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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TOM M. FRANKS,
CDCR # AV-3360,

Plaintiff,

vs.

S. ROBERTS, SHAKIBA, MAJAMAD,

Defendants.

Case No.: 3:23-cv-2130-JAH-DDL

**ORDER DISMISSING CIVIL
ACTION FOR FAILURE TO
PROSECUTE**

I. INTRODUCTION

On November 9, 2023, Tom M. Franks (“Plaintiff” or “Franks”), a state inmate proceeding *pro se*, filed a civil rights action pursuant to 42 U.S.C. § 1983, along with a motion to proceed *in forma pauperis* (“IFP”). ECF Nos. 1, 2. On December 20, 2023, the Court granted Plaintiff’s IFP application but dismissed the complaint without prejudice for failure to state a claim. ECF No. 7. The Court gave Plaintiff 45 days to file an amended complaint and advised him that failure to do so would result in the Court entering a final order of dismissal. *Id.* at 8. The Court subsequently granted Plaintiff two extensions of time to file his amended complaint, the latter of which required Plaintiff to file it no later than April 22, 2024. *See* ECF No. 11.

1 **II. DISCUSSION**


2 The time for Plaintiff to respond to the Court’s Order has passed and the Court has
3 received no further communication from Plaintiff. The failure of the plaintiff eventually to
4 respond to the court’s ultimatum—either by amending the complaint or by indicating to the
5 court that [he] will not do so—is properly met with the sanction of a Rule 41(b) dismissal.”
6 *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004); *Henderson v. Duncan*, 779
7 F.2d 1421, 1423 (9th Cir. 1986) (the Court has discretion to *sua sponte* dismiss a case for
8 lack of prosecution or failure to comply with a court order); *see also* Fed. R. Civ. P. 41(b)
9 (providing for involuntary dismissal for failure to prosecute or comply with the federal
10 rules or court order).

11 **III. CONCLUSION AND ORDER**

12 The Court **DISMISSES** this civil action in its entirety based on Plaintiff’s failure to
13 state a plausible § 1983 claim and his failure to prosecute this action. The Court **DIRECTS**
14 the Clerk to enter a final judgment of dismissal and close the file.

15 **IT IS SO ORDERED.**

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17 Dated: June 3, 2024

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20 JOHN A. HOUSTON
21 UNITED STATES DISTRICT JUDGE
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