

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACOB WINDING,

Plaintiff,

No. 2:09-cv-03526 KJM KJN PS

v.

ALLSTATE INSURANCE COMPANY
and DOES 1 through 25, inclusive,

Defendants,

ORDER

ALLSTATE INSURANCE COMPANY,

Counter-claimant,

v.

JACOB WINDING,

Counter-defendant.

On August 1, 2011, defendant and counter-claimant Allstate Insurance Company (“Allstate”) filed a motion for summary judgment, or partial summary judgment in the alternative, with respect to plaintiff’s claims against it (Dkt. No. 60). That same day, Allstate filed a motion for summary judgment addressed to its counterclaim against plaintiff (Dkt. No. 59). Allstate noticed both motions for a hearing to take place before the undersigned on

1 September 15, 2011.¹ Pursuant to this court’s Local Rules, plaintiff was obligated to file and
2 serve a written opposition or statement of non-opposition to the pending motions at least fourteen
3 days prior to the re-noticed hearing date, or September 1, 2011. See E. Dist. Local Rule 230(c).²
4 The court’s docket reveals that plaintiff, who is now proceeding without counsel, failed to file a
5 written opposition or statement of non-opposition with respect to Allstate’s motions. Thus,
6 plaintiff violated Local Rules 230(c) and 260.

7 Eastern District Local Rule 110 provides that “[f]ailure of counsel or of a party to
8 comply with these Rules or with any order of the Court may be grounds for imposition by the
9 Court of any and all sanctions authorized by statute or Rule or within the inherent power of the
10 Court.” Moreover, Eastern District Local Rule 183(a) provides, in part:

11 Any individual representing himself or herself without an attorney is
12 bound by the Federal Rules of Civil or Criminal Procedure, these Rules,
13 and all other applicable law. All obligations placed on “counsel” by these
14 Rules apply to individuals appearing in propria persona. Failure to comply
15 therewith may be ground for dismissal, judgment by default, or any other
16 sanction appropriate under these Rules.

17 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
18 same rules of procedure that govern other litigants.”). Case law is in accord that a district court

19 ¹ This action proceeds before the undersigned pursuant to Eastern District of California
20 Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On June 13, 2011, plaintiff’s counsel was
21 permitted to withdraw from his representation of plaintiff in this action. (Order, June 13, 2011, Dkt.
22 No. 57.)

23 ² Eastern District Local Rule 230(c) provides:

24 **(c) Opposition and Non-Opposition.** Opposition, if any, to the granting of
25 the motion shall be in writing and shall be filed and served not less than
26 fourteen (14) days preceding the noticed (or continued) hearing date. A
responding party who has no opposition to the granting of the motion shall
serve and file a statement to that effect, specifically designating the motion
in question. No 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. . . .

Plaintiff was also obligated to comply with Local Rule 260 in regards to the motions for
summary judgment and partial summary judgment.

1 may impose sanctions, *including involuntary dismissal of a plaintiff's case* pursuant to Federal
2 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to
3 comply with the court's orders, the Federal Rules of Civil Procedure, or the court's local rules.
4 See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court "may act *sua*
5 *sponte* to dismiss a suit for failure to prosecute"); Hells Canyon Preservation Council v. U.S.
6 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action
7 pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff's failure to prosecute
8 or comply with the rules of civil procedure or the court's orders); Ghazali v. Moran, 46 F.3d 52,
9 53 (9th Cir. 1995) (per curiam) ("Failure to follow a district court's local rules is a proper ground
10 for dismissal."), cert. denied, 516 U.S. 838 (1995); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th
11 Cir. 1992) ("Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
12 action for failure to comply with any order of the court."), cert. denied, 506 U.S. 915 (1992);
13 Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam)
14 (stating that district courts have inherent power to control their dockets and may impose
15 sanctions including dismissal and default), cert. denied, 479 U.S. 829 (1986).

16 In light of the foregoing, IT IS HEREBY ORDERED that:

17 1. The hearing on Allstate's motions for summary judgment or partial
18 summary judgment (Dkt. Nos. 59-60), which is presently set for September 15, 2011, is
19 continued until October 27, 2011.


20 2. Plaintiff shall file and serve separate written oppositions to Allstate's
21 motions, or statements of non-opposition, no later than September 15, 2011. If plaintiff chooses
22 to file written oppositions, he *must* comply with the requirements of Local Rule 230 and Local
23 Rule 260. Plaintiff's failure to file a proper written opposition to either motion will be deemed a
24 statement of non-opposition to, and plaintiff's consent to the granting of, the motion to which
25 plaintiff failed to respond. Such failure shall also constitute an additional ground for the
26 imposition of appropriate sanctions, including recommendations that plaintiff's claims be

1 involuntarily dismissed pursuant to Federal Rule of Civil Procedure 41(b) and that a default
2 judgment be entered against plaintiff as to Allstate's counterclaim.

3 3. Allstate may file a written reply to plaintiff's oppositions, if any, on or
4 before September 29, 2011.

5 IT IS SO ORDERED.

6 DATED: September 6, 2011

7
8 
9 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26