

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTONIO MORA MENCHACA, Jr.,
Booking #16105447,

Plaintiff,

vs.

SAN DIEGO SHERIFF'S
DEPARTMENT,

Defendant.

Case No. 3:17-cv-02059-JAH-JMA

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

ANTONIO MORA MENCHACA, Jr. ("Plaintiff"), while in custody of the San Diego Sheriff Department's Vista Detention Facility, and proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 5, 2017. See Compl., ECF No. 1.

In his Complaint, Plaintiff claimed the San Diego Sheriff's Department violated his right to be free from cruel and unusual punishment sometime between February and April 2016, when he alleged to have been assaulted by six unidentified Sheriff's Department officers who were responding to a fight between other inmates. Id. at 2-3.

I. Procedural History

On February 13, 2018, the Court granted Plaintiff leave to proceed in forma pauperis, but dismissed his Complaint for failing to state any claim pursuant to 28 U.S.C.

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

8 More than two months have passed since the Court’s February 13, 2018 Order, and
9 Plaintiff’s Amended Complaint was due on or before March 30, 2018. But to date, Plaintiff
10 has failed to file an Amended Complaint, and has not requested an extension of time in
11 which to do so. “The failure of the plaintiff eventually to respond to the court’s ultimatum—
12 either by amending the complaint or by indicating to the court that [he] will not do so—is
13 properly met with the sanction of a Rule 41(b) dismissal.” *Edwards v. Marin Park*, 356
14 F.3d 1058, 1065 (9th Cir. 2004).


15 **II. Conclusion and Order**

16 Accordingly, the Court **DISMISSES** this civil action in its entirety **with prejudice**
17 based on Plaintiff’s failure to state a claim upon which § 1983 relief can be granted pursuant
18 to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), and his failure to prosecute pursuant to FED.
19 R. CIV. P. 41(b) in compliance with the Court’s February 13, 2018 Order (ECF No. 5).

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

23 **IT IS SO ORDERED.**

24 Dated: April 30, 2018

25 
26 _____
27 Hon. John A. Houston
28 United States District Judge