

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 DONNIE RAY McKINLEY, JR.,
12 CDCR #H83058,

13 Plaintiff,

14 vs.

15 J. RUDDY, *et al.*,

16 Defendants.

Case No. 17-cv-0154-BAS-WVG

**ORDER DISMISSING CIVIL
ACTION FOR (1) FAILURE TO
STATE A CLAIM AND (2) FAILURE
TO PROSECUTE**


17 Donnie Ray McKinley, Jr. (“Plaintiff”), while housed at Centinela State Prison
18 located in Imperial, California, and proceeding pro se, filed this civil rights action pursuant
19 to 42 U.S.C. §1983. (ECF No. 1). On May 16, 2017, the Court granted Plaintiff leave to
20 proceed *in forma pauperis*, but dismissed his Complaint for failing to state a claim upon
21 which relief can be granted pursuant to 28 U.S.C. §1915(e)(2)(B) and §1915A(b). (*See*
22 ECF No. 3.) Plaintiff was informed of his various pleading deficiencies, and granted 45
23 days to file an amended complaint. (*Id.* at 11–12.) Plaintiff was further cautioned that his
24 failure to amend would result in the dismissal of his case. (*Id.* at 12 (citing *Lira v. Herrera*,
25 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of the
26 opportunity to fix his complaint, a district court may convert the dismissal of the complaint
27 into a dismissal of the entire action.”))).) More than five months have passed since the
28 Court’s May 16, 2017, 2017 Order, and Plaintiff’s Amended Complaint was due on or

1 about July 1, 2017. But to date, Plaintiff has failed to file an amended complaint. “The
2 failure of the plaintiff eventually to respond to the court’s ultimatum—either by amending
3 the complaint or by indicating to the court that [he] will not do so—is properly met with the
4 sanction of a Rule 41(b) dismissal.” *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th
5 Cir. 2004).

6 Accordingly, the Court **DISMISSES** this civil action in its entirety without prejudice
7 based on Plaintiff’s failure to state a claim upon which § 1983 relief can be granted pursuant
8 to 28 U.S.C. §1915(e)(2)(B) and §1915A(b), and his failure to prosecute pursuant to Fed.
9 R. Civ. P. 41(b) in compliance with the Court’s May 16, 2017 Order (ECF No. 3). The
10 Court further **CERTIFIES** that an IFP appeal would not be taken in good faith pursuant to
11 28 U.S.C. § 1915(a)(3) and **DIRECTS** the Clerk to enter a final judgment of dismissal and
12 close the file.

13 **IT IS SO ORDERED.**

14 **DATED: November 8, 2017**

15 
16 **Hon. Cynthia Bashant**
17 **United States District Judge**