

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 De'Marian Clemons,
5 Plaintiff
6 v.
7 Gentry, et al.,
8 Defendants
9

2:17-cv-02071-JAD-CWH
Order Dismissing Case

10 Pro se plaintiff De'Marian Clemons brings this civil-rights action under § 1983 for events
11 that allegedly occurred while he was incarcerated at the Southern Desert Correctional Center.¹
12 On January 24, 2018, I denied his application to proceed *in forma pauperis* without prejudice
13 because Clemons had “three strikes” under 28 U.S.C. § 1915(g), and I gave him until February
14 23, 2018, to pay the \$400 filing fee.² I expressly warned him that his failure to pay the filing fee
15 by that deadline would result in the dismissal of this case.³ The deadline has now passed, and
16 Clemons has not paid the filing fee.

17 District courts have the inherent power to control their dockets and, “[i]n the exercise of
18 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A
19 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
20 court order, or failure to comply with local rules.⁵ In determining whether to dismiss an action
21

22 ¹ ECF No. 1-1.

23 ² ECF No. 4.

24 ³ *Id.*

25 ⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

26 ⁵ *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
27 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
28 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439,

1 for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the
2 court must consider several factors: (1) the public’s interest in expeditious resolution of
3 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;
4 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
5 drastic alternatives.⁶

6 I find that the first two factors—the public’s interest in expeditiously resolving the
7 litigation and the court’s interest in managing the docket—weigh in favor of dismissing this case.
8 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury
9 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
10 prosecuting an action.⁷ The fourth factor is greatly outweighed by the factors in favor of
11 dismissal, and a court’s warning to a party that his failure to obey the court’s order will result in
12 dismissal satisfies the consideration-of-alternatives requirement.⁸ Clemons was warned that his
13 case would be dismissed without prejudice if he failed to pay the filing fee by February 23,
14 2018.⁹ So, Clemons had adequate warning that his failure to pay the fee would result in this
15 case’s dismissal.

16 Accordingly, IT IS HEREBY ORDERED that **this case is DISMISSED** without
17 prejudice based on Clemons’s failure to pay the filing fee in compliance with my January 24,
18 2018, order.

19 . . .

20 _____
21 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs
22 to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
23 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

24 ⁶ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130; *Ferdik*,
25 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 ⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 ⁸ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ⁹ ECF No. 4.

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

The **Clerk of Court** is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE.**

DATED: March 6, 2018.



U.S. District Judge Jennifer A. Dorsey