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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 CESAR ARMANDO ROJAS,
10 CDCR #BA-4157,

11 Plaintiff,

12 vs.

13 RASHAD JOHNSON, Probation Officer,
14 et al.,

15 Defendants.

Case No. 3:17-cv-01287-JAH-JMA

**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**

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17 CESAR ARMANDO ROJAS (“Plaintiff”), while incarcerated at Mule Creek State
18 Prison in Ione, California, and proceeding pro se, filed this civil rights action pursuant to
19 42 U.S.C. § 1983 (ECF No. 1).

20 In his Complaint, Plaintiff claimed a San Diego County probation officer, his
21 unnamed “transferring partner,” a San Diego County Deputy Sheriff, the University of
22 California San Diego Emergency Room, and an unidentified emergency medical
23 technician violated his Eighth Amendment rights on December 22, 2014. (ECF No. 1 at
24 3-5.) Plaintiff sought to enjoin Defendants from “bothering” him, and requested more
25 than \$19 million in general and punitive damages. (*Id.* at 7.)

26 **I. Procedural History**

27 On September 25, 2017, the Court granted Plaintiff leave to proceed in forma
28 pauperis, but dismissed his Complaint for failing to state a claim upon which relief can be

1 granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b) (ECF No. 5). 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 6-9.) Plaintiff was further cautioned that
4 his failure to amend would result in the dismissal of his case. (*Id.* at 9) (citing *Lira v.*
5 *Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of
6 the 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 two months have passed since the Court’s September 25, 2017 Order,
9 and Plaintiff’s Amended Complaint was due on or before November 9, 2017. But to date,
10 Plaintiff has failed to file an Amended Complaint, and has not requested an extension of
11 time in which to do so. “The failure of the plaintiff eventually to respond to the court’s
12 ultimatum—either by amending the complaint or by indicating to the court that [he] will
13 not do so—is properly met with the sanction of a Rule 41(b) dismissal.” *Edwards v. Marin*
14 *Park*, 356 F.3d 1058, 1065 (9th Cir. 2004).

15 **II. Conclusion and Order**

16 Accordingly, the Court **DISMISSES** this civil action in its entirety without
17 prejudice based on Plaintiff’s failure to state a claim upon which § 1983 relief can be
18 granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), and his failure to
19 prosecute pursuant to FED. R. CIV. P. 41(b) in compliance with the Court’s September 25,
20 2017 Order (ECF No. 5).

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

24 **IT IS SO ORDERED.**

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26 Dated: 12/5/2017

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HON. JOHN A. HOUSTON
United States District Judge