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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JOSE SANTANA,
12 CDCR #AH-0190,

13 Plaintiff,

14 vs.

15 RONALD ZHANG, et al.,

16 Defendants.
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Case No. 3:16-cv-00105-GPC-JMA

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO
STATE A CLAIM AND FOR
FAILING TO PROSECUTE IN
COMPLIANCE WITH COURT
ORDERS REQUIRING
AMENDMENT**

19 JOSE SANTANA (“Plaintiff”), proceeding pro se, and incarcerated at Richard J.
20 Donovan Correctional Facility (“RJD”) in San Diego, California, filed this civil rights
21 action pursuant to 42 U.S.C. § 1983 on January 14, 2016, claiming that medical officials
22 at RJD and two doctors at the Alvarado Medical Center (Butera and Hood) acted with
23 deliberate indifference to his serious medical needs, specifically, a methicillin resistant
24 staphylococcus aureas infection, which developed and recurred over the course of two
25 years in violation of the Eighth Amendment. (ECF No. 1 at 21-37.)

26 Plaintiff also alleged pendent state law claims of medical negligence and
27 malpractice in violation of Cal. Govt. Code §§ 845.6 and 815.2, and the California
28 Constitution, Art I, §§ 15, 17. (*Id.* at 37-48, 50-51.) He sought declaratory and injunctive

1 relief, as well as nominal, presumed, and punitive damages. (*Id.* at 52-53.)

2 **I. Procedural Background**

3 On September 15, 2016, the Court granted Defendant Butera's and Hood's
4 Motions to Dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6), sua sponte
5 dismissed Plaintiff's Eighth Amendment claims as to all remaining RJD defendants for
6 failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A, and declined to
7 exercise supplemental jurisdiction over his state law claims pursuant to 28 U.S.C.
8 § 1367(c)(3). (*See* ECF No. 28 at 33.) This dismissal was without prejudice, and Plaintiff
9 was granted 45 days leave in which to amend. (*Id.*) *See Lopez v. Smith*, 203 F.3d 1122,
10 1130 (9th Cir. 2000) (en banc) (noting that leave to amend should be granted when
11 complaint is dismissed sua sponte under § 1915 "if it appears at all possible that the
12 plaintiff can correct the defect.").

13 Plaintiff was explicitly cautioned that should he fail to amend within the time
14 granted, "his case [would] be dismissed without further leave to amend." (ECF No. 28 at
15 133, *citing Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) ("If a plaintiff does not
16 take advantage of the opportunity to fix his complaint, a district court may convert the
17 dismissal of the complaint into a dismissal of the entire action.")).

18 On November 15, 2016, after the period permitted for amendment elapsed, but
19 before the Court could entered a final Order dismissing his entire action for failure to
20 state a claim, Plaintiff filed a Motion for Reconsideration of the Court's September 15,
21 2016 Order (ECF No. 33).

22 On February 16, 2017, the Court denied Plaintiff's Motion, but granted him an
23 additional 45 days leave, or until approximately April 3, 2017, in which to file his
24 Amended Complaint. (ECF No. 34 at 5.) Again, Plaintiff was warned that his failure to
25 amend within that time would result in dismissal. (*Id.*)

26 More than three months have passed since the Court's February 16, 2017 Order,
27 and an additional thirty days have elapsed since Plaintiff's Amended Complaint was due.
28 However, he has filed no Amended Complaint, and has not requested any additional

1 extension of time in which to do so. *See Edwards v. Marin Park*, 356 F.3d 1058, 1065
2 (9th Cir. 2004) (“The failure of the plaintiff eventually to respond to the court’s
3 ultimatum—either by amending the complaint or by indicating to the court that [he] will
4 not do so—is properly met with the sanction of a Rule 41(b) dismissal.”).

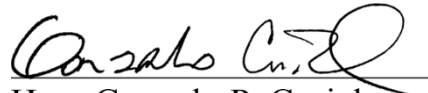
5 **II. Conclusion and Order**

6 Accordingly, the Court **DISMISSES** this civil action in its entirety without further
7 leave to amend based on Plaintiff’s failure to state a claim upon which § 1983 relief can
8 be granted, and his failure to prosecute pursuant to FED. R. CIV. P. 41(b) in compliance
9 with the Court’s September 15, 2016, and February 16, 2017 Orders (ECF Nos. 28, 34).

10 The Court further **CERTIFIES** that an IFP appeal would not be taken in good
11 faith pursuant to 28 U.S.C. § 1915(a)(3) and **DIRECTS** the Clerk to enter a final
12 judgment of dismissal and to close the file.

13 **IT IS SO ORDERED.**

14 Dated: May 18, 2017

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16 Hon. Gonzalo P. Curiel
17 United States District Judge
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