

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS WILLEQUER,

Plaintiff,

v.

STEVE SISOLAK, *et al.*,

Defendants.

Case No. 2:23-cv-01167-RFB-DJA

DISMISSAL ORDER

Plaintiff Thomas Willequer brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 4 at 1). On October 24, 2024, this Court ordered Willequer to update his address and either pay the full filing fee of \$402 or file a complete application to proceed *in forma pauperis* for a non-prisoner by November 22, 2024. (ECF No. 7 at 1–2). That deadline expired without an updated address from Willequer, and his mail from the Court is being returned as undeliverable. (ECF No. 10). In addition, Willequer has not paid the filing fee or filed a complete application to proceed *in forma pauperis* for a non-prisoner.

I. DISCUSSION

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 based on a party’s failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming 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). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;

1 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
2 their merits; and (5) the availability of less drastic alternatives. See In re Phenylpropanolamine
3 Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v. U.S. Postal Serv., 833
4 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public’s interest in expeditiously resolving this litigation and the
6 Court’s interest in managing its docket, weigh in favor of dismissal of Willequer’s claims. The
7 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
8 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered
9 by the court or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976).
10 The fourth factor—the public policy favoring disposition of cases on their merits—is greatly
11 outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can be used
13 to correct the party’s failure that brought about the Court’s need to consider dismissal. See Yourish
14 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
15 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
16 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
17 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
18 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial granting
19 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
20 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
21 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
22 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed without the
23 ability for the Court and the defendants to send Willequer case-related documents, filings, and
24 orders, the only alternative is to enter a second order setting another deadline. But without an
25 updated address, the likelihood that the second order would even reach Willequer is low, so issuing
26 a second order will only delay the inevitable and further squander the Court’s finite resources.

1 Setting another deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
5 favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on
6 Willequer's failure to file an updated address and pay the full filing fee of \$402 or file a complete
7 application to proceed *in forma pauperis* for a non-prisoner in compliance with this Court's
8 October 24, 2024, order. The Clerk of Court is directed to enter judgment accordingly and close
9 this case.

10 Willequer may move to reopen this case and vacate the judgment by filing a motion for
11 reconsideration of this order. In this motion, Willequer would need to explain that circumstances
12 which led to him not being able to update his address and pay the filing fee or file a complete
13 application proceed *in forma pauperis* as directed by the Court. If the Court finds there is good
14 cause or a reasonable explanation for the failure to update the address, the Court will reopen the
15 case and vacate the judgment.

16 **DATED:** November 15, 2024.

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19 **RICHARD F. BOULWARE, II**
20 **UNITED STATES DISTRICT JUDGE**