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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RALPH WYATT,  
CDCR #AE-2425,

Plaintiff,

vs.

C/O J. PINUELAS,

Defendant.

Case No. 3:16-cv-01553-GPC-DHB

**ORDER DISMISSING CIVIL  
ACTION FOR FAILING TO  
STATE A CLAIM PURSUANT  
TO 28 U.S.C. § 1915(e)(2)(B)(ii) AND  
§ 1915A(b)(1) AND FOR FAILING  
TO PROSECUTE IN COMPLIANCE  
WITH COURT ORDER REQUIRING  
AMENDMENT**

RALPH WYATT (“Plaintiff”), proceeding pro se, and while incarcerated at the California State Prison Substance Abuse Treatment Facility in Corcoran, California, filed this civil rights action pursuant to 42 U.S.C. § 1983, claiming that Calipatria State Prison Correctional Officer Pinuelas failed to protect him from an attack by another inmate while he was incarcerated there in March 2015. (ECF No. 1 at 2.)

**I. Procedural Background**

On December 13, 2016, the Court granted Plaintiff leave to proceed in forma pauperis (“IFP”), but dismissed his Complaint sua sponte for failing to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) (ECF No. 3). Specifically, the Court found Plaintiff failed to allege facts sufficient to

1 show he faced a “substantial risk of serious harm” or that Defendant Pinuelas acted with  
2 “deliberate indifference” to that risk. (*Id.* at 5, citing *Farmer v. Brennan*, 511 U.S. 825,  
3 837 (1994); *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010).) The Court also  
4 granted Plaintiff 45 days in which to file an Amended Complaint that cured these  
5 pleading deficiencies. (*Id.* at 7, citing *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.  
6 2000) (en banc) (noting that leave to amend should be granted when complaint is  
7 dismissed sua sponte under § 1915 “if it appears at all possible that the plaintiff can  
8 correct the defect.”).)

9 Plaintiff was explicitly warned that should he fail to amend within the time  
10 granted, the Court would “enter a final Order dismissing this civil action based both on  
11 his failure to state a claim upon which § 1983 relief can be granted ... and his failure to  
12 prosecute in compliance with a court order requiring amendment.” (ECF No. 3 at 8,  
13 citing *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take  
14 advantage of the opportunity to fix his complaint, a district court may convert the  
15 dismissal of the complaint into a dismissal of the entire action.”)).

16 More than two months have passed since the Court’s December 13, 2016 Order.  
17 Plaintiff has filed no Amended Complaint; nor has he requested an extension of time in  
18 which to do so. *See Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004) (“The  
19 failure of the plaintiff eventually to respond to the court’s ultimatum—either by amending  
20 the complaint or by indicating to the court that [he] will not do so—is properly met with  
21 the sanction of a Rule 41(b) dismissal.”).

## 22 **II. Conclusion and Order**

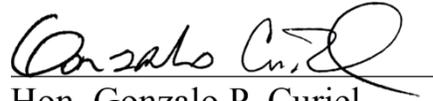
23 Accordingly, the Court **DISMISSES** this civil action in its entirety without further  
24 leave to amend based on Plaintiff’s failure to state a claim upon which § 1983 relief can  
25 be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1), and his failure to  
26 prosecute pursuant to FED. R. CIV. P. 41(b) in compliance with the Court’s December 13,  
27 2016 Order (ECF No. 3).

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

4           **IT IS SO ORDERED**

5 Dated: March 9, 2017

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7 Hon. Gonzalo P. Curiel  
8 United States District Judge  
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