



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 TRAVIS J. YOUNG,  
12 CDCR #BF-0681,

13 Plaintiff,

14 vs.

15 ESCONDIDO POLICE DEPARTMENT,  
16 et al.,

17 Defendants.

Case No. 3:18-cv-00497-WQH-WVG

**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**

18  
19 Travis J. Young (“Plaintiff”), while incarcerated at Wasco State Prison and  
20 proceeding pro se, filed this civil rights Complaint pursuant to 42 U.S.C. § 1983, on  
21 March 7, 2018, seeking to sue the Escondido Police Department, the Vista Superior  
22 Court, the San Diego County District Attorney’s Office in Vista, the Superior Court, the  
23 County Probation Department, the Public Defender, as well as San Diego Gas & Electric,  
24 and two private citizens for discriminating against him and violating his rights to equal  
25 protection in the course of several San Diego County criminal proceedings. *See* Compl.,  
26 ECF No. 1 at 1-4, 10-17.<sup>1</sup>

27  
28 <sup>1</sup> Plaintiff later filed a Notice of Change of Address indicating his release from custody. *See* ECF No. 10.

1 **I. Procedural History**

2 On October 4, 2018, the Court granted Plaintiff's renewed Motion seeking leave to  
3 proceed *in forma pauperis* ("IFP"), but dismissed his Complaint for failing to state claim  
4 and for seeking damages from defendants who are immune pursuant to 28 U.S.C.  
5 § 1915(e)(2) and § 1915A(b). *See* ECF No. 11. Plaintiff was notified of his pleading  
6 deficiencies, and granted 45 days leave to file an Amended Complaint that fixed them, if  
7 he could. *Id.* at 6-9. Plaintiff was also warned that his failure to amend would result in the  
8 dismissal of his case. *Id.* at 9-10 (citing *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir.  
9 2005) ("If a plaintiff does not take advantage of the opportunity to fix his complaint, a  
10 district court may convert the dismissal of the complaint into a dismissal of the entire  
11 action.")).

12 Plaintiff's Amended Complaint was due on or before November 19, 2018, and two  
13 full months have passed since the Court issued its October 4, 2018 Order. But to date,  
14 Plaintiff has failed to file an Amended Complaint, and has not requested an extension of  
15 time in which to do so.<sup>2</sup> "The failure of the plaintiff eventually to respond to the court's  
16 ultimatum—either by amending the complaint or by indicating to the court that [he] will  
17 not do so—is properly met with the sanction of a Rule 41(b) dismissal." *Edwards v. Marin*  
18 *Park*, 356 F.3d 1058, 1065 (9th Cir. 2004).

19 **II. Conclusion and Order**

20 Accordingly, the Court **DISMISSES** this civil action in its entirety without  
21 prejudice because Plaintiff has failed to state a claim upon which § 1983 relief can be  
22 granted and because he seeks damages from defendants who are immune. *See* 28 U.S.C.  
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25 <sup>2</sup> The Court presumes its October 4, 2018 Order was received by Plaintiff at the location indicated on his  
26 August 31, 2018 Notice of Change of Address since that Order has *not* been returned to the Clerk by the  
27 U.S. Post Office as undeliverable. *See* S.D. Cal. CivLR 83.11.b; *In re Bucknum*, 951 F.2d 204, 207 (9th  
28 Cir. 1991) ("Mail that is properly addressed, stamped and deposited into the mails is presumed to be  
received by the addressee."); *Franco v. Sessions*, 740 F. App'x 869, 872 (9th Cir. 2018) (discussing the  
delivery of regular and certified mail and the "presum[ption] that postal officers properly discharge their  
duties.") (citing *Salta v. INS*, 314 F.3d 1076, 1079 (9th Cir. 2002).

1 § 1915(e)(2)(B) and § 1915A(b). In addition, the Court **DISMISSES** the case based on  
2 Plaintiff's failure to prosecute pursuant to Fed. R. Civ. P. 41(b) as required by Court's  
3 October 4, 2018 Order requiring amendment. *See* ECF No. 11.

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

7 **IT IS SO ORDERED.**

8  
9 Dated:

12/1/18



10 Hon. William Q. Hayes  
11 United States District Judge