions authorized by statute or Rule or within the inherent power of the 20 Court."); E.D. Cal. Local Rule 183(a) (providing that a pro se party's failure to comply 21 with the federal rules, local rules, or other applicable law may support dismissal of that 22 party's action). The court may act on its own accord in exercising this authority. *Hells 23 Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) 24 (approving sua sponte dismissals under Rule 41(b)). 25 / / / 26 27 2 On July 9, 2025, the Court granted Defendant's request to appear remotely at the July 22, 2025 hearing. (ECF No. 11.) The Court reset the July 22, 2025 hearing for 9:30 a.m. 28 before the undersigned via Zoom. (Id.) 1 The Ninth Circuit has found the following factors relevant in determining whether a 2 case should be dismissed under Rule 41(b):

(1) the public's interest in expeditious resolution of litigation;

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(2) the court's need to manage its docket;

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

(4) merits the availability of less drastic alternatives; and

5 (5) the public policy favoring disposition of cases on their. 6 *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019).

7 II. DISCUSSION

8 Applying the factors for involuntary dismissal, the Court finds this action should be 9 dismissed. See *Applied Underwriters*, 913 F.3d at 890. The first two factors weigh in 10 favor of dismissal because the public has a strong interest in expeditious resolution of 11 litigation, and Plaintiff has failed to take the steps necessary to move this case forward. 12 In addition, this district court in particular has a strong need and interest in managing its 13 docket given the extremely high caseload in the Eastern District of California. While the 14 risk of prejudice to Defendant is somewhat minimal, there is some prejudice given the 15 impact on resources of stale litigation. 16 As to the fourth factor, the Court has already tried less drastic alternatives. 17 Specifically, Plaintiff previously missed the deadline to file an opposition or statement of 18 non-opposition to

Defendant's motion to dismiss and was given an opportunity to explain 19 this failure. (ECF No. 9.) Despite this, Plaintiff has failed to respond to the Order to Show 20 Cause, respond to the motion to dismiss, or participate in this litigation, leaving the Court 21 with little alternative but to recommend dismissal. 22 Finally, as to the public policy favoring disposition of cases on their merits, that 23 factor is outweighed here. Indeed, it is Plaintiff's own failure to prosecute the case and 24 comply with the rules that precludes a resolution on the merits. 25 Therefore, after careful consideration, the Court concludes dismissal for failure to 26 prosecute is appropriate. See *Hells Canyon*, 403 F.3d at 689 (approving court's sua 27 sponte dismissal under Rule 41(b) for a plaintiff's failure to prosecute or comply with the 28 Federal Rules of Civil Procedure or the court's orders). 1 | Ill. CONCLUSION 2 Accordingly, IT |S HEREBY ORDERED that: 3 1. The July 22, 2025 Zoom hearing on Defendant's motion to dismiss is 4 VACATED; and 5 2. The Clerk of Court is directed to send a courtesy copy of this order and 6 findings and recommendations by e-mail to Plaintiff at the e-mail address 7 listed by Plaintiff on her documents mcbrydetiffany@gmail.com. 8 Further, IT |S HEREBY RECOMMENDED that: 9 1. Plaintiff's action be DISMISSED; 10 2. Defendant's motion to dismiss (ECF No. 3) be DENIED as moot; and 11 3. The Clerk of Court be directed to CLOSE this case. 12 | These findings and recommendations are submitted to the United States District Judge 13 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 14 | after being served with these findings and recommendations, any party may file written 15 || objections with the Court and serve a copy on all parties. This document should be 16 | captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply 17 || to the objections shall be served on all parties and filed with the Court within 14 days 18 | after service of the objections. Failure to file objections within the specified time may 19 || waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 20 | (9th Cir. 1998); *Martinez v. Yist*, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 21 22 || Dated: July 15, 2025 C i s

23 CHI SOO KIM

24 UNITED STATES MAGISTRATE JUDGE

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