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

FEDERICO J. GEMPESAW,

Plaintiff,

No. 2:11-cv-00811 LKK KJN PS

v.

RECONTRUST COMPANY, N.A., et al.,

Defendants.

ORDER

On April 20, 2011, defendants ReconTrust Company, N.A., Countrywide Home Loans, Inc., and BAC Home Loans Servicing, LP¹ filed an amended motion to dismiss plaintiff's complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and noticed that motion for a hearing before the undersigned to take place on June 9, 2011.² (See Am. Notice of Mot. & Mot. to Dismiss, Dkt. No. 10.) Pursuant to the court's Local Rules, plaintiff was obligated to file and serve a written opposition or statement of non-opposition to the defendants' motion at least

¹ Defendant BAC Home Loans Servicing, LP asserts that it was erroneously sued as "Bank of America Home Loans."

² This action proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 fourteen days prior to the hearing date, or May 26, 2011. See E. Dist. Local Rule 230(c).³ The
2 court’s docket reveals that plaintiff, who is proceeding without counsel, failed to file a written
3 opposition or statement of non-opposition to defendants’ motion.

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

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

14 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
15 same rules of procedure that govern other litigants.”). Case law is in accord that a district court
16 may impose sanctions, *including involuntary dismissal of a plaintiff’s case* pursuant to Federal
17 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to
18 comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local rules.⁴
19 See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act *sua*

19 ³ Eastern District Local Rule 230(c) provides:

20 **(c) Opposition and Non-Opposition.** Opposition, if any, to the granting of
21 the motion shall be in writing and shall be filed and served not less than
22 fourteen (14) days preceding the noticed (or continued) hearing date. A
23 responding party who has no opposition to the granting of the motion shall
24 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. . . .

25 ⁴ The Ninth Circuit Court of Appeals had held that under certain circumstances a district
26 court 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
County Sch. Dist., 376 Fed. Appx. 789, 790 (9th Cir. 2010), cert. denied, 131 S. Ct. 422 (2010).

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

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

13 1. The hearing on defendants’ amended motion to dismiss plaintiff’s
14 complaint (Dkt. No. 10), which is presently set for June 9, 2011, is continued until July 7, 2011.

15 2. Plaintiff shall file a written opposition to the motion to dismiss, or a
16 statement of non-opposition thereto, on or before June 9, 2011. *Plaintiff’s failure to file a*
17 *written opposition will be deemed a statement of non-opposition to the pending motion and*
18 *consent to the granting of the motion to dismiss, and shall constitute an additional ground for the*
19 *imposition of appropriate sanctions, including a recommendation that plaintiff’s case be*
20 *involuntarily dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).*

21 3. Defendants may file a written reply to plaintiff’s opposition, if any, on or
22 before June 23, 2011.

23 IT IS SO ORDERED.

24 DATED: June 1, 2011

25 
26 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE