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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JOSHUA CHARLES ACOSTA,
12 CDCR # BI-1477,

13 Plaintiff,

14 vs.

15 Y. SERVIN, Psychologist, Calipatria State
16 Prison; DOE 1, Psychologist, Wasco State
17 Prison; DOE 2, Chief Medical Officer,
18 Wasco State Prison; DOE 3, Chief Health
19 Officer, Calipatria State Prison,

20 Defendants.

Case No. 20cv2225-MMA-MSB

**ORDER DISMISSING CIVIL
ACTION PURSUANT
TO 28 U.S.C. § 1915(e)(2)(B)(ii) AND
§ 1915A(b)(1) AND FOR FAILING
TO PROSECUTE IN COMPLIANCE
WITH COURT ORDER
REQUIRING AMENDMENT**

21 Plaintiff Joshua Charles Acosta, while incarcerated at Calipatria State Prison
22 (“CAL”) in Imperial, California, and proceeding *pro se*, filed this civil rights action
23 pursuant to 42 U.S.C. § 1983 (“Compl.”) in the Central District of California on October
24 28, 2020. *See* “Compl.,” Doc. No. 1 at 1. Plaintiff claimed CAL Psychologist Y. Servin,
25 CAL’s Chief Mental Health Officer, and an unidentified psychologist and Chief Medical
26 Officer at Wasco State Prison (“WSP”), violated his rights under the Americans with
27 Disabilities Act, his “protections under the *Armstrong*, *Coleman*, and *Clark* remedial
28 plans,” and the Eighth Amendment by “hous[ing] [him] within the mainline population”
at both CAL and WSP despite his autism. *Id.* at 3–6.

1 Plaintiff sought \$250,000 in compensatory damages, an injunction requiring
2 Defendants “to identify, assess, and treat people with autism spectrum disorder,” and
3 Defendants’ “termination of employment.” *Id.* at 7.

4 **I. Procedural History**

5 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the
6 time he filed his Complaint, but instead submitted an Application to Proceed In Forma
7 Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2), as well as an ex parte
8 Motion for Assignment of Counsel. *See* Doc. No. 3. On November 13, 2020, however,
9 the Honorable Cormac J. Carney determined venue did not lie in the Central District of
10 California, and transferred the action here in the interest of justice pursuant to 28 U.S.C.
11 § 1406(a). *See* Doc. No. 5.

12 On February 24, 2021, this Court granted Plaintiff’s Motion to Proceed IFP, but
13 denied his Motion for Assignment of Counsel and dismissed his Complaint for failing to
14 state claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1). *See* Doc. No. 8.
15 Plaintiff was notified of his pleading deficiencies, and granted 60 days leave in which to
16 file an Amended Complaint that fixed them. *Id.* at 9–18. Plaintiff was also warned his
17 failure to amend would result in the dismissal of his case. *Id.* at 18 (citing *Lira v.*
18 *Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of
19 the opportunity to fix his complaint, a district court may convert the dismissal of the
20 complaint into a dismissal of the entire action.”)).

21 Plaintiff’s Amended Complaint was due on or before April 24, 2021. More than a
22 month has elapsed since that time, but to date, Plaintiff has failed to amend, and has not
23 requested an extension of time in which to do so.¹ “The failure of the plaintiff eventually
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26 ¹ In fact, the Court’s February 24, 2021 Order (Doc. No. 8) was returned undeliverable by the U.S. Post
27 Office on March 16, 2021. *See* Doc. No. 11. Because Plaintiff filed a Notice of Change of Address
28 indicating his transfer to Mule Creek State Prison (“MCSP”) in the interim on March 3, 2021, however,
see Doc. No. 9, the Clerk of the Court mailed a separate copy of the Court’s February 24, 2021 Order to
Plaintiff at MCSP on March 4, 2021. *See* Doc. No. 9 (“NOTICE of Change of Address by Joshua
Charles Acosta (jms) Order 8 mailed to new address (jms). (Entered: 03/04/2021)”). The Court has

1 to respond to the court’s ultimatum—either by amending the complaint or by indicating to
2 the court that [he] will not do so—is properly met with the sanction of a Rule 41(b)
3 dismissal.” *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004).

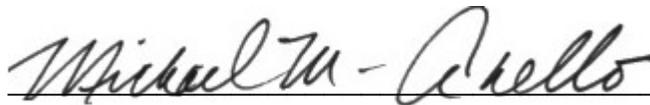
4 **II. Conclusion and Order**

5 Accordingly, the Court **DISMISSES** this civil action in its entirety based on
6 Plaintiff’s failure to state a claim upon which § 1983 relief can be granted pursuant to 28
7 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1), and his failure to prosecute as required by
8 Court’s February 24, 2021 Order requiring amendment.

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

12 **IT IS SO ORDERED.**

13 DATE: June 7, 2021



14 HON. MICHAEL M. ANELLO
15 United States District Judge

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24 confirmed that Plaintiff remains incarcerated at MCSP, and notes the March 4, 2021 mailing was *not*
25 returned by the Post Office as undelivered. *See* [https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=](https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=BI1477)
26 [BI1477](https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=BI1477) (last visited June 7, 2021); *see also United States v. Basher*, 629 F.3d 1161, 1165 (9th Cir. 2011)
27 (taking judicial notice of prisoner’s address using Bureau of Prisons’ inmate locator); *In re Bucknum*,
28 951 F.2d 204, 207 (9th 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).