

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Everardo Mata Zuniga,

Plaintiff

V.

Naph Care Inc.,

Defendant

2:16-cv-00180-JAD-CWH

**Order Dismissing and Closing Case
and Denying Application to Proceed *in
forma pauperis***

[ECF No. 1]

10 On June 28, 2016, I screened Everardo Mata Zuniga's pro se civil-rights complaint,
11 dismissed his claims without prejudice, and gave him 30 days to file an amended complaint curing
12 the deficiencies outlined in that order.¹ Shortly before the deadline to file the amended complaint
13 expired, Zuniga moved for an extension² and I extended the deadline to September 16, 2016.³
14 Zuniga has not filed an amended complaint or requested an extension to do, so I exercise my inherent
15 authority to control the court's docket, and I dismiss this case with prejudice.

Discussion

17 District courts have the inherent power to control their dockets and “[i]n the exercise of that
18 power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A court
19 may dismiss an action with prejudice when a party fails to prosecute an action,⁵ obey a court order,⁶

¹ ECF No. 2.

2 ECF No. 4.

³ ECF No. 5

⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁵ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

⁶ *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th

1 or comply with local rules.⁷

2 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
3 order, or failure to comply with local rules, the court must consider: (1) the public's interest in
4 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
5 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
6 (5) the availability of less drastic alternatives.⁸

7 Here, the first two factors—the public's interest in expeditiously resolving this litigation and
8 the court's interest in managing the docket—weigh in favor of dismissal. The third factor also
9 weighs in favor of dismissal because a presumption of injury arises from unreasonable delay in filing
10 a pleading ordered by the court or prosecuting an action.⁹ A court's warning to a party that his
11 failure to obey the court's order will result in dismissal satisfies the fifth factor's "consideration of
12 alternatives" requirement,¹⁰ and my order extending the deadline for Zuniga to file an amended
13 complaint expressly stated that this case would be dismissed if he failed to do so.¹¹

14 The only factor that weighs against dismissal is the fourth factor—the policy favoring
15 disposition of cases on their merits. I find that this factor is greatly outweighed by the other factors
16 favoring dismissal, so I exercise my discretion to dismiss this case with prejudice based on Zuniga's
17 failure to comply with my July 29, 2016, order and failure to prosecute this action.

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20 Cir. 1987) (dismissal for failure to comply with court order).

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22 ⁷ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local
rule); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with
local rule requiring *pro se* plaintiffs to keep court apprised of address).

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24 ⁸ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*,
963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

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26 ⁹ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

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28 ¹⁰ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

¹¹ ECF No. 5 at 2.

Conclusion

2 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that **this case is DISMISSED**
3 **with prejudice, and Zuniga's application to proceed *in forma pauperis* [ECF No. 1] is DENIED**
4 **as moot.**

5 The Clerk of Court is instructed to enter judgment for defendant and against plaintiff and
6 CLOSE THIS CASE.

Dated this 23rd day of September, 2016

Jennifer A. Dorsey
United States District Judge