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28UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANTONIO LEE MIXON, JR.,

Plaintiff,

v.

ELIZABETH BROWN, *et al.*,

Defendants.

Case No. 2:16-cv-02711-MMD-VCF

ORDER

On April 27, 2017, this Court issued an Order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty-three (33) days. (ECF No. 6.) The thirty-three-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's Order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833

1 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
2 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
3 failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
9 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
10 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.


11 In the instant case, the Court finds that the first two factors, the public's interest in
12 expeditiously resolving this litigation and the Court's interest in managing the docket,
13 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
14 in favor of dismissal, since a presumption of injury arises from the occurrence of
15 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
16 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public policy
17 favoring disposition of cases on their merits — is greatly outweighed by the factors in favor
18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
19 the court's order will result in dismissal satisfies the "consideration of alternatives"
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
21 at 1424. The Court's order requiring Plaintiff to file an amended complaint within thirty
22 days expressly stated: "Plaintiff is given thirty three (33) days from the date the Clerk
23 mails Plaintiff a copy of this Order within which to file an amended complaint remedying,
24 if possible, the defects in the complaint explained in the Magistrate Judge's Report and
25 Recommendation. . . . Plaintiff's failure to file an amended complaint within the prescribed
26 time period will result in dismissal of this action with prejudice." (ECF No. 6 at 2-3.) Thus,
27 Plaintiff had adequate warning that dismissal would result from his noncompliance with
28 the Court's order to file an amended complaint within thirty-three (33) days.

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It is therefore ordered that this action is dismissed with prejudice based on Plaintiff's failure to file an amended complaint in compliance with this Court's April 27, 2017, Order.

The Clerk is instructed to close this case.

DATED THIS 8th day of June 2017.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE