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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CESAR RIVERA,
Inmate #16152631,

Plaintiff,

vs.

EMURILSH MURILLO, et al.,

Defendants.

Case No. 3:16-cv-02979-LAB-JLB

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

CESAR RIVERA (“Plaintiff”), proceeding pro se, and while detained and/or serving his sentence in local custody at the San Diego County Sheriff Department’s East Mesa Reentry Facility (“EMRF”), filed this civil rights action pursuant to 42 U.S.C. § 1983. In his Complaint, Plaintiff alleged several EMRF officials placed him and 29 other inmates on lockdown for more than a month, denied them showers for 96 hours, and refused to provide them with stationary and “hygiene packs” in violation of the Eighth Amendment. (ECF No. 1 at 3.)

I. Procedural History

On April 20, 2017, the Court granted Plaintiff leave to proceed in forma pauperis, but dismissed his Complaint for failing to state a claim upon which relief can be granted

1 pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). *See* ECF No. 6. Plaintiff was
2 informed of his various pleading deficiencies, and granted 45 days leave in which to file
3 an Amended Complaint that fixed them. *Id.* at 5-7. Plaintiff was further cautioned that his
4 failure to amend would result in the dismissal of his case. (*Id.* at 8, citing *Lira v. Herrera*,
5 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of the
6 opportunity to fix his complaint, a district court may convert the dismissal of the
7 complaint into a dismissal of the entire action.”)).

8 More than three months have passed since the Court’s April 20, 2017 Order. But
9 Plaintiff has not filed an Amended Complaint, nor has he requested an extension of time
10 in which to do so. “The failure of the plaintiff eventually to respond to the court’s
11 ultimatum—either by amending the complaint or by indicating to the court that [he] will
12 not do so—is properly met with the sanction of a Rule 41(b) dismissal.” *Edwards v. Marin*
13 *Park*, 356 F.3d 1058, 1065 (9th Cir. 2004).

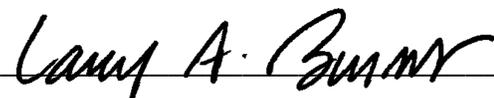
14 **II. Conclusion and Order**

15 Accordingly, the Court **DISMISSES** this civil action in its entirety without
16 prejudice based on Plaintiff’s failure to state a claim upon which § 1983 relief can be
17 granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), and his failure to
18 prosecute pursuant to FED. R. CIV. P. 41(b) in compliance with the Court’s April 20, 2017
19 Order (ECF No. 6).

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

23 **IT IS SO ORDERED.**

24
25 Dated: July 24, 2017

26 

27 HON. LARRY ALAN BURNS
28 United States District Judge