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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID HOWELL,

Plaintiff,

v.

MEARES, et. al.,

Defendants.

Case No. 3:17-cv-00682-RCJ-CBC

ORDER

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On January 24, 2019, this Court issued an order denying Plaintiff’s application to proceed *in forma pauperis* because Plaintiff had “three strikes” pursuant to 28 U.S.C. § 1915(g). (ECF No. 12). The Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within thirty days of the date of that order, the Court would dismiss the action without prejudice. (*Id.*) Plaintiff subsequently filed multiple requests for extension of time to file the fee, which the Court granted. (ECF No. 14, 15, 16, 17). The extended deadline for filing the fee was August 1, 2019, and Plaintiff has not paid the full filing fee of \$400.00.

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.

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

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

16 In the instant case, the Court finds that the first two factors, the public's interest in
17 expeditiously resolving this litigation and the Court's interest in managing the docket,
18 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
19 in favor of dismissal, since a presumption of injury arises from the occurrence of
20 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
21 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
22 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
23 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
24 the court's order will result in dismissal satisfies the "consideration of alternatives"
25 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
26 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing fee within thirty
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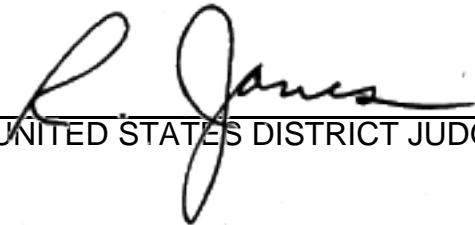
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days expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff does not file the required fees by August 1, 2019, the Court may dismiss the case without prejudice without further notice." (ECF No. 17 at 2.) Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance with the Court's order to timely pay the full filing fee.

It is therefore ordered that this action is dismissed without prejudice based on Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's order.

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

DATED: This 12th day of September, 2019.


UNITED STATES DISTRICT JUDGE