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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Percy Lavae Bacon,

Plaintiff

v.

James Dzurenda, et al.,

Defendants

Case No.: 2:18-cv-00319-JAD-NJK

**Order Dismissing Case**

Pro se plaintiff Percy Lavae Bacon has three strikes and must pay the full \$400 filing fee in advance for his § 1983 claims unless he is in imminent danger of serious physical injury.<sup>1</sup> So, he moved to proceed *in forma pauperis* under the imminent-danger exception, alleging that he is in imminent danger of losing sight in his right eye.<sup>2</sup> Magistrate Judge Nancy Koppe denied the motion without prejudice, explaining that Bacon “must first submit a complaint and an application to proceed *in forma pauperis* . . . before the Court can evaluate whether [his] complaint makes a plausible allegation that [he] faced imminent danger of serious physical injury at the time of filing.”<sup>3</sup> Judge Koppe then gave Bacon 30 days to file a complaint and a fully complete pauper application. She also warned him that his case may be dismissed if he did not comply with her order.<sup>4</sup> That 30-day deadline has come and gone, and Bacon has filed nothing.

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.<sup>5</sup> A court may dismiss an action with prejudice based on a party’s failure to prosecute an action,

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<sup>1</sup> 28 U.S.C. § 1915(g).

<sup>2</sup> ECF No. 1.

<sup>3</sup> ECF No. 3 at 1.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

1 failure to obey a court order, or failure to comply with local rules.<sup>6</sup> In determining whether to  
2 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with  
3 local rules, the court must consider several factors: (1) the public's interest in expeditious  
4 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
5 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
6 availability of less drastic alternatives.<sup>7</sup>

7 I find that the first two factors—the public's interest in expeditiously resolving the  
8 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.  
9 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury  
10 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or  
11 prosecuting an action.<sup>8</sup> The fourth factor is greatly outweighed by the factors favoring  
12 dismissal, and a court's warning to a party that his failure to obey the court's order will result in  
13 dismissal satisfies the consideration-of-alternatives requirement.<sup>9</sup> Bacon was warned that his  
14 case would be dismissed without prejudice if he failed to submit a complaint and file a  
15 completed application or pay the filing fee within 30 days.<sup>10</sup> So, Bacon had adequate warning  
16 that his failure to submit a complaint and file a completed application or pay the filing fee would  
17 result in this case's dismissal.

18 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** without  
19 prejudice based on Bacon's failure to submit a complaint and file a completed application to

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20 <sup>6</sup> See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with  
21 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to  
22 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–  
23 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 F.2d 128, 130 (9th Cir.  
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 <sup>7</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;  
25 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 <sup>8</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 <sup>9</sup> *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 <sup>10</sup> ECF No. 3.

1 proceed *in forma pauperis* or pay the filing fee in compliance with this Court's February 23,  
2 2018, order. The **Clerk of Court** is directed to **ENTER JUDGMENT accordingly** and  
3 **CLOSE THIS CASE.**

4 Dated: April 13, 2018

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7 U.S. District Judge Jennifer A. Dorsey

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