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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SELVIN O. CARRANZA,
12 CDCR #T-67780,

13 Plaintiff,

14 vs.

15 EDMUND G. BROWN, Jr., Governor,
16 et al.,

17 Defendants.
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Case No.: 3:14-cv-0773-GPC-BLM

ORDER:

**1) DISCHARGING ORDER TO
SHOW CAUSE
[Doc. No. 15];**

**2) GRANTING MOTIONS FOR
EXTENSION OF TIME
[Doc. Nos. 18, 20, 24];**

AND

**3) DENYING MOTIONS TO STOP
RETALIATION AND FOR
PRELIMINARY INJUNCTION
[Doc. Nos. 16, 20, 22]**

24 Selvin O. Carranza (“Plaintiff”), a prisoner proceeding pro se and currently
25 incarcerated at California State Prison, in Lancaster, California (“LAC”),¹ initiated this
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28 ¹ Plaintiff was incarcerated at Kern Valley State Prison (“KVSP”) on March 28, 2014 when he first
initiated this action claiming that unidentified correctional officials at Richard J. Donovan Correctional

1 civil action pursuant to 42 U.S.C. § 1983 more than two years ago, on March 28, 2014
2 (Doc. No. 1). The case remains open, and Plaintiff has recently filed motions seeking
3 extensions of time (Doc. Nos. 18, 20, 24) and repeated motions for injunctive relief (Doc.
4 Nos. 16, 20, 22), but he has yet to file the Second Amended Complaint (“SAC”) he was
5 granted leave to file on October 26, 2015. *See* Doc. No. 14.

6 **I. Procedural History**

7 On October 26, 2015, after Plaintiff had been granted three previous extensions of
8 time in which to amend, the Court granted Plaintiff a fourth opportunity to amend, and
9 gave him an additional forty-five (45) days in which to file his SAC. *See* Doc. No. 14. The
10 Court further cautioned Plaintiff that his SAC must comply with FED. R. CIV. P. 8(a)(2),
11 directed the Clerk to provide him with a blank copy of its form Civil Rights Complaint in
12 order to assist him in meeting Rule 8’s requirements, and limited him to an additional 15
13 pages of pleading pursuant to S.D. CAL. CIVLR 8.2(a). *Id.* at 6-7. Finally, the Court notified
14 Plaintiff that if he failed to file his SAC within 45 days, which would have been on or about
15 December 12, 2015, his case would be subject to dismissal without prejudice based on his
16 failure to prosecute and/or comply with the Court’s Orders permitting amendment. *Id.* at
17 7-8 (citing *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not
18 take advantage of the opportunity to fix his complaint, a district court may convert the
19 dismissal of the complaint into dismissal of the entire action.”)).

21
22 Facility (“RJD”) staged a “gladiator-style fight” between him and another inmate on June 22, 2012, while
23 he was incarcerated there. *See* Doc. No. 1 at 1. On July 15, 2015, Plaintiff filed a Notice of Change of
24 Address indicating he had been transferred from KVSP to the California Correctional Institution (“CCI”) in
25 Tehachapi. *See* Doc. No. 13. By the time Plaintiff filed his Response to the Court’s OSC on April 13,
26 2016, he had been transferred to Pleasant Valley State Prison (“PVSP”) in Coalinga, where he was placed
27 in “Short Term Restricted Housing” (“STRH”). *See* Doc. Nos. 16, 18. On June 3, 2016, Plaintiff included
28 another change of address, this time to California State Prison in Lancaster (“LAC”), in a Motion that also
requests another extension of time, and injunctive relief requiring the “CDCR to stop retaliation” and to
return his “property.” (Doc. No. 20.) Between PVSP and LAC, Plaintiff also contends he was transferred
from PSVP to a “crisis bed” at California Men’s Colony (“CMC”) in San Luis Obispo on May 4, 2016,
until he was “discharged” from suicide watch and ultimately transferred to LAC on May 11, 2016. *See*
Doc. No. 20 at 1-2.

1 December 12, 2015, came and went, and still Plaintiff filed no SAC; therefore, on
2 March 15, 2016, the Court ordered Plaintiff to show cause why his case should not be
3 dismissed for failure to prosecute and for failing to comply with the Court's Order. (Doc.
4 No. 15.) The OSC ostensibly granted Plaintiff a fifth extension of time and an additional
5 45 days leave, or until April 26, 2016, in which to file his SAC or face dismissal. (*Id.* at 2.)
6 The Court further cautioned Plaintiff that "no further extensions of time to amend [would]
7 be granted." (*Id.*)

8 On April 13, 2016, Plaintiff filed a Response to the OSC (Doc. No. 16), from
9 Pleasant Valley State Prison ("PVSP"), blaming prison officials at the California
10 Correctional Institution ("CCI") in Tehachapi, California, for failing to mail his "civil
11 action," which the Court presumes was his SAC, and which he claims to have filed on
12 December 9, 2015, "per the mail box rule" from CCI. (*Id.* at 1-2; Doc. No. 18 at 3-4; Doc.
13 No. 22 at 1.) Plaintiff claims he was not aware that his "civil action" had not been mailed
14 to the Court until March 23, 2016, when it was returned to him "incomplete," with "parts
15 missing," and "without explanation [as to] 'why it hadn't been mailed out.'" (Doc. No. 16
16 at 2; Doc. No. 18 at 4; Doc. No. 22 at 1.) In his Response, Plaintiff also requests "an
17 immediate preliminary injunction against the Secretary of the CDCR, Warden, [and]
18 Associate Wardens at CCI" to "stop retaliating against [him]," to "stop hindering" his
19 access to this Court, and requiring his transfer to the LAC "Honor Yard." (*See* Doc. No. 16
20 at 11.)

21 In several additional Motions, Plaintiff requests extensions of time in which to file
22 his SAC (Doc. Nos. 18, 20, 24), an "update" on the status of his civil action, and injunctive
23 relief requiring the Secretary of the CDCR (Doc. No. 20 at 4), and all "subordinates" to
24 cease all acts of retaliation against him (Doc. Nos. 20, 22). In another "Notice" dated July
25 21, 2016, Plaintiff claims to have begun a hunger strike at LAC in order to compel the
26 return of his personal property, including the "civil action" he claims to have mailed on
27 December 9, 2015, and quarterly packages from his family and private vendors, including
28 vitamins and a TV (Doc. No. 24). On August 1, 2016, however, Plaintiff filed a second

1 “Notice” informing the Court that while he is “still being deprived of [his] property,” he
2 has ended his hunger strike due to its “foolishness.” (Doc. No. 26.)

3 **II. Motions for Extension of Time to Amend**

4 As noted above, Plaintiff has already been granted five extensions of time in which
5 to amend his pleadings in this case, and has been warned on several of those occasions that
6 no further extensions of time would be granted. *See* Doc. Nos. 4, 6, 9, 14, 15. Because
7 neither his original or his First Amended Complaint (“FAC”) complied with Rule 8, and
8 because he sought leave to amend his FAC immediately after he filed it, on October 26,
9 2015, the Court granted him leave to file “*one* single Second Amended Complaint, which
10 properly and completely allege[d] all the causes of action” he intended to pursue, “name[d]
11 all the parties he intend[ed] to sue,” and “include[d] a ‘short and plain statement’ of any
12 and all grounds upon which he claims entitlement to relief.” (Doc. No. 14 at 5.)

13 Plaintiff has yet to file the SAC that was due more than 6 months ago; instead he has
14 filed three more requests for additional time in which to amend—all after the time for filing
15 his SAC had long lapsed. *See* Doc. Nos. 18, 20, 24.

16 Rule 6(b) of the Federal Rules of Civil Procedure provides that “[w]hen an act may
17 or must be done within a specified time, the court may, for good cause, extend the time:
18 (A) with or without motion or notice if the court acts, or if a request is made, before the
19 original time or its extension expires; or (B) on motion made after the time has expired if
20 the party failed to act because of excusable neglect. FED. R. CIV. P. 6(b)(1). “This rule, like
21 all the Federal Rules of Civil Procedure, ‘[is] to be liberally construed to effectuate the
22 general purpose of seeing that cases are tried on the merits.’” *Ahanchian v. Xenon Pictures,*
23 *Inc.*, 624 F.3d 1253, 1258-59 (9th Cir. 2010) (quoting *Rodgers v. Watt*, 722 F.2d 456, 459
24 (9th Cir.1983)); *see also* FED. R. CIV. P. 1 (“[The Federal Rules] should be construed and
25 administered to secure the just, speedy, and inexpensive determination of every action and
26 proceeding.”).

27 A plaintiff pursuing a civil rights action without counsel, like all other litigants, is
28 required to obey the court’s orders, including an order to amend his pleading, and to do so

1 within a time certain. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992);
2 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). His failure to obey the court’s
3 orders and the local and federal rules and meet his responsibilities in prosecuting this action
4 may justify dismissal, including dismissal with prejudice. *Ferdik*, 963 F.2d at 1262-63
5 (affirming dismissal with prejudice for pro se prisoner's failure to comply with order
6 requiring filing of amended civil rights complaint); *Pagtalunan*, 291 F.3d at 642 (affirming
7 dismissal with prejudice for pro se prisoner’s failure to comply with order requiring filing
8 of amended habeas petition); *Moore v. United States*, 193 F.R.D. 647, 653 (N.D. Cal. 2000)
9 (denying motion for leave to file third amended complaint and dismissing action with
10 prejudice for pro se plaintiff’s failure to comply with Rule 8); *Franklin v. Murphy*, 745
11 F.2d 1221, 1232-33 (9th Cir. 1984) (affirming dismissal with prejudice for pro se prisoner’s
12 failure to prosecute); *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir.1988) (affirming
13 dismissal without prejudice for pro se prisoner’s failure to comply with local rule requiring
14 he notify the court of any change of address).

15 Plaintiff now claims that he *did* attempt to comply with Court’s October 26, 2015
16 Order when he “timely filed [his] civil action, due diligently prosecuting [his] case,” by
17 placing it in a manila envelope and requesting that prison officials at CCI, where he was
18 housed at the time, mail it to the Court. (Doc. No. 18 at 3-4.) Plaintiff further claims it was
19 not until March 23, 2016, while he was in Ad-Seg at CCI that his “civil action was suddenly
20 returned to [him] without explanation [as to] ‘why it hadn’t been mailed out.’” (Doc. No.
21 22 at 1.) Plaintiff further claims that he “sought mental health treatment and was placed on
22 suicide watch at PVSP from April 13, 2016, through April 25, 2016 (Doc. No. 18 at 4), and
23 attributes his inability to timely amend to six prison transfers over the last three years, and
24 miscellaneous hindrances and other obstacles posed by various prison officials at CCI,
25 PVSP, and LAC, all of whom are alleged to have either delayed the return of or to have
26 deprived him of his personal property. (Doc. No. 20 at 1-5; Doc. No. 24 at 1-3.)

27 Therefore, based on these allegations, the Court finds Plaintiff has demonstrated the
28 “good cause” and “excusable neglect” required under Rule 6(b)(1), *Ahanchian*, 624 F.3d

1 at 1259, and GRANTS his several Motions requesting an extension of time (Doc. Nos. 18,
2 20, 24). While the Court has already exercised “wide latitude” extending Plaintiff
3 additional time to amend, *id.* at 1255, it will do so one final time in this case. *See also*
4 *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002) (noting the district
5 court’s “broad authority to impose reasonable time limits”) (citation and internal quotations
6 omitted); *cf. Efa v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007) (noting that while court
7 has similarly broad discretion to grant extensions of time under FED. R. CIV. P. 4(m), those
8 extensions must end somewhere, for “no court has ruled that the discretion is limitless.”).

9 **III. Motions for Injunctive Relief**

10 In his Response to the Court’s OSC, filed on April 13, 2016, and after he had been
11 transferred from both KVSP and CCI, Plaintiff includes a request for a preliminary
12 injunction “order[ing] the Secretary for CDCR and his subordinates, to stop retaliating
13 against [him],” and “hindering [his] access[] [to] this Court.” (Doc. No. 16 at 11). Plaintiff
14 has also filed two separate Motions from LAC requesting similar injunctive relief
15 preventing the “Secretary of the CDCR and his subordinates,” to stop his “being bounced
16 around from prison to prison,” (Doc. No. 20 at 4), and ordering the return of “all [his]
17 property.” (Doc. No. 22 at 1-3, 8, 11.)

18 “A preliminary injunction is an extraordinary remedy never awarded as of right.”
19 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008) (citation
20 omitted). “The proper legal standard for preliminary injunctive relief requires a party to
21 demonstrate ‘that he is likely to succeed on the merits, that he is likely to suffer irreparable
22 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and
23 that an injunction is in the public interest.’” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127
24 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).

25 To show irreparable harm, the “plaintiff must show that he is under threat of
26 suffering ‘injury in fact’ that is concrete and particularized; the threat must be actual and
27 imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged
28 action of the defendant; and it must be likely that a favorable judicial decision will prevent

1 or redress the injury.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009) (citing
2 *Friends of Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167, 180-
3 181 (2000)). In sum, an injunction “may only be awarded upon a clear showing that the
4 plaintiff is entitled to relief.” *Winter*, 555 U.S. at 22.

5 Here, Plaintiff’s Motions for Injunctive Relief must be denied because he has yet to
6 file a pleading that states a plausible claim for relief against any party. Therefore, he
7 necessarily has not and cannot show that he is “likely to succeed on the merits” of any
8 claim, that “the balance of equities tips in his favor,” or that the issuance of an injunction
9 in his case would serve the public interest. *Winter*, 555 U.S. at 20. In addition, to the extent
10 Plaintiff seeks injunctive relief enjoining prison officials at any institution other than LAC,
11 where he is currently incarcerated, his motions have been mooted by his transfer. *See Dilley*
12 *v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995) (prisoners released from prison or transferred
13 to a different prison may not sue for injunctive relief because they would no longer benefit
14 from having the injunction issued) (citing *Preiser v. Newkirk*, 422 U.S. 395, 402-03 (1975);
15 *Rupe v. Cate*, 688 F. Supp. 2d 1035, 1043 (E.D. Cal. 2010).

16 Finally, FED. R. CIV. P. 65(d)(2) provides that an injunction binds only persons who
17 receive actual notice of it by personal service or otherwise: “(A) the parties; (B) the parties’
18 officers, agents, servants, employees, and attorneys; and (C) other persons who are in active
19 concert or participation with [them].” FED. R. CIV. P. 65(d)(2)(A)-(C). In general, “[a]
20 federal court may issue an injunction if it has personal jurisdiction over the parties and
21 subject matter jurisdiction over the claim; it may not attempt to determine the rights of
22 persons not before the court.” *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1985). One
23 “becomes a party officially, and is required to take action in that capacity, only upon service
24 of summons or other authority-asserting measure stating the time within which the party
25 served must appear to defend.” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526
26 U.S. 344, 350 (1999); *see also Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 234-
27 35 (1916).

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1 Thus, even if Plaintiff could satisfy all the *Winter* factors justifying extraordinary
2 injunctive relief under Rule 65, at this stage of the proceedings, the Court simply lacks
3 jurisdiction over *any* of the prison officials Plaintiff seeks to enjoin, none of which have
4 been served, and most of which have never even been identified as parties in any pleading.
5 *Zepeda*, 753 F.2d at 727-28.

6 Therefore, Plaintiff’s Motions for Preliminary Injunction (Doc. Nos. 16, 22) and for
7 “Secretary for CDCR to Ensure His Subordinate Stop Retaliating” and to “Provide
8 [Plaintiff] all [his] Property’ (Doc. No. 20) are DENIED.

9 **IV. Conclusion and Orders**

10 For all the reasons discussed, the Court:

- 11 1) **DISCHARGES** its March 15, 2016 Order to Show Cause (Doc. No. 15);
- 12 2) **DENIES** Plaintiff’s Motions for Preliminary Injunction and for CDCR to
13 Stop Retaliating and Provide or Return Property (Doc. Nos. 16, 20, 22);
- 14 3) **GRANTS** Plaintiff’s Motions for Extension of Time to Amend (Doc. Nos.
15 18, 20, 24);
- 16 4) **GRANTS** Plaintiff forty-five (45) days from the date of this Order in which
17 to file his Second Amended Complaint. Plaintiff’s pleading must be identified as his
18 Second Amended Complaint, include Civil Case No. 14cv0773 GPC (BLM) in its caption,
19 name the all parties he wishes to sue, and allege all the claims he wishes to pursue in one
20 single, clear, and concise pleading.² In order to assist him, and to encourage his timely
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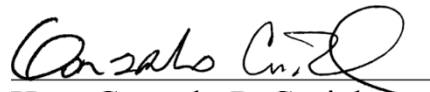
22 ² Plaintiff is reminded that he need not cite case law or make any legal arguments. Instead, he should avoid
23 exaggeration, and use short, plain, declarative sentences to describe, in his own words, what each
24 individual person he names as a defendant did to violate his rights, when, where, and how they did it, and
25 what relief he seeks. *See* FED. R. CIV. P. 8(a)(2); *Iqbal v. Ashcroft*, 556 U.S. 662, 676 (2009) (noting that
26 “[b]ecause vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each
27 Government-official defendant, through the official’s own individual actions, has violated the
28 Constitution.”). If his SAC fails to comply with Rule 8, or otherwise fails to “contain sufficient factual
matter, accepted as true, to ‘state a claim to relief that is plausible on its face,’” *Iqbal*, 556 U.S. at 678
(citation omitted), it will be dismissed sua sponte, and prior to service upon any party pursuant to 28
U.S.C. § 1915(e)(2) and § 1915A(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en
banc); *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (“The purpose of § 1915A is to ‘ensure

1 compliance, the Court also **DIRECTS** the Clerk of Court to provide Plaintiff with *another*
2 copy of its form Civil Rights Complaint pursuant to 42 U.S.C. § 1983, and strongly
3 suggests that he use it. Plaintiff's Second Amended Complaint must also comply with S.D.
4 CAL. CIVLR 8.2(a); therefore, *he may attach no more than fifteen (15) additional pages;*
5 and,

6 5) **CAUTIONS** Plaintiff that no further extensions of time or motions requesting
7 leave to exceed page limits will be granted. Therefore, should he fail to comply with the
8 directions set forth in this Order by filing a Second Amended Complaint within the 45 days
9 provided, the Court will dismiss his entire civil action without prejudice based on his failure
10 to prosecute and/or comply with the Court's Orders permitting amendment. *See Lira*, 427
11 F.3d at 1169 ("If a plaintiff does not take advantage of the opportunity to fix his complaint,
12 a district court may convert the dismissal of the complaint into dismissal of the entire
13 action."); *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004) ("The failure of the
14 plaintiff eventually to respond to the court's ultimatum—either by amending the complaint
15 or by indication to the court that it will not do so—is properly met with the sanction of a
16 Rule 41(b) dismissal.").

17 **IT IS SO ORDERED.**

18 Dated: August 17, 2016

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20 Hon. Gonzalo P. Curiel
21 United States District Judge
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28 that the targets of frivolous or malicious suits need not bear the expense of responding.'") (citation omitted).