

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Evig, LLC v. Fantasy, Inc.

Evig · No. 2:24-cv-00349-GMN-DJA · Decided November 21, 2025

SUMMARY

The United States District Court for the District of Nevada dismisses the case without prejudice after Plaintiff failed to file an amended complaint by the court-ordered deadline. Applying the Ninth Circuit’s dismissal factors, the court concludes that dismissal is warranted and directs the Clerk of Court to close the case.

CASE DETAILS

COURT	United States District Court for the District of Nevada
WRITING FOR THE COURT	Gloria M. Navarro
JURISDICTION	United States District Court for the District of Nevada
DECIDED	November 21, 2025
DOCKET	2:24-cv-00349-GMN-DJA
DISPOSITION	dismissed
PROCEDURAL POSTURE	After granting Defendant's motion to dismiss and allowing Plaintiff until April 18, 2025, to file an amended complaint, the court dismissed the action without prejudice when Plaintiff failed to file an amended complaint.
STANDARD OF REVIEW	The court considered whether dismissal was appropriate for failure to comply with a court order, applying the Ninth Circuit's five-factor test concerning expeditious resolution, docket management, prejudice, disposition on the merits, and availability of less-drastic alternatives.
PRECEDENTIAL VALUE	unpublished
PARTIES	Evig, LLC v. Fantasy, Inc.

TOPICS

- pleadings
- motions to dismiss
- sanctions
- civil procedure
- commercial litigation

PRACTICE AREAS

- Civil procedure
- Commercial litigation

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because Plaintiff failed to comply with the court's deadline to file an amended complaint.
2. Whether the Ninth Circuit's five dismissal factors favored dismissal and whether another deadline would constitute a meaningful less-drastic alternative.

HOLDINGS

1. A district court may dismiss an action when a party fails to comply with a court order, and dismissal without prejudice was warranted because Plaintiff failed to file an amended complaint by the court-ordered deadline.

KEY QUOTATIONS

“Courts “need not exhaust every sanction short of dismissal before finally dismissing a case but must explore possible and meaningful alternatives.”” (at 2)

“IT IS HEREBY ORDERED that this case is DISMISSED without prejudice for failure to file an amended complaint in compliance with the Court’s deadline.” (at 2)

FACTUAL BACKGROUND

The court had previously dismissed Defendant's motion-targeted claims and allowed Evig, LLC to file an amended complaint by April 18, 2025. Evig did not file an amended complaint by that deadline or otherwise provide a basis for additional time. Because the action could not proceed without an operative complaint, the court dismissed the case without prejudice.

PROCEDURAL HISTORY

On March 28, 2025, the court granted Defendant's motion to dismiss and granted Plaintiff leave to amend. Plaintiff did not file an amended complaint by the court-ordered deadline. The court determined that dismissal was warranted after weighing the applicable dismissal factors and directed the Clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *In re Phenylpropanolamine Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006)
- *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
- *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976)
- *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
- *Hernandez v. City of El Monte*, 138 F.3d 393 (9th Cir. 1998)

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 EVIG, LLC, 4 Plaintiff,
Case No.: 2:24-cv-00349-GMN-DJA 5 vs. 6 ORDER DISMISSING CASE FANTASY, INC, 7
Defendant. 8 9 On March 28, 2025, the Court granted Defendant's Motion to Dismiss. (See Order
10 Granting Mot. Dismiss, ECF No. 37).

The Court granted Plaintiff leave to amend and set a 11 deadline of April 18, 2025, to file an
amended complaint. To date, Plaintiff has not filed an 12 amended complaint. As a result, the
Court dismisses the case without prejudice. 13 The law permits a district court to dismiss an action
based on a party's failure to comply 14 with a court order. See *Ferdik v. Bonzelet*, 963 F.2d 1258,
1260–61 (9th Cir.

1992) (dismissal 15 for failure to comply with an order requiring amendment of complaint). In
determining 16 whether to dismiss an action on this ground, the court must consider: (1) the
public's interest in 17 expeditious resolution of litigation, (2) the court's need to manage its
docket, (3) the risk of 18 prejudice to the defendants, (4) the public policy favoring disposition of
cases on their merits, 19 and (5) the availability of less-drastic alternatives.

In *re Phenylpropanolamine Prod. Liab.* 20 Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
Malone v. U.S. Postal Serv., 833 F.2d 128, 21 130 (9th Cir. 1987)). 22 The first two factors, the
public's interest in expeditiously resolving this litigation and 23 the Court's interest in managing
its docket, weigh in favor of dismissal of Plaintiff's claims. 24 The third factor, risk of prejudice to
Defendants, also weighs in favor of dismissal because a 25 presumption of injury arises from the
occurrence of unreasonable delay in filing a pleading 1 || ordered by the court or prosecuting an
action.

See *Anderson v. Air West*, 542 F.2d 522, 524 (9th 2 1976). The fourth factor—the public policy
favoring disposition of cases on their merits— 3 || weighs against dismissal. 4 The fifth factor
requires the Court to consider whether less-drastic alternatives can be 5 || used to correct the
party's failure that brought about the Court's need to consider dismissal.

6 || Courts “need not exhaust every sanction short of dismissal before finally dismissing a case but
7 || must explore possible and meaningful alternatives.” *Henderson vy. Duncan*, 779 F.2d 1421, 8 ||
1424 (9th Cir. 1986).

Because this action cannot proceed without an operative complaint, the 9 || only alternative is to
enter another order setting another deadline. The circumstances here do 10 || not indicate that
Plaintiff needs additional time.

Therefore, setting another deadline is not a 11 meaningful alternative. So, the fifth factor favors
dismissal. On balance, the factors above 12 || favor a recommendation of dismissal. See *Hernandez*
v. City of El Monte, 138 F.3d 393 (9th 13 || Cir. 1998) (holding that dismissal is proper where at

least four factors support dismissal or 14 || where at least three factors “strongly” support dismissal).

15 Accordingly, 16 IT IS HEREBY ORDERED that this case is DISMISSED without prejudice for failure 17 || to file an amended complaint in compliance with the Court’s deadline. 18 The Clerk of Court is kindly directed to close this case. 19 Dated this _21 day of November, 2025. 20 Vif, Gloria M. vay arro, District Judge 22 United States District Court 23 24 25 Page 2 of 2