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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **HERMAN D. SHEAD,**

9 **Plaintiff,**

10 **v.**

11 **C/O VANG, et. al.,**

12 **Defendants.**
13

CASE NO. 1:09-CV-006 AWI SKO

**ORDER ON DEFENDANT’S MOTION
TO DISMISS AND ORDER CLOSING
CASE**

(Doc. No. 94)

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15 This is a civil rights case brought by Plaintiff Herman Shead (“Shead”) against Defendant
16 Correctional Officer Vang (“Vang”). Shead is incarcerated in a California State Prison, and his
17 complaint is based on alleged excessive force used by Vang. Although this case was filed initial
18 by Shead pro se, Shead has been represented by counsel since August 2012. Now pending before
19 the Court is Vang’s motion to dismiss the complaint under Rules 16(f) and 41(b) and the Court’s
20 inherent authority. For the reasons that follow, the motion will be granted and this case will be
21 closed.

22 *Background*

23 On January 4, 2012, the Court issued a scheduling order that required Shead to file a pre-
24 trial statement on or before July 9, 2012. See Doc. No. 64. That scheduling order warned Shead
25 that failure to comply with its terms could result in the dismiss of his case. See id.

26 On August 1, 2012, the Court issued an order to show cause why this case should not be
27 dismissed for failure to obey a court order. See Doc. No. 70. Specifically, the Shead had failed to
28 file a pre-trial statement by July 9, 2012.

1 On September 5, 2012, the Court discharged the order to show cause. See Doc. No. 70.
2 As part of that discharge order, the Court warned Shead: “Plaintiff is formally warned that if he
3 again fails to obey a court order, that failure will result in the imposition of more serious sanctions,
4 including monetary sanctions and/or dismissal of this action. Id.

5 On July 8, 2013, the Court issued an order regarding an August settlement conference. See
6 Doc. No. 85. Pursuant to the July 8 order, the parties were to submit confidential settlement
7 statements. See id. Vang complied with the order, but Shead did not.

8 On August 7, 2013, the settlement conference was vacated and an order to show cause why
9 sanctions should not be imposed on Shead was issued. See Doc. No. 92. Shead was to show
10 cause no later than August 13, 2013. See id. Shead did not file a response to the order to show
11 cause.

12 On August 29, 2013, Vang filed this motion to dismiss. See Doc. No. 94. The motion to
13 dismiss was set for hearing on September 30, 2013, but the hearing was vacated on September 26,
14 2013 after Shead failed to file an opposition or response. See Doc. No. 96.

15 DEFENDANT’S MOTION

16 Defendant’s Argument

17 Vang argues that dismissal is appropriate because the relevant factors weigh in favor of
18 dismissal.
19

20 Plaintiff’s Opposition

21 Shead has filed no opposition or response of any kind.

22 Legal Standard

23 Federal Rule of Civil Procedure 16(f) provides for the imposition of sanctions for the
24 failure to obey a scheduling order. See Fed. R. Civ. Pro. 16(f); In re Phenylpropanolamine (PPA)
25 Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006). Federal Rule of Civil
26 Procedure 41(b) provides for the involuntary dismissal of an action for failure to prosecute or obey
27 a court order. See Fed. R. Civ. Pro. 41(b); Malone v. USPS, 833 F.2d 128, 130 (9th Cir. 1988).
28 “District courts have the inherent power to control their dockets and in the exercise of that power

1 they may impose sanctions including, where appropriate, dismissal of a case.” Bautista v. Los
2 Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); see also Chambers v. NASCO, Inc., 501 U.S.
3 32, 43-45 (1991) (courts have inherent authority to sanction conduct that is abusive to the judicial
4 process). Dismissal with prejudice is an available sanction under all three sources of authority.
5 Al-Torki v. Kaempfen, 78 F.3d 1381, 1385 (9th Cir. 1996). Under each of these sources of
6 authority, in order to dismiss an action, a court must weigh five factors: (1) the public’s interest in
7 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
8 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
9 (5) the availability of less drastic alternatives. See In re Phenylpropanolamine, 460 F.3d at 1226;
10 Bautista, 216 F.3d at 841; Malone, 833 F.2d at 130.

11 Discussion

12 After considering the relevant factors, the Court concludes that dismissal of this case is
13 appropriate. First, the public’s interest in expeditious resolution weighs in favor of dismissal.
14 Second, this Court has a highly congested and impacted docket, which weighs in favor of
15 dismissal. Third, this case is over four years old, and there is no reason given for Shead’s failure
16 to comply with the scheduling order. Shead’s conduct has caused additional delay, and there is no
17 reason given. It appears that the delay is unreasonable and unnecessary, which prejudices Vang.
18 Fourth, the public policy favoring disposition of a case on the merits weighs against dismissal.
19 Fifth, the Court is aware of no other options. Shead has been previously warned that the failure to
20 obey court orders would lead to sanctions, including possible dismissal. Shead has now violated
21 the scheduling order, a settlement conference order, failed to respond to an order to show cause,
22 and failed to respond to Vang’s motion to dismiss. It is impractical to keep this case open without
23 Shead’s participation and in the face of disobedience to Court orders.

24 CONCLUSION

25 Shead has failed to obey court orders and is no longer prosecuting this case. Because four
26 of the five factors weigh in favor of dismissal, the Court will grant Defendant’s motion and
27 dismiss this case.
28

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. Defendant's motion to dismiss (Doc. No. 94) is GRANTED;
2. This case is DISMISSED with prejudice; and
3. The Clerk shall CLOSE this case.

IT IS SO ORDERED.

Dated: September 30, 2013



SENIOR DISTRICT JUDGE