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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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MARLOS MOORE,

Case No. 3:21-cv-00514-ART-CLB

6

Plaintiff,

ORDER

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v.

DR. S CALDWELL BARR,

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Defendant.

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Plaintiff Marlos Moore brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Lovelock Correctional Center. (ECF No. 1-1.) On August 3, 2022, this Court denied Plaintiff's application to proceed *in forma pauperis* for prisoners as moot and ordered Plaintiff to file an application to proceed *in forma pauperis* for non-prisoners, or pay the \$402 filing fee, within 30 days. (ECF No. 10.) That deadline expired and Plaintiff did not file an application to proceed *in forma pauperis* for non-prisoners, pay the \$402 filing fee, or otherwise respond to the Court's order.

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I. DISCUSSION

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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 based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)

1 (dismissal for failure to comply with court order). In determining whether to
 2 dismiss an action on one of these grounds, the Court must consider: (1) the
 3 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
 5 favoring disposition of cases on their merits; and (5) the availability of less drastic
 6 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
 7 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th
 8 Cir. 1987)).

9 The first two factors, the public's interest in expeditiously resolving this
 10 litigation and the Court's interest in managing its docket, weigh in favor of
 11 dismissal of Plaintiff's claims. The third factor, risk of prejudice to defendants,
 12 also weighs in favor of dismissal because a presumption of injury arises from the
 13 occurrence of unreasonable delay in filing a pleading ordered by the court or
 14 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
 15 1976). The fourth factor—the public policy favoring disposition of cases on their
 16 merits—is greatly outweighed by the factors favoring dismissal.

17 The fifth factor requires the Court to consider whether less drastic
 18 alternatives can be used to correct the party's failure that brought about the
 19 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
 20 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
 21 the party has disobeyed a court order does not satisfy this factor); *accord*
 22 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that
 23 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted
 24 pursuit of less drastic alternatives prior to disobedience of the court’s order as
 25 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
 26 with the warning of dismissal for failure to comply[,]” have been “eroded” by
 27 *Yourish*). Courts “need not exhaust every sanction short of dismissal before
 28 finally dismissing a case, but must explore possible and meaningful

1 alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).
2 Because this action cannot realistically proceed until and unless Plaintiff either
3 files a fully complete application to proceed *in forma pauperis* for non-prisoners
4 or pays the \$402 filing fee for a civil action, the only alternative is to enter another
5 order setting another deadline. But the reality of repeating an ignored order is
6 that it often only delays the inevitable and squanders the Court’s finite resources.
7 The circumstances here do not indicate that this case will be an exception: there
8 is no hint that Plaintiff needs additional time or evidence that he did not receive
9 the Court’s order. Setting another deadline is not a meaningful alternative given
10 these circumstances. So the fifth factor favors dismissal.

11 **II. CONCLUSION**

12 Having thoroughly considered these dismissal factors, the Court finds that
13 they weigh in favor of dismissal. It is therefore ordered that this action is
14 dismissed without prejudice based on Plaintiff’s failure to file an application to
15 proceed *in forma pauperis* for non-prisoners or pay the \$402 filing fee in
16 compliance with this Court’s August 3, 2022 order. The Clerk of Court is directed
17 to enter judgment accordingly and close this case. No other documents may be
18 filed in this now-closed case. If Plaintiff wishes to pursue his claims, he must file
19 a complaint in a new case and file an application to proceed *in forma pauperis*
20 for non-prisoners or pay the \$402 filing fee.

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DATED THIS 15th day of September 2022.

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ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE