

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

* * *

MARTY SCOTT FITZGERALD,

 Plaintiff,

 v.

MARY BAKER, *et al.*,

 Defendants.

Case No. 3:22-cv-00011-MMD-CSD

ORDER

Pro se Plaintiff Marty Scott Fitzgerald brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Northern Nevada Correctional Center. (ECF Nos. 1-1, 13.) On June 23, 2022, this Court gave Plaintiff thirty days to file a non-prisoner application to proceed *in forma pauperis* or pay the full \$402 filing fee. (ECF No. 14.) The Court warned Plaintiff that the action could be dismissed if he failed to file a non-prisoner application to proceed *in forma pauperis* or pay the full \$402 filing fee for a civil action by that deadline. (*Id.*) That deadline expired, and Plaintiff did not file a non-prisoner application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

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) (affirming dismissal for failure to comply with court order). In determining

1 whether to dismiss an action on one of these grounds, the Court must consider: (1) the
2 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
3 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
4 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
5 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
6 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

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

14 The fifth factor requires the Court to consider whether less drastic alternatives can
15 be used to correct the party's failure that brought about the Court's need to consider
16 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
17 that considering less drastic alternatives *before* the party has disobeyed a court order
18 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
19 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
20 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's
21 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
22 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
23 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
24 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
25 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
26 unless Plaintiff either files a non-prisoner application to proceed *in forma pauperis* or pays
27 the \$402 filing fee for a civil action, the only alternative is to enter a second order setting
28 another deadline. But the reality of repeating an ignored order is that it often only delays

1 the inevitable and squanders the Court's finite resources. The circumstances here do not
2 indicate that this case will be an exception: there is no hint that Plaintiff needs additional
3 time or evidence that he did not receive the Court's order. Setting another deadline is not
4 a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

5 Having thoroughly considered these dismissal factors, the Court finds that they
6 weigh in favor of dismissal.

7 It is therefore ordered that this action is dismissed without prejudice based on
8 Plaintiff's failure to file a non-prisoner application to proceed *in forma pauperis* or pay the
9 full \$402 filing fee in compliance with this Court's June 23, 2022, order.

10 The Clerk of Court is directed to enter judgment accordingly and close this case.
11 No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his
12 claims, he must file a complaint in a new case.

13 DATED THIS 1st Day of August 2022.



14
15
16 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE