

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TROY ALLAN ROSENTHAL,
vs.
GAVIN NEWSOME, et al.,
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Case No. 21-cv-1356-MMA (BLM)

**ORDER DISMISSING CIVIL
ACTION FOR FAILURE TO STATE
A CLAIM AND FOR FAILURE TO
PROSECUTE IN COMPLIANCE
WITH COURT ORDER**

On July 23, 2021, Troy Allan Rosenthal (“Plaintiff”), proceeding *pro se*, was housed at Vista Detention Facility and filed a civil rights complaint pursuant to 42 U.S.C. § 1983 in this Court. *See* Doc. No. 1. Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a); instead, he filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* Doc. No. 2. The Court granted Plaintiff’s Motion to Proceed in Forma Pauperis and dismissed Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A(b)(1). Doc. No. 4. The Court granted Plaintiff forty-five (45) days from the date of the dismissal Order to file a First Amended Complaint. *Id.*

Thus, Plaintiff's First Amended Complaint was due on or before October 5, 2021. To date, he has failed to amend, and has not requested another extension of time in which to do so. "The failure of the plaintiff eventually to respond to the court's ultimatum—either

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

4 Accordingly, the Court **DISMISSES** this civil action in its entirety based on
5 Plaintiff’s failure to state a claim upon which § 1983 relief can be granted pursuant to 28
6 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) for the reasons set forth in the Court’s August
7 20, 2021 Order, and his failure to prosecute as required by the Court’s Order. The Court
8 further **CERTIFIES** that an IFP appeal would not be taken in good faith pursuant to 28
9 U.S.C. § 1915(a)(3) and **DIRECTS** the Clerk to enter a final judgment of dismissal and
10 close the file.

11 **IT IS SO ORDERED.**

12 Dated: November 17, 2021

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

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