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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RENO CONTRACTING, INC.,
12 Plaintiff,
13 v.
14 CRUM & FORSTER SPECIALTY
15 INSURANCE COMPANY,
16 Defendant.

Case No.: 18-CV-0450 W (JLB)

ORDER:

**(1) GRANTING DEFENDANT’S
MOTION TO DISMISS [DOC. 67];
AND**

**(2) DENYING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT AS MOOT [DOC. 68]**

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20 Pending before the Court are: (1) Defendant’s motion to dismiss pursuant to
21 Federal Rule of Civil Procedure 41(b); and (2) Defendant’s motion for summary
22 judgment pursuant to Federal Rule of Civil Procedure 56. [Docs. 67, 68.] The Court
23 decides the matters on the papers submitted and without oral argument. See Civ. L.R.
24 7.1(d)(1). For the reasons below, the Court **GRANTS** the motion to dismiss, and
25 **DENIES AS MOOT** the motion for summary judgment.

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1 **I. BACKGROUND**

2 Plaintiff Reno Contracting (“Reno”) brought this action in the Superior Court of
3 California against Defendant Crum and Forster Specialty Insurance Company (“Crum &
4 Forster”) on November 15, 2017, alleging that Crum & Forster had failed to defend and
5 indemnify it in underlying litigation per the terms of an insurance policy. (*Compl.* [Doc.
6 1-2, Exh. 1].) Defendant removed the action on February 28, 2018. (*Notice of Removal*
7 [Doc. 1].)

8 Defendant moved for partial summary judgment on November 2, 2018. (*Def.’s*
9 *Partial MSJ* [Doc. 29].) The Court granted in part and denied in part that motion,
10 holding per Rule 56(g) that “[t]he Reno Contracting Policy provided no insurance
11 coverage for the underlying litigation.” (*February 21, 2019 Order* [Doc. 44].)

12 Thereafter, on March 21, 2019, Plaintiff filed a motion to substitute attorney.
13 (*Reno Contracting Mot. to Substitute* [Doc. 51]; *Coyle/Reno Mot. to Substitute* [Doc.
14 52].) The motion was granted. (*Apr. 3, 2019 Order* [Doc. 54].) Plaintiff thereafter
15 ceased participating in the case. Specifically, Plaintiff failed to lodge a Mandatory
16 Settlement Conference (“MSC”) statement by the due date, failed to respond to a minute
17 order alerting it of that fact, failed to appear at the MSC, and then failed to respond to an
18 Order to Show Cause (“OSC”) or to appear at the OSC hearing. (*See OSC* [Doc. 60];
19 *Minute Entry* [Doc. 62].) Judge Burkhardt imposed monetary sanctions on Plaintiff and
20 its attorney, jointly and severally, in the amount of \$2,473.52. (*June 12, 2019 Order*
21 [Doc. 69].) The order imposing those sanctions on Plaintiff and Plaintiff’s counsel was
22 returned as undeliverable. [Doc. 70.]

23 Defendant now moves to dismiss Plaintiff’s complaint with prejudice pursuant
24 to Rule 41(b), and for summary judgment. (*Def.’s MTD* [Doc. 67-1]; *Mot. for Summary*
25 *Judgment* [Doc. 68].) Plaintiff does not oppose either motion. For the reasons that
26 follow, the motion to dismiss will be granted. The motion for summary judgment will be
27 denied as moot.

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1 **II. LEGAL STANDARD**

2 **A. Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(b)**

3 Rule 41(b) provides:

4 If the plaintiff fails to prosecute or to comply with these rules or a court
5 order, a defendant may move to dismiss the action or any claim against it.
6 Unless the dismissal order states otherwise, a dismissal under this
7 subdivision (b) ... operates as an adjudication on the merits.

8 A Rule 41(b) dismissal “must be supported by a showing of unreasonable delay.”
9 Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986). A district court must further
10 weigh: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
11 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
12 policy favoring disposition of cases on their merits[,] and (5) the availability of less
13 drastic sanctions.” Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting
14 Henderson, 779 F.2d at 1423); In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460
15 F.3d 1217, 1226 (9th Cir. 2006). Dismissal is appropriate where at least four factors
16 support dismissal, or where three factors strongly support dismissal. See Frederik v.
Bonzelet, 963 F. 2d 1258, 1263 (9th Cir. 1992).

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1 **III. DISCUSSION**

2 **A. Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(b)**

3 As a preliminary matter, Plaintiff has consented to the dismissal of this case by
4 failing to oppose Defendant’s motion to dismiss. See Judge Whelan Chambers Rule 3(d);
5 Civ. L.R. 7.1(f)(3)(c). Moreover, the following Rule 41(b) factors counsel in favor of
6 dismissal with prejudice.

7 Plaintiff has caused unreasonable delay, and the public’s interest in expeditious
8 resolution of litigation favors dismissal. See Henderson, 779 F.2d at 1423; Omstead, 594
9 F.3d at 1084. Reno has continuously violated Court orders and is nonresponsive to
10 opposing counsel’s communications. (*See Ward Decl.* [Doc. 67-3].) There is no
11 indication it intends to participate further in this lawsuit.

12 The Court’s need to manage its docket favors dismissal. See Omstead, 594 at
13 1084. Plaintiff’s behavior “strongly suggest[s] that [it] is not interested in seriously
14 prosecuting this case, or at least, does not take [its] obligations to the court and other
15 parties seriously.” De La Torre Quiles v. United States, 2015 WL 5882524 at *2. (E.D.
16 Cal. Oct. 5, 2015).

17 Needlessly extending this case in the absence of a plaintiff prejudices Defendant.
18 The opposing party should not be required to expend time and resources on a case that
19 the plaintiff has ceased to pursue. See, e.g., Omstead, 594 F.3d at 1084; Yourish v.
20 California Amplifier, 191 F.3d 989, 991–92 (9th Cir. 1999).

21 Public policy favors disposition on the merits. See Omstead, 594 F.3d at 1084.
22 But a full decision on the merits is not possible when a plaintiff has ceased to litigate.
23 And as the Court’s February 21, 2019 order held, “[t]he Reno Contracting Policy
24 provided no insurance coverage for the underlying litigation.” (*Feb. 21, 2019 Order*
25 [Doc. 54].) This preceded Plaintiff’s disappearance from the case. To a limited extent, a
26 decision on the merits has already taken place.

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1 Less drastic alternatives are not available. See Omstead, 594 F.3d at 1084.
2 Monetary sanctions have already been imposed. (*June 12, 2019 Order* [Doc. 69].) The
3 order imposing those sanctions was returned as undeliverable. [Doc. 70.]

4 In light of the foregoing, dismissal with prejudice is the appropriate remedy. See,
5 e.g., Anderson v. Air West, Inc., 542 F.2d 522, 526 (9th Cir. 1976). Defendant's motion
6 to dismiss for failure to prosecute will be granted. [Doc. 67.]

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8 **B. Motion for Summary Judgment**

9 As Plaintiff's motion to dismiss will be granted, this case is to be dismissed with
10 prejudice. Plaintiff's motion for summary judgment will be denied as moot. [Doc. 68.]

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12 **IV. CONCLUSION & ORDER**

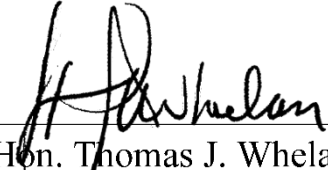
13 Defendant's motion to dismiss is **GRANTED**. [Doc. 67.]

14 Defendant's motion for summary judgment is **DENIED AS MOOT**. [Doc. 68.]

15 This action is dismissed with prejudice. The Clerk is directed to close the case.

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17 **IT IS SO ORDERED.**

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19 Dated: July 16, 2019

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22 Hon. Thomas J. Whelan
United States District Judge