

1 Significantly, however, Plaintiff fails to acknowledge that the defendants identified in his
2 complaint are not state actors within the meaning of 42 U.S.C. § 1983. As the Magistrate Judge
3 explained, the Ninth Circuit has determined that a public defender representing a client in the lawyer’s
4 traditional adversarial role is not a state actor for purposes of Section 1983. Miranda v. Clark County,
5 319 F.3d 465, 468 (9th Cir. 2003) (citing Polk County v. Dodson, 454, U.S. 312 (1981)). Thus,
6 Plaintiff’s claim for ineffective assistance of counsel fails as a matter of law under 42. U.S.C. §1983.
7 Instead, such a claim is properly brought in a petition for writ of habeas corpus, following exhaustion
8 of applicable state remedies. See 28 U.S.C. § 2254. Because Plaintiff’s claim fails as a matter of law,
9 leave to amend to amend would be futile. See Lopez v. Smith, 203 F.3d 1122, 1127-28 (9th Cir. 2000)
10 (dismissal of a *pro se* complaint for failure to state a claim is proper where it is obvious that the
11 plaintiff cannot prevail on the facts alleged).

12 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and Britt v. Simi Valley United
13 School Dist., 708 F.2d 452, 454 (9th Cir. 1983), this Court conducted a de novo review of the case.
14 Having carefully reviewed the record, the Court finds the Findings and Recommendations are
15 supported by the record and proper analysis.

16 Based upon the foregoing, **IT IS HEREBY ORDERED:**

- 17 1. The Findings and Recommendations dated February 9, 2016 (Doc. 3) are **ADOPTED**
18 **IN FULL;**
- 19 2. Plaintiff’s motion to proceed in forma pauperis (Doc. 2) is **DENIED;**
- 20 3. The action is **DISMISSED** without prejudice; and
- 21 4. The Clerk of Court is **DIRECTED** to close this action, because this order terminates the
22 matter in its entirety.

23 **IT IS SO ORDERED**
24 **Dated: March 3, 2016**

25 /s/ Lawrence J. O’Neill
26 **United States District Judge**