

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROY HOUSEMAN,

Case No. 3:17-cv-00031-MMD-WGC

1

Plaintiff.

ORDER

PAPKE et al.,

Defendants.

14 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by
15 a former state prisoner. On August 7, 2017, this Court issued an order denying the
16 application to proceed *in forma pauperis* for prisoners as moot because Plaintiff was no
17 longer incarcerated. (ECF No. 7 at 2.) The Court ordered Plaintiff to file a fully complete
18 application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of
19 \$400.00 within thirty (30) days from the date of that order. (*Id.*) The thirty-day period has
20 now expired, and Plaintiff has not filed an application to proceed *in forma pauperis* for
21 non-prisoners, paid the full filing fee, or otherwise responded to the Court’s order.

22 District courts have the inherent power to control their dockets and “[i]n the
23 exercise of that power, they may impose sanctions including, where appropriate . . .
24 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
25 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s
26 failure to prosecute an action, failure to obey a court order, or failure to comply with
27 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
28 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

1 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
2 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
3 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
4 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
5 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
6 for lack of prosecution and failure to comply with local rules).

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

14 In the instant case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket,
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
17 in favor of dismissal, since a presumption of injury arises from the occurrence of
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
19 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public
20 policy favoring disposition of cases on their merits – is greatly outweighed by the factors
21 in favor of dismissal discussed herein. Finally, a court's warning to a party that his
22 failure to obey the court's order will result in dismissal satisfies the "consideration of
23 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
24 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to file an application
25 to proceed *in forma pauperis* for non-prisoners or pay the full filing fee within thirty (30)
26 days expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff fails to timely
27 comply with this order, the Court shall dismiss this case without prejudice." (ECF No. 7
28 at 3.) Thus, Plaintiff had adequate warning that dismissal would result from his

1 noncompliance with the Court's order to file an application to proceed *in forma pauperis*
2 for non-prisoners or pay the full filing fee within thirty (30) days.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to file an application to proceed *in forma pauperis* for non-prisoners or
5 pay the full filing fee in compliance with this Court's August 7, 2017, order.

6 It is further ordered that the Clerk of Court enter judgment accordingly.

7 DATED THIS 14th day of November 2017.

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10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE
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