

1 the court, explains that plaintiff has not secured funds or
2 obtained new counsel. Doc #101. For the reasons set forth herein,
3 the court determines that plaintiff has failed to prosecute her
4 claims. Accordingly, the case is DISMISSED pursuant to FRCP 41(b).

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6 I

7 Plaintiff's claims arise from the death of her son,
8 Gustavus Rugly, who was fatally shot by members of the San
9 Francisco police department on June 29, 2004. Doc #1 at 26. On
10 June 28, 2005, plaintiff filed in San Francisco superior court a
11 complaint against the City and County of San Francisco. The
12 original complaint alleged negligence and intentional infliction of
13 emotional distress. Doc #73-2 at 2. On June 28, 2006, plaintiff
14 filed a first amended complaint alleging additional civil rights
15 claims under 42 USC § 1983. Doc #73-4 at 8-12. The case was
16 removed from San Francisco superior court on July 26, 2006. Doc
17 #1.

18 On December 1, 2006, plaintiff's counsel moved to
19 withdraw and explained that, following counsel's review of
20 discovery, counsel could not "in good faith and in compliance with
21 the California Rules of Professional Conduct continue to represent
22 Plaintiff in light of the current state of the law." Doc #13 at 2.
23 The court permitted counsel to withdraw. Doc #19.

24 On July 10, 2008, plaintiff's current attorney, Marylon
25 Boyd, made her first appearance in this case at a case management
26 conference. Doc #70. Plaintiff moved to file a second amended
27 complaint; on November 7, 2008 the court denied the motion in large
28 part and permitted only a minor amendment. Doc #82.

1 The court held a further case management conference on
2 September 17, 2009, and plaintiff informed the court that very
3 little discovery had been conducted. Doc #87. Defendants noticed
4 plaintiff's deposition for October 2009, but plaintiff failed to
5 appear. Doc #98 ¶ 23. The court then scheduled another case
6 management conference, which was held on May 27, 2010. Doc #94.
7 At that time, plaintiff had made no progress pursuing her claims,
8 and the court issued an order to show cause why the case should not
9 be dismissed for failure to prosecute. Id.

10 Plaintiff responded to the order to show cause on June
11 16, 2010, one day after the deadline for doing so had passed, and
12 informed the court that counsel for plaintiff lacked the resources
13 to prosecute the case and requested time to obtain new counsel or
14 to obtain funds from the Federal Pro Bono Project. Doc #95.
15 Defendants replied that plaintiff's response was insufficient in
16 light of the failure to plaintiff to conduct any discovery or
17 otherwise prosecute the case in the four years it has been pending
18 in federal court. Doc #97. Defendants argue that plaintiff's
19 explanations for the delay are frivolous and furthermore do not
20 show that plaintiff now is able to prosecute her claims. Id. On
21 September 15, 2010, the court ordered plaintiff to inform the court
22 of the status of her attempts to secure funds or obtain counsel.
23 Doc #100. Three days after the deadline for doing so had passed,
24 counsel for plaintiff informed the court that plaintiff had not
25 secured funds or new counsel. Doc #101. Plaintiff has never
26 informed the court of a specific plan to prosecute her claims.
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II

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2 The court may dismiss a case for failure to prosecute
3 pursuant to FRCP 41(b). Link v Wabash RR, 370 US 626, 633 (1962).
4 The court considers five factors in determining whether to dismiss
5 for failure to prosecute: "(1) the public's interest in expeditious
6 resolution of litigation; (2) the court's need to manage its
7 docket; (3) the risk of prejudice to the defendants; (4) the public
8 policy favoring disposition of cases on their merits; and (5) the
9 availability of less drastic sanctions." Thompson v Housing
10 Authority of City of Los Angeles, 782 F2d 829, 831 (9th Cir 1986).
11 Prejudice to the defendants appears when plaintiff's actions impair
12 defendants' ability to defend against plaintiff's claims or
13 otherwise "threaten to interfere with the rightful decision in the
14 case." Malone v United States Postal Service, 833 F2d 128, 131
15 (9th Cir 1987). Involuntary dismissal is a harsh sanction, and
16 when possible, the court should consider imposing alternative
17 sanctions before ordering dismissal. Id at 130, 132.

18 Here, the first and second factors favor dismissal. Both
19 the court and the public have an interest in resolving the case,
20 which has remained without progress on the court's docket for over
21 four years. The shooting death occurred over six years ago;
22 plaintiff has still not formulated a plan to pursue her claims.
23 Because plaintiff lacks a plan to proceed, without dismissal the
24 case will likely linger on the court's docket indefinitely.

25 The third factor also favors dismissal. Defendants argue
26 their case will be prejudiced if the court does not order
27 dismissal. Defendants point to the six years that have passed
28 since the shooting death of Rugley and assert that witnesses'

1 memories surely have faded with the passage of time. Doc #97 at 8.
2 Defendants state that some evidence is now unavailable through
3 discovery that may otherwise have been available had discovery had
4 progressed at a reasonable pace. Id. Plaintiff does nothing to
5 counter defendants' concerns that the only evidence now available
6 through discovery may be stale because of the amount of time that
7 has passed.

8 The fifth factor supports dismissal, as previous
9 encouragement and warnings have not convinced plaintiff to pursue
10 her claims. The court has provided plaintiff with many
11 opportunities to conduct discovery and to formulate a plan to
12 proceed. Since plaintiff's current counsel entered the case in
13 July 10, 2008, the court has held three case management conferences
14 and agreed to provide plaintiff additional time to conduct
15 discovery. No discovery has occurred, and plaintiff failed to
16 appear at her own deposition. The court warned plaintiff that it
17 was considering dismissing the case after the May 27, 2010 case
18 management conference; plaintiff has not provided the court with a
19 plan to proceed. Neither extensions nor warnings have caused
20 plaintiff to act on her claims.

21 As in most cases, the fourth factor favoring decisions on
22 the merits weighs against dismissal. Here, however, that factor
23 does not outweigh the other factors favoring dismissal. The record
24 suggests that it may not be possible to reach a decision on the
25 merits of plaintiff's claims, as no discovery has been conducted
26 and plaintiff has no articulated plan to pursue her claims. Thus,
27 while the court remands mindful of the strong public policy
28 favoring resolution of cases on the merits, the remedy of dismissal

1 pursuant to FRCP 41(b) is appropriate here to ensure the case does
2 not remain indefinitely on the court's docket.

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III

Plaintiff has not acted diligently to pursue her claims in the four years this case has remained on the court's docket. Accordingly, the case is DISMISSED pursuant to FRCP 41(b). The clerk is directed to terminate all motions and close the file.

IT IS SO ORDERED.



VAUGHN R WALKER
United States District Chief Judge