

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

4 Diamandia Lingos,
5 Plaintiff
6 v.
7 U Gym LLC, et al.,
8 Defendants

Case No. 2:16-cv-01684-JAD-GWF

**Order Dismissing and
Closing Case**

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10 On 5/8/17, after the parties notified the court that this action had been settled and that the
11 final settlement payment was due 7/15/17,¹ the court ordered the parties to file their stipulation
12 and proposed order to dismiss with prejudice and close this case by 8/4/17.² Nothing was filed.
13 On 5/1/19, the court ordered the parties to file a stipulation and proposed order dismissing and
14 closing this case, or this court will deem this case abandoned and direct the clerk of court to
15 dismiss and close it.³ Still, nothing was filed. I construe this silence as the plaintiff’s intent to
16 abandon this case, and I dismiss it.

17 District courts have the inherent power to control their dockets and “[i]n the exercise of
18 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A
19 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a

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21 ¹ ECF No. 18.

22 ² ECF No. 20.

23 ³ ECF No. 21.

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

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

6 The first two factors, the public’s interest in expeditiously resolving this litigation and the
7 court’s interest in managing its docket, weigh in favor of dismissal. The third factor, risk of
8 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
9 from the occurrence of unreasonable delay in filing a pleading ordered by the court or
10 prosecuting an action.⁷ A court’s warning to a party that its failure to obey the court’s order will
11 result in dismissal satisfies the fifth factor’s “consideration of alternatives” requirement.⁸ That
12 warning was given here.⁹ The fourth factor—the public policy favoring disposition of cases on
13 their merits—is greatly outweighed by the factors favoring dismissal.

17 ⁵ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
18 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
19 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
20 41 (9th Cir. 1988) (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.
21 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
22 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

21 ⁶ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
22 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

22 ⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).


23 ⁸ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

⁹ ECF No. 21.

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Accordingly, IT IS HEREBY ORDERED that this action is DISMISSED without prejudice for failure to prosecute it. The Clerk of Court is directed to CLOSE THIS CASE.

Dated: May 20, 2019



U.S. District Judge Jennifer A. Dorsey