

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

\* \* \*

ANDREW REGASPI,  
  
Plaintiff  
  
v.  
  
NORTHERN NEVADA CORRECTIONAL  
CENTER MAINTENANCE  
DEPARTMENT,  
  
Defendant

Case No. 3:18-cv-00274-MMD-WGC  
  
ORDER

This action began with a *pro se* civil rights Complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On August 19, 2019, the Court issued an order dismissing the Complaint with leave to amend and directed Plaintiff to file a first amended complaint within 30 days. (ECF No. 3 at 7.) The Court also deferred a decision on the motion for appointment of counsel until after Plaintiff filed a first amended complaint. (*Id.*) On September 12, 2019, upon motion by Plaintiff, the Court granted Plaintiff until December 18, 2019, to either file a first amended complaint or have an attorney enter a notice of appearance in this case. (ECF No. 6.) The deadline has now expired, and Plaintiff has not filed a first amended complaint and no attorney has entered a notice of appearance in this case.

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) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming 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) (affirming 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) (affirming dismissal for failure to comply with  
5 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming  
6 dismissal 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 obey  
8 a court order, or failure to comply with local rules, the court must consider several factors:  
9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
10 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
11 disposition of cases on their merits; and (5) the availability of less drastic alternatives. See  
12 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
13 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 Here, the Court finds that the first two factors, the public's interest in expeditiously  
15 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
16 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
17 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
18 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
19 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
20 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
21 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the  
22 court's order will result in dismissal satisfies the "consideration of alternatives"  
23 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
24 at 1424. The Court's order requiring Plaintiff to file a first amended complaint or have an  
25 attorney enter a notice of appearance on or before December 18, 2019, expressly stated:  
26 "It is further ordered that, if Plaintiff fails to file a timely first amended complaint or have an  
27 attorney enter a notice of appearance by the deadline, the Court will dismiss this action  
28 with prejudice." (ECF No. 6.) Thus, Plaintiff had adequate warning that dismissal would

1 result from his noncompliance with the Court's order to file a first amended complaint or  
2 have an attorney enter a notice of appearance.

3 It is therefore ordered that this action is dismissed with prejudice based on Plaintiff's  
4 failure to file a first amended complaint or have an attorney enter a notice of appearance  
5 in compliance with this Court's September 12, 2019, order.

6 It is further ordered that the motion for appointment of counsel (ECF No. 1-3) is  
7 denied as moot.

8 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 1) is  
9 denied as moot.

10 It is further ordered that the Clerk of Court shall close the case and enter judgment  
11 accordingly.

12

13 DATED THIS 6<sup>th</sup> day of January 2020.

14

15

  
MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE

16

17

18

19

20

21

22

23

24

25

26

27

28