

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3 JOHN GAINES,  
4 aka Kenya Gaines,

Case No. 2:20-cv-01908-APG-BNW

## 5 Plaintiff ORDER

6 v.

7 HUTCH, et al.,

8 Defendants

9 This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a  
10 state prisoner. On October 16, 2020, Magistrate Judge Weksler ordered plaintiff John Gaines to  
11 file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400 on  
12 or before December 14, 2020. ECF No. 3 at 2-3. The December 14, 2020 deadline has now  
13 expired, and Gaines has not filed a fully complete application to proceed *in forma pauperis* or paid  
14 the full \$400 filing fee.

15 District courts have the inherent power to control their dockets and “[i]n the exercise of  
16 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.  
17 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may  
18 dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey  
19 a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th  
20 Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d  
21 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring  
22 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming  
23 dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of  
24 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal  
25 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
26 (affirming dismissal for lack of prosecution and failure to comply with local rules).

27 In determining whether to dismiss an action for lack of prosecution, failure to obey a court  
28 order, or failure to comply with local rules, the court must consider several factors: (1) the public’s

1 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the  
 2 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
 3 merits; and (5) the availability of less drastic alternatives. *See Thompson*, 782 F.2d at 831;  
 4 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*,  
 5 46 F.3d at 53.

6 Here, the Court finds that the first two factors, the public’s interest in expeditiously  
 7 resolving this litigation and the Court’s interest in managing the docket, weigh in favor of  
 8 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal,  
 9 since a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading  
 10 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th  
 11 Cir. 1976). The fourth factor—public policy favoring disposition of cases on their merits—is  
 12 greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court’s warning  
 13 to a party that his failure to obey the court’s order will result in dismissal satisfies the  
 14 “consideration of alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-  
 15 33; *Henderson*, 779 F.2d at 1424. Judge Weksler’s order expressly stated: “IT IS FURTHER  
 16 ORDERED that, if Plaintiff does not file a fully complete application to proceed *in forma pauperis*  
 17 with all three documents or pay the full \$400 filing fee for a civil action on or before December  
 18 14, 2020, the Court will dismiss this action without prejudice for Plaintiff to refile the case with  
 19 the Court, under a new case number, when Plaintiff has all three documents needed to file a  
 20 complete application to proceed *in forma pauperis* or pays the the full \$400 filing fee.” ECF No.  
 21 3 at 3. Thus, Gaines had adequate warning that dismissal would result from his noncompliance  
 22 with Judge Weksler’s order.

23 I THEREFORE ORDER that this action is dismissed without prejudice based on plaintiff  
 24 John Gaines’ failure to file a fully complete application to proceed *in forma pauperis* or pay the  
 25 full filing fee in compliance with this court’s order dated October 16, 2020.

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I FURTHER ORDER that the Clerk of Court will close the case and enter judgment accordingly.

IT IS SO ORDERED.

DATED: January 6, 2021

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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE