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

JESSIE HUNT, III,

Plaintiff,

No. 2:12-cv-2455 KJM KJN PS

v.

LINCOLN UNIFIED SCHOOL
DISTRICT, et al.

Defendants.

ORDER

On October 4, 2012, defendants Lincoln Unified School District and San Joaquin County Office of Education filed a motion to dismiss plaintiff’s complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).¹ (Dkt. No. 12.) Defendants noticed their motion to dismiss for a hearing to take place before the undersigned on November 8, 2012. (Id.) Pursuant to this court’s Local Rules, plaintiff was obligated to file and serve a written opposition or statement of non-opposition to the pending motion at least fourteen (14) days prior to the hearing date, or October 25, 2012. See E.D. Cal. L.R. 230(c).² The court’s docket reveals that

¹ This action proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

² More specifically, Eastern District Local Rule 230(c) provides:

1 plaintiff, who is proceeding without counsel, failed to file a written opposition or statement of
2 non-opposition with respect to the motion to dismiss.

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

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

11 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
12 same rules of procedure that govern other litigants”) (overruled on other grounds). Case law is in
13 accord that a district court may impose sanctions, *including involuntary dismissal of a plaintiff’s*
14 *case* pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his
15 or her case or fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the
16 court’s local rules.³ See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a
17 court “may act *sua sponte* to dismiss a suit for failure to prosecute”); Hells Canyon Preservation
18 Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss
19

20 **(c) Opposition and Non-Opposition.** Opposition, if any, to the granting
21 of 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 ³ 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) (unpublished).

1 an action pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff's failure to
2 prosecute or comply with the rules of civil procedure or the court's orders); Ghazali v. Moran, 46
3 F.3d 52, 53 (9th Cir. 1995) (per curiam) ("Failure to follow a district court's local rules is a
4 proper ground for dismissal"); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992)
5 ("Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for
6 failure to comply with any order of the court"); Thompson v. Housing Auth. of City of L.A., 782
7 F.2d 829, 831 (9th Cir. 1986) (per curiam) (stating that district courts have inherent power to
8 control their dockets and may impose sanctions including dismissal or default).

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

10 1. The hearing on defendants' motion to dismiss plaintiff's complaint (Dkt.
11 No. 12), which is presently set for November 8, 2012, is CONTINUED until December 13, 2012.

12 2. Plaintiff shall file a written opposition to the motion to dismiss, or a
13 statement of non-opposition thereto, on or before November 29, 2012. *Plaintiff's failure to file a*
14 *written opposition will be deemed a statement of non-opposition to the pending motion and*
15 *consent to the granting of the motion to dismiss, and shall constitute an additional ground for the*
16 *imposition of appropriate sanctions, including a recommendation that plaintiff's case be*
17 *involuntarily dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).*

18 3. Defendants may file a written reply to plaintiff's opposition, if any, on or
19 before December 6, 2012.

20 IT IS SO ORDERED.

21 DATED: October 26, 2012

22 
23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE
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