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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MICHAEL McINERNEY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
EDUCATION,

Defendants.

Case No. 3:17-cv-00346-MMD-WGC

ORDER

On October 11, 2017, Plaintiff was directed to file an amended complaint within thirty days. (ECF No. 17 at 6.) That deadline has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's Order.

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 L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (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 Serv.*, 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).

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

8 In the instant case, the Court finds that the first two factors, the public's interest in  
9 expeditiously resolving this litigation and the Court's interest in managing the docket,  
10 weigh in favor of dismissal. The third factor, risk of prejudice to Defendant, also weighs in  
11 favor of dismissal, since a presumption of injury arises from the occurrence of  
12 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
13 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy  
14 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor  
15 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
16 the court's order will result in dismissal satisfies the "consideration of alternatives"  
17 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
18 at 1424. The Court's Order requiring Plaintiff to file an amended complaint within thirty (30)  
19 days expressly stated: "Failure to file an amended complaint with thirty (30) days will result  
20 in dismissal of this action with prejudice." (ECF No. 17 at 6.) Thus, Plaintiff had adequate  
21 warning that dismissal would result from his noncompliance with the Court's Order to file  
22 an amended complaint.

23 It is therefore ordered that this action is dismissed with prejudice based on Plaintiff's  
24 failure to file an amended complaint in compliance with this Court's Order.

25 DATED THIS 6<sup>th</sup> day of August 2018.

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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE