NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEAK OIL HOLDINGS LLC; PEAK OPERATOR LLC, Plaintiff-ctr-defendants - Appellants, v. COUNTY OF VENTURA, Defendant-ctr-claimant - Appellee.	No. 25-4114 D.C. No. 2:21-cv-00734-DSF-AJR MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted October 21, 2026
Pasadena, California

Before: N.R. SMITH and JOHNSTONE, Circuit Judges, and ORRICK, District Judge.**

Peak Oil Holdings LLC and Peak Operator LLC (Peak) appeal from the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable William Horsley Orrick, United States District Judge for the Northern District of California, sitting by designation.

district court's entry of a default judgment against them. Peak seeks to reverse the district court's order under Federal Rule of Civil Procedure 12(b)(6) dismissing its takings claim against the County of Ventura. But because Peak never filed a motion in the district court under Federal Rules of Civil Procedure 55(c) or 60(b) to set aside the default judgment, we must dismiss the appeal. *See Consorzio Del Prosciutto di Parma v. Domain Name Clearing Co.*, 346 F.3d 1193, 1195 (9th Cir. 2003); *In re Lam*, 192 F.3d 1309, 1311 (9th Cir. 1999). Even if Peak had moved to set aside the default judgment, it has not mentioned, let alone challenged, the district court's dismissal of its claims under Federal Rule of Civil Procedure 41(b) as a sanction for violating a court order. *See Brown v. Rawson–Neal Psychiatric Hosp.*, 840 F.3d 1146, 1148 (9th Cir. 2016) (holding that when a plaintiff's claims were originally dismissed under Rule 12(b)(6) and then later under Rule 41(b), the Rule 12(b)(6) dismissal was not reviewable because the plaintiff did not argue "that the district court abused its discretion in dismissing [the plaintiff's] federal claims under Rule 41(b)"). So Peak's claim on appeal that the district court erred by dismissing its takings claim under Rule 12(b)(6) is not properly before this Court.

DISMISSED.