

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TREVANTAE T. WESTMORELAND,

Plaintiff,

v.

LAKE'S CROSSING CENTER, *et al.*,

Defendants.

* * *

Case No. 3:17-cv-00432-MMD-VPC

ORDER OF DISMISSAL

On December 27, 2017, the Court dismissed claims in Plaintiff's complaint with prejudice, except for Plaintiff's Eighth Amendment claim against Lake Crossing Center which the Court dismissed without prejudice and with leave to amend. (ECF No. 10.) With respect to that claim, the Court gave Plaintiff 30 days to file an amended complaint. (*Id.* at 3.) 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 Los Angeles*, 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

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


7 In determining whether to dismiss an action for lack of prosecution, failure to obey
8 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*, 833
13 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 defendant, also weighs in
17 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 failure
22 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 dismissal order cautioned Plaintiff that
25 "Plaintiff's failure to file an amended complaint, . . . , within the 30 day time allowed will
26 result in dismissal of Plaintiff's Eighth Amendment claim without prejudice and without
27 leave to amend." (ECF No. 10 at 3.) Thus, Plaintiff had adequate warning that dismissal
28 would result from his noncompliance with the Court's order to amend this claim.

1 It is therefore ordered that Plaintiff's Eighth Amendment claim is dismissed
2 without prejudice and without leave to amend based on Plaintiff's failure to amend this
3 claim in compliance with this Court's order. The Court previously dismissed the
4 remaining claims with prejudice. (ECF No. 10.)

5 The Clerk is directed to enter judgment accordingly and close this case.

6 DATED THIS 8th day of February 2018.

7
8 
9 _____
10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28