

1 “Pro se litigants must follow the same rules of procedure that govern other litigants.”
2 King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (overruled on other grounds). A district court
3 may impose sanctions, *including involuntary dismissal of a plaintiff’s case* pursuant to Federal
4 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case, or fails to
5 comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local rules.
6 See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act sua
7 sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.
8 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action
9 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute
10 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,
11 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground
12 for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal
13 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with
14 any order of the court”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.
15 1986) (per curiam) (stating that district courts have inherent power to control their dockets and
16 may impose sanctions including dismissal or default).

17 This court’s Local Rules are in accord. Eastern District Local Rule 110 provides that
18 “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may
19 be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or
20 within the inherent power of the Court.” Eastern District Local Rule 183(a) provides, in part:

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

28 E.D. Cal. L.R. 183(a).


Plaintiff’s failure to appear violates the Court’s local rules. See E.D. Cal. L.R. 230(i)
 (“Absent notice of intent to submit the matter on the briefs, failure to appear may be deemed
 withdrawal of . . . opposition to the motion, in the discretion of the Court, or may result in the

1 imposition of sanctions.”). Thus, the Court issues this order for Plaintiff to show cause why he
2 should not be sanctioned. This may include monetary sanctions or even dismissal of his case with
3 prejudice for failure to prosecute and failure to comply with the local rules and court orders.²

4 Accordingly, IT IS ORDERED:

- 5 1. Within 21 days of this order, Plaintiff shall show cause in writing why sanctions should
6 not be imposed for his failure to appear at the December 19, 2019 hearing;
- 7 2. Plaintiff’s failure to file the required response shall constitute an additional ground for,
8 *and plaintiff’s consent to*, the imposition of appropriate sanctions, including a potential
9 recommendation that Plaintiff’s case be involuntarily dismissed with prejudice
10 pursuant to Federal Rule of Civil Procedure 41(b) and Local Rules 110 and 183(a);
- 11 3. The January 23, 2020 hearings on Plaintiff’s motions for reconsideration (ECF No.
12 152) and motion for a protective order (ECF No. 155) are VACATED. The Court
13 STAYS resolution of these matters until after this Order to Show Cause is resolved.

14 Dated: December 19, 2019

15 
16 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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18 ² The Court notes that Plaintiff’s dilatory behavior is not new. Plaintiff has a history of
19 improperly filing motions without noticing them for a hearing (ECF No. 147), filing
20 substantively-frivolous motions (See ECF No. 118), and asserting that he will be filing additional
21 briefing despite the lack of authority for doing so (See ECF No. 155, Plaintiff’s 8-page
22 memorandum requesting a protective order, where he instead unilaterally deems the filing a
23 simple “motion [that] will be supported through a subsequently filed Memorandum of Points and
24 Authorities[.]”). It also appears Plaintiff’s suit in state court was dismissed for failure to bring the
25 action to trial within 5 years. (See, e.g., ECF No. 93, “Plaintiff discloses, however, that the case
26 in which the preliminary injunction was entered was dismissed for failing to bring the matter to
27 trial within five years on November 24 2015, and an appeal of the dismissal was denied by the
28 Third District Court of Appeal without a decision on the merits.”). Thus, Plaintiff has tied up
these Defendants in litigation for nearly a decade, and has yet to move this case forward with any
reasonable expediency. (See ECF No. 88, setting a discovery cutoff of 6/7/18; ECF No. 136,
resetting discovery cutoff for 12/18/19; ECF No. 151, extending the discovery cutoff to 12/31/19
due to Plaintiff’s avoidance of a deposition; see also ECF No. 153–1, emails between Plaintiff
and Defense Counsel showing Plaintiff’s avoidance of what appear to be a proper attempt to
depose him.) Consistent with this pattern, Plaintiff has chosen to file multiple (apparently
frivolous) motions in response to Defendant’s attempt to depose him, and then has deemed
himself above appearing for a judicial hearing. To be clear, Plaintiff’s behavior is not well taken.