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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY LEE MOURNING,
CDCR# BK-7383,

Plaintiff,

vs.

OFFICE OF THE ATTORNEY
GENERAL; ERIC A. SWENSON;
ALLEN BROWN,

Defendants.

Case No. 3:20-cv-00804-AJB-JLB

ORDER:

**(1) DISMISSING CIVIL ACTION
FOR FAILING TO STATE A CLAIM
AND FOR SEEKING MONETARY
DAMAGES AGAINST IMMUNE
DEFENDANTS PURSUANT TO
§ 1915A(b); AND**

**(2) DISMISSING FOR FAILING
TO PROSECUTE IN COMPLIANCE
WITH COURT ORDER
REQUIRING AMENDMENT**

I. Procedural Background

Plaintiff Jefferey Lee Mourning, currently incarcerated at Ironwood State Prison in Blythe, California, is proceeding *pro se* in this civil action filed on April 27, 2020, pursuant to 42 U.S.C. § 1983. *See* ECF No. 1 (“Compl.”). Plaintiff did not file a motion to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) and instead remitted the \$400

1 filing fee required by 28 U.S.C. § 1914(a) to commence a civil action. *See* ECF No. 1,
2 Receipt No. CAS120979.

3 On May 14, 2020, the Court dismissed his Complaint for failing to state any claim
4 upon which relief could be granted and for seeking monetary damages against immune
5 defendants pursuant to 28 U.S.C. § 1915A(b). (*See* ECF No. 2.) Plaintiff was advised of
6 his pleading deficiencies and was granted until June 15, 2020 to file an amended pleading.
7 (*Id.*)

8 As stated above, Plaintiff's Amended Complaint was due on or before June 15, 2020.
9 But to date, Plaintiff has not filed an Amended Complaint, and has not requested an
10 extension of time in which to do so. "The failure of the plaintiff eventually to respond to
11 the court's ultimatum—either by amending the complaint or by indicating to the court that
12 [he] will not do so—is properly met with the sanction of a Rule 41(b) dismissal." *Edwards*
13 *v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004).


14 **II. Conclusion and Order**

15 Accordingly, the Court **DISMISSES** this civil action in its entirety without prejudice
16 based on Plaintiff's failure to state a claim upon which § 1983 relief can be granted and for
17 seeking monetary damages against immune defendants pursuant to 28 U.S.C. § 1915A(b),
18 and his failure to prosecute pursuant to Fed. R. Civ. P. 41(b) in compliance with the Court's
19 May 14, 2020 Order.

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
25 Dated: September 14, 2020

26 
27 Hon. Anthony J. Battaglia
28 United States District Judge