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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 PATRICK HENRY RIVERA, JR.,
12 17155995

13 Plaintiff,

14 vs.

15 CHINO PRISON CIM; GEORGE
16 BAILEY DETENTION FACILITY,

17 Defendants.
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Case No. 3:17-CV-2094-JLS-NLS

**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**

20 **I. Procedural History**

21 Patrick Henry Rivera, Jr. (“Plaintiff”), is proceeding pro se in this civil rights action,
22 filed pursuant to 42 U.S.C. § 1983. At the time he filed his Complaint, Plaintiff did not
23 prepay the \$400 filing fee mandated by 28 U.S.C. § 1914(a); instead, he filed a Motion to
24 proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a), (ECF No. 2).

25 On November 9, 2017, the Court granted Plaintiff leave to proceed IFP, conducted
26 its mandatory initial screening of Plaintiff’s Complaint, and dismissed it sua sponte for
27 failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), (ECF No. 3).
28 The Court also granted Plaintiff 45 days leave in which to file an Amended Complaint that

1 addressed the deficiencies of pleading it identified. (*Id.*) See also *Lopez v. Smith*, 203 F.3d
2 1122, 1130–31 (9th Cir. 2000) (en banc) (“[A] district court should grant leave to amend
3 even if no request to amend the pleading was made, unless it determines that the pleading
4 could not possibly be cured.” (citations omitted)).

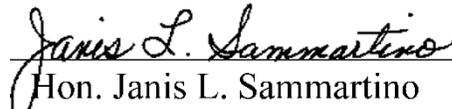
5 That time has since passed and Plaintiff has failed to file an Amended Complaint.
6 “The failure of the plaintiff eventually to respond to the court’s ultimatum—either by
7 amending the complaint or by indicating to the court that [he] will not do so—is properly
8 met with the sanction of a Rule 41(b)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

10 **II. Conclusion and Order**

11 Accordingly, the Court **DISMISSES** this civil action in its entirety without prejudice
12 based on Plaintiff’s failure to state a claim upon which § 1983 relief can be granted pursuant
13 to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), and his failure to prosecute pursuant to Fed.
14 R. Civ. P. 41(b) in compliance with the Court’s November 19, 2017 Order. The Clerk of
15 Court is directed to enter a final judgment of dismissal and close the file.

16 **IT IS SO ORDERED.**

17 Dated: January 12, 2018

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19 Hon. Janis L. Sammartino
20 United States District Judge
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