

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLARENDON NATIONAL
INSURANCE COMPANY,

Plaintiff,

v.

CARDINAL LOGISTICS
MANAGEMENT CORPORATION, et al.,

Defendants.

No. 2:15-CV-01309 KJM KJN

ORDER

On May 5, 2017, the court determined this case had settled. ECF No. 46. The court ordered the parties to file dispositional documents by June 19, 2017. *Id.* That deadline passed, yet no dispositional documents were filed. On August 2, 2017, the court ordered plaintiff to show cause within seven days why this case should not be dismissed. ECF No. 47. Plaintiff never responded. Accordingly, and as explained below, the court now dismisses this case for failure to prosecute under Federal Rule of Civil Procedure 41(b).

Under Rule 41(b), the district court may dismiss an action for failure to comply with a court order. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). Before doing so, the court must weigh five factors including: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;

1 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
2 drastic alternatives.” *Id.* at 1260-61 (quoting *Thompson v. Housing Auth.*, 782 F.2d 829, 831
3 (9th Cir. 1986)); *see also Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

4 The first two factors support dismissal here. This action has been pending for over
5 two years and has reached the stage, set by the court’s June 7, 2016 scheduling order, for trial
6 preparation. *See* ECF No. 28 (final pretrial conference set for October 20, 2017; trial set for
7 December 11, 2017). Plaintiff has not complied with court orders or otherwise taken any action
8 in nearly six months. *See* ECF Nos. 45-47. The third factor, prejudice to defendants, also
9 supports dismissal as defendants would be disadvantaged if the court allowed this action, which
10 plaintiff appears to have abandoned, to continue against them. Although the fourth factor, the
11 public policy favoring disposition of cases on their merits, generally weighs against dismissal, the
12 factor is neutral here: the parties have purportedly settled and plaintiff has remained inattentive to
13 finalizing settlement. Finally, the fifth factor also favors dismissal, as the court has granted
14 plaintiff ample time to respond or otherwise finalize the purported settlement, but to no avail,
15 leaving the court with no suitable alternative to dismissal.

16 Having considered the five *Ferdik* factors, the court now DISMISSES this action
17 under Federal Rule of Civil Procedure 41(b).

18 IT IS SO ORDERED.

19 This resolves ECF No. 47. The Clerk of the Court is hereby ordered to close this
20 case.

21 DATED: October 17, 2017.

22
23 
24 UNITED STATES DISTRICT JUDGE
25
26
27
28