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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ROBERT SIMBA MAKONI,
12 Former Booking #16143756,

13 Plaintiff,

14 vs.

15 ROBERT DOWNS, et al.,

16 Defendants.
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Case No. 3:16-cv-02335-AJB-WVG

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR LACK OF PROPER VENUE
PURSUANT TO 28 U.S.C. § 1406(a)
AND FOR FAILING TO
PROSECUTE PURSUANT
TO Fed. R. Civ. P. 41(b)**

19 ROBERT SIMBA MAKONI (“Plaintiff”), proceeding pro se, and while detained
20 at the San Diego Sheriff’s Department Vista Detention Facility (“VDF”), filed this civil
21 rights action pursuant to 42 U.S.C. § 1983 on September 13, 2016, claiming he was
22 subject to abuse and was denied medical attention by Prisoner Transportation Services of
23 America employees, two Gwinnett and Clayton County Georgia Sheriff’s Department
24 officials, and a doctor employed by the Clayton County Jail,¹ during a 28-day cross-
25 country extradition transport from VDF to Clayton County, Georgia, beginning in
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28 ¹ While Plaintiff was detained at VDF at the time of filing, no Defendant was alleged to reside in either San Diego or Imperial County. See 28 U.S.C. § 1391(b)(1).

1 November 2015. (ECF No. 1 at 2-16.)²

2 **I. Procedural Background**

3 On December 13, 2016, the Court denied Plaintiff's Motion to Proceed In Forma
4 Pauperis ("IFP"), as well as his Motions for a Temporary Restraining Order and
5 Appointment of Counsel (ECF No. 10). At the same time, the Court granted Plaintiff
6 leave to supplement his Complaint (ECF No. 9), but sua sponte screened both Plaintiff's
7 original pleading, as well as his proposed supplemental claims, and dismissed them
8 without prejudice based on his failure to allege proper venue in the Southern District of
9 California pursuant to 28 U.S.C. § 1391(b). (*Id.* at 10-11.) Plaintiff was granted leave to
10 re-open his case by either paying the civil filing fee required by 28 U.S.C. § 1914(a), *or*
11 submitting a properly supported Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
12 *and* by filing a First Amended Complaint alleging facts sufficient to demonstrate the
13 Southern District of California as the proper venue within 30 days. (*Id.* at 11.)

14 On January 21, 2017, Plaintiff filed a new Motion to Proceed IFP (ECF No. 11),
15 but no Amended Complaint. A week later, on January 27, 2017, Plaintiff requested an
16 extension of time in which to amend (ECF No. 13). On February 22, 2017, the Court
17 granted both Motions, and directed Plaintiff to file his First Amended Complaint on or
18 before April 3, 2017 (ECF No. 14).

19 More than three months have passed since the Court's February 22, 2017 Order,
20 but Plaintiff has taken no action. He did not file a First Amended Complaint within the
21 time permitted; nor has he requested another extension of time in which to do so.

22 "If a plaintiff does not take advantage of the opportunity to fix his complaint, a
23 district court may convert the dismissal of the complaint into a dismissal of the entire
24 action." *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005); *see also Edwards v. Marin*
25 *Park*, 356 F.3d 1058, 1065 (9th Cir. 2004) ("The failure of the plaintiff eventually to
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28 ² On October 24, 2016, Plaintiff filed a Notice of Change of Address indicating his subsequent release
from VDF custody. (ECF No. 7).

1 respond to the court’s ultimatum—either by amending the complaint or by indicating to
2 the court that [he] will not do so—is properly met with the sanction of a Rule 41(b)
3 dismissal.”).

4 **II. Conclusion and Order**

5 Accordingly, the Court **DISMISSES** this civil action in its entirety without
6 prejudice based on its lack of proper venue pursuant to 28 U.S.C. § 1406(a), and
7 Plaintiff’s failure to prosecute pursuant to FED. R. CIV. P. 41(b) in compliance with the
8 Court’s December 13, 2016, and February 22, 2017 Orders (ECF Nos. 10, 14).

9 The Court further **CERTIFIES** that an IFP appeal would not be taken in good
10 faith pursuant to 28 U.S.C. § 1915(a)(3), **DIRECTS** the Clerk to enter a final judgment
11 of dismissal without prejudice, and to close the file.

12 **IT IS SO ORDERED.**

13 Dated: June 8, 2017

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15 Hon. Anthony J. Battaglia
16 United States District Judge
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