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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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YOSEF I. MUSTAFANOS, and SHIRLEY
J. CLIFTON by and through YOSEF L.
MUSTAFANOS, her legally appointed
guardian,

Case No. 3:16-cv-00254-MMD-WGC

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ORDER

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Plaintiffs,

v.

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THE STATE OF NEVADA, LYON
COUNTY, P.J. BALTES, GREGORY
KANTZ, ALBERT TORRES, DEBORAH
JUNE STRODE, LAURA DEPAOLI,
ANDREW STRODE, EDWARD
ANDERSON, JD, LEON ABASTURI,
DAVID O'MARA, AARON MOURITSEN,
JAMES SHIELDS BEASLEY, JONATHAN
KING, DAY WILLIAMS and DOES 1 thru
10 inclusive,

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Defendants.

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On March 13, 2017, the Court issued an Order dismissing claims against
20 Defendants Andrew Strobe and Albert Torres and gave leave for Plaintiffs to amend their
21 complaint to comply with Fed. R. Civ. P. 8(a)(2). (ECF No. 95.) The Court gave Plaintiffs
22 thirty (30) days (until April 13, 2017) to file an amended complaint and subsequently
23 extended this deadline to May 12, 2017. (*Id.* at 12; ECF No. 102.) To date, Plaintiffs have
24 failed to file an amended complaint or otherwise responded to the Court's Order.

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District courts have the inherent power to control their dockets and "[i]n the
26 exercise of that power, they may impose sanctions including, where appropriate . . .
27 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
28 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure

1 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
2 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
3 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for
4 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
5 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
6 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
7 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
8 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
9 failure to comply with local rules).

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

17 In the instant case, the Court finds that the first two factors, the public's interest in
18 expeditiously resolving this litigation and the Court's interest in managing the docket,
19 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
20 in favor of dismissal, since a presumption of injury arises from the occurrence of
21 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
22 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public policy
23 favoring disposition of cases on their merits — is greatly outweighed by the factors in
24 favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to
25 obey the court's order will result in dismissal satisfies the "consideration of alternatives"
26 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
27 at 1424. The Court's Order giving leave for Plaintiffs to file an amended complaint
28 expressly stated: "Plaintiffs will be given thirty (30) days to amend their Complaint to

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provide 'a short and plain statement of the claim showing' Plaintiffs are 'entitled to relief' against Defendants Andrew Strode and Albert Torres. Fed.R.Civ.P.8(a)(2). Failure to do so will result in dismissal of the claims against these Defendants with prejudice." (ECF No. 95 at 12.) Thus, Plaintiffs had adequate warning that dismissal would result from their noncompliance with the Court's Order giving them leave to file an amended complaint.

It is therefore ordered that claims against Defendants Andrew Strode and Albert Torres are dismissed with prejudice.

It is further ordered that Defendant Andrew Strode's motion to dismiss (ECF No. 103) is denied as moot.

DATED THIS 18th day of May 2017.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE