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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**

6 **PERCY LEE RHODES,**

7 **Plaintiff**

8 **v.**

9 **CITY OF FRESNO, et al.,**

10 **Defendants**

CASE NO. 1:18-CV-0013 AWI SKO

**ORDER ON DEFENDANTS' MOTION
TO DISMISS**

(Doc. No. 5)

11
12 Percy Lee Rhodes has alleged in his *pro se* petition multiple claims against various
13 defendants for alleged violations of his civil rights, all of which stem from his arrest for possession
14 of a firearm in late March of 2016. *See, generally*, Doc. No. 1. During the pendency of the State
15 of California's case against him, Rhodes was represented by Deputy Public Defender Vanessa
16 Pfaff; Public Defender Elizabeth Diaz was D.P.D. Pfaff's supervisor at the time. Pertinent to this
17 order, Rhodes has alleged the following claims against D.P.D. Pfaff and P.D. Diaz:

- 18 - "Claim 5" – Right to Medical Care, Due Process, Freedom from Cruel and Unusual
19 Punishment, against D.P.D. Pfaff;
20 - "Claim 6" – Right to Medical Care, Due Process, Freedom from Cruel and Unusual
21 Punishment, against P.D. Diaz;
22 - "Causes of Action" 7, 8, 9, 10, and 12 – Deliberate Indifference to Medical Needs and to
23 Plaintiff's Rights, against D.P.D. Pfaff and P.D. Diaz;
24 - "Cause of Action" 11 – Failure to train and supervise D.P.D. Pfaff, against P.D. Diaz.

25 *Id.*

26 D.P.D. Pfaff and P.D. Diaz now move under Rule 12(b)(6) to dismiss with prejudice each
27 count against them for failing to state a claim on which relief may be granted. *See* Doc. No. 5.
28 For the reasons that follow, Pfaff and Diaz's motion will be granted.

DISCUSSION

Legal Standard

1 Under Federal Rule of Civil Procedure 12(b)(6), a claim may be dismissed because of the
2 plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A
3 dismissal under Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the
4 absence of sufficient facts alleged under a cognizable legal theory. *Mollett v. Netflix, Inc.*, 795
5 F.3d 1062, 1065 (9th Cir. 2015). In reviewing a complaint under Rule 12(b)(6), all well-pleaded
6 allegations of material fact are taken as true and construed in the light most favorable to the non-
7 moving party. *Faulkner v. ADT Sec. Servs.*, 706 F.3d 1017, 1019 (9th Cir. 2013).

8 To avoid a Rule 12(b)(6) dismissal, "a complaint must contain sufficient factual matter,
9 accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678;
10 *Mollett*, 795 F.3d at 1065. "A claim has facial plausibility when the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable for the
12 misconduct alleged." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013) (quoting *Iqbal*,
13 556 U.S. at 678). "Plausibility" means "more than a sheer possibility," but less than a probability,
14 and facts that are "merely consistent" with liability fall short of "plausibility." *Id.* This
15 plausibility inquiry is "a context-specific task that requires the reviewing court to draw on its
16 judicial experience and common sense." *Iqbal*, 556 U.S. at 679. Thus, the Ninth Circuit has
17 distilled the following principles to apply to Rule 12(b)(6) motions:

18 First, to be entitled to the presumption of truth, allegations in a complaint or
19 counterclaim may not simply recite the elements of a cause of action, but must
20 contain sufficient allegations of underlying facts to give fair notice and to enable
21 the opposing party to defend itself effectively.

22 Second, the factual allegations that are taken as true must plausibly suggest an
entitlement to relief, such that it is not unfair to require the opposing party to be
subjected to the expense of discovery and continued litigation.

23 *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014). If a motion to dismiss is granted, "[the]
24 district court should grant leave to amend even if no request to amend the pleading was made,"
25 unless amendment would be futile or the plaintiff has failed to cure deficiencies despite repeated
26 opportunities. *Garmon v. County of L.A.*, 828 F.3d 837, 842 (9th Cir. 2016).

27 Analysis

28 Title 42 U.S.C. § 1983 provides a cause of action for the "deprivation of any rights,

1 privileges, or immunities secured by the Constitution and laws" of the United States. *Long v.*
2 *County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). To state a claim under § 1983, a
3 plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of
4 the United States was violated, and (2) that the alleged violation was committed by a person acting
5 under the color of State law. *Id.* (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)). A person "acts
6 under color of state law for purposes of § 1983 only when exercising power 'possessed by virtue of
7 state law and made possible only because the wrongdoer is clothed with the authority of state
8 law.'" *Id.* (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

9 In 1981, the U.S. Supreme Court established that "a public defender does not act under
10 color of state law when performing a lawyer's traditional function as counsel to a defendant in a
11 criminal proceeding." *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). The Court has
12 described the rationale underlying this policy as such:

13 Public defenders, appointed to represent a criminal defendant during trial, or on
14 appeal, do not generally act under color of state law because representing a client is
15 essentially a private function ... for which state office and authority are not needed.
16 Thus, when publicly appointed defenders are performing as advocates, i.e., meeting
with clients, investigating possible defenses, presenting evidence at trial and arguing
to the jury, they do not act under color of state law for section 1983 purposes.

17 *Id.* at 319 (internal citations omitted); *see also Miranda v. Clark County*, 319 F.3d 465, 468 (9th
18 Cir. 2003) (en banc) (public defender is not a state actor under § 1983 because his function is to
19 represent client's interests, not those of state or county); *Escalera v. Pub. Defs. Office*, 2009 WL
20 88597, at *2 (S.D. Cal. Jan. 12, 2009) ("[W]hen publicly appointed counsel are performing as
21 advocates, i.e., meeting with clients, investigating possible defenses, presenting evidence at trial
22 and arguing to the jury, they do not act under color of state law for section 1983 purposes.").

23 From what this Court can glean from Rhodes' *pro se* petition, he has alleged up to eight
24 separate § 1983 claims against D.P.D. Pfaff and P.D. Diaz for violations of his civil rights:

- 25 - "Claim 5" – Right to Medical Care, Due Process, Freedom from Cruel and Unusual
26 Punishment, against D.P.D. Pfaff;
- 27 - "Claim 6" – Right to Medical Care, Due Process, Freedom from Cruel and Unusual
Punishment, against P.D. Diaz;
- 28 - "Causes of Action" 7, 8, 9, 10, and 12 – Deliberate Indifference to Medical Needs and to
Plaintiff's Rights, against D.P.D. Pfaff and P.D. Diaz;

1 - "Cause of Action" 11 – Failure to train and supervise D.P.D. Pfaff, against P.D. Diaz.
2 There appears to be immense overlap between these "claims" and "causes of action." However,
3 even assuming each are distinct actions, Rhodes' claims all concern D.P.D. Pfaff's actions
4 representing Rhodes as his public defender during the pendency of Rhodes' unlawful possession
5 case, and P.D. Diaz' supervision of Pfaff during this time. Under *Polk County*, these claims are
6 not cognizable in a § 1983 action. See 454 U.S. at 325, *Miranda*, 319 F.3d at 468; see also
7 *Casterlow-Bey v. Jarmon*, 2017 U.S. Dist. LEXIS 201046, *3 (W.D. Wash Oct 26, 2017)
8 (dismissing complaint where the plaintiff's defense attorney "is not a state actor and therefore
9 cannot be liable under § 1983[.]").

10 Further, since "district courts are only required to grant leave to amend if a complaint can
11 possibly be saved," this Court declines to do so because of the nature of Rhodes' complaints
12 against D.P.D. Pfaff and P.D. Diaz. Because the basis of the plaintiff's claim concerns his
13 attorney's conduct as a court appointed defense counsel, Plaintiff will not be able to amend his
14 complaint to state a § 1983 claim. *Johnson v. Griffin*, 2010 U.S. Dist. LEXIS 33281 *6 (9th Cir.
15 2010) (declining amendment after § 1983 claims against his defense counsel dismissed).

16 **ORDER**

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Defendants' Motion to Dismiss all claims against Vanessa Pfaff and Elizabeth Diaz
19 (Doc. No. 5) is GRANTED;
20 2. Defendants Vanessa Pfaff and Elizabeth Diaz are DISMISSED from this case; and
21 3. The remainder of this case is referred back to the magistrate judge for further
22 proceedings.

23 IT IS SO ORDERED.

24 Dated: February 16, 2018

25 
26 SENIOR DISTRICT JUDGE