

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 Everardo Mata Zuniga,

5 Plaintiff

6 v.

7 Naph Care Inc.,

8 Defendant

2:16-cv-00180-JAD-CWH

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

[ECF No. 1]

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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.<sup>1</sup> Shortly before the deadline to file the amended complaint  
13 expired, Zuniga moved for an extension<sup>2</sup> and I extended the deadline to September 16, 2016.<sup>3</sup>  
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.

16 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.<sup>4</sup> A court  
19 may dismiss an action with prejudice when a party fails to prosecute an action,<sup>5</sup> obey a court order,<sup>6</sup>

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21 <sup>1</sup> ECF No. 2.

22 <sup>2</sup> ECF No. 4.

23 <sup>3</sup> ECF No. 5.

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

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

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

1 or comply with local rules.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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,<sup>10</sup> 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.<sup>11</sup>

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

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

24 <sup>8</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130; *Ferdik*,  
25 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

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

27 <sup>10</sup> *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 <sup>11</sup> ECF No. 5 at 2.

1 **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.

7 Dated this 23rd day of September, 2016

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Jennifer A. Dorsey  
United States District Judge