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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RONALD C. DIAZ,  
F-45125

Plaintiff,

vs.

N. McGEE; S. RUTHLEDGE; D.  
HOLBROOK; J. WILBORN;  
CALVERT; RICHARD J. DONOVAN  
CORRECTIONAL FACILITY,

Defendants.

Case No. 3:17-cv-1772-LAB-BLM

**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**

**I. Procedural History**

Ronald C. Diaz (“Plaintiff”), incarcerated the California State Prison - Los Angeles County located in Lancaster, California, is proceeding pro se in this civil rights action, filed pursuant to 42 U.S.C. § 1983. At the time he filed his Complaint, Plaintiff did not prepay the \$400 filing fee mandated by 28 U.S.C. § 1914(a); instead, he filed a Motion to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

On September 25, 2017, the Court granted Plaintiff leave to proceed IFP, conducted its mandatory initial screening of Plaintiff’s Complaint, and dismissed it sua sponte for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b)

1 (ECF No. 3). The Court also granted Plaintiff 45 days leave in which to file an Amended  
2 Complaint that addressed the deficiencies of pleading it identified. (*Id.*). *See also Lopez*  
3 *v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc) (“[A] district court should  
4 grant leave to amend even if no request to amend the pleading was made, unless it  
5 determines that the pleading could not possibly be cured.”) (citations omitted).

6 On October 30, 2017, Plaintiff filed his First Amended Complaint (“FAC”). (ECF  
7 No. 4.) The Court also dismissed Plaintiff’s FAC sua sponte for failing to state a claim  
8 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b) (ECF No. 5). Plaintiff again given 45  
9 days leave in which to file an Amended Complaint to address the deficiencies of pleading  
10 identified in the Court’s Order. (*Id.*)

11 That time has since passed and Plaintiff has failed to file an Amended Complaint.  
12 “The failure of the plaintiff eventually to respond to the court’s ultimatum—either by  
13 amending the complaint or by indicating to the court that [he] will not do so—is properly  
14 met with the sanction of a Rule 41(b) dismissal.” *Edwards v. Marin Park*, 356 F.3d 1058,  
15 1065 (9th Cir. 2004).

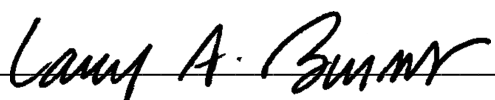
## 16 **II. Conclusion and Order**

17 Accordingly, the Court **DISMISSES** this civil action in its entirety without  
18 prejudice based on Plaintiff’s failure to state a claim upon which § 1983 relief can be  
19 granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), and his failure to  
20 prosecute pursuant to FED. R. CIV. P. 41(b) in compliance with the Court’s November 13,  
21 2017 Order.

22 The Clerk of Court is directed to enter a final judgment of dismissal and close the  
23 file.

24 **IT IS SO ORDERED.**

25 Dated: January 12, 2018

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28 HON. LARRY ALAN BURNS  
United States District Judge