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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES D. HASS,

Plaintiff,

v.

SACRAMENTO COUNTY DEPARTMENT  
OF SUPPORT SERVICES,  
SACRAMENTO COUNTY SHERIFF  
SCOTT JONES, ATTORNEY SEAN  
GJERDE, AND DOES 1 through X,  
inclusive,

Defendants.

No. 2:13-CV-01746 JAM KJN

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

This matter is before the Court on Defendants County of Sacramento ("Defendant County") and Sacramento County Sheriff Scott Jones' ("Defendant Jones") (collectively "Defendants") Motion to Dismiss (Doc. ##4,8) Plaintiff James Hass' ("Plaintiff") Complaint (Doc. #1) for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes the motion ("Opposition") (Doc. #6). Defendants have filed a reply (Doc. #14). For the following reasons, Defendants' motion is GRANTED.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for November 6, 2013.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 On May 1, 2009, Plaintiff alleges he met with "legal counsel  
3 on staff" at the Sacramento County Department of Child Support  
4 Services ("DCSS") regarding his court-ordered child support  
5 payments. Compl. ¶ 9. Plaintiff had been ordered to pay monthly  
6 child support for his son in the amount of \$3,200 with an  
7 additional \$2,000 for arrearages accruing on unpaid support and  
8 \$720 for the opposing party's attorney fees. Compl. ¶¶ 8, 10.  
9 After meeting with Plaintiff, DCSS allegedly determined that  
10 Plaintiff lacked the ability to pay this amount, and "acted as  
11 legal counsel of record for Plaintiff" by filing a motion to  
12 modify Plaintiff's child support payments. Compl. ¶¶ 9, 11.

13 At the hearing to modify child support payments in July  
14 2009, the family court ordered Plaintiff to file a new Financial  
15 Income and Expense Declaration and continued the matter to  
16 October 22, 2009. Compl. ¶ 12. Plaintiff alleges that DCSS  
17 failed to "advise Plaintiff of this Court Order" or "me[e]t or  
18 confer or assist Plaintiff with the preparation and/or the filing  
19 of a new Declaration for the October 22, 2009 hearing." Compl.  
20 ¶¶ 14-15. After Plaintiff failed to file the required documents,  
21 and neither DCSS nor Plaintiff appeared at the hearing on October  
22 22, 2009, the motion to modify payments was removed from the  
23 court calendar. Compl. ¶ 16. Child support continued to accrue  
24 at the established level and, as of December 2010, was in excess  
25 of \$110,000. Compl. ¶ 17.

26 On December 30, 2009, Plaintiff retained Attorney Sean  
27 Gjerde ("Defendant Gjerde") to file a Petition in bankruptcy  
28 court on his behalf. Compl. ¶ 19. This Petition was dismissed

1 and re-filed on numerous occasions, and Defendant Gjerde's  
2 representation of Plaintiff is the subject matter of Plaintiff's  
3 third through seventh causes of action. However, as Defendants'  
4 Motion to Dismiss only addresses Plaintiff's first and second  
5 causes of action, the facts of Defendant Gjerde's representation  
6 are not relevant and are not summarized here.

7 In February 2010, DCSS filed a contempt petition against  
8 Plaintiff, alleging that Plaintiff willfully failed to pay child  
9 support. Compl. ¶ 24. Plaintiff retained Defendant Gjerde to  
10 represent him in the family law matter. Compl. ¶ 25. On  
11 December 8, 2010, Plaintiff was arraigned on the contempt matter  
12 and trial was set for February 7, 2011. Compl. ¶ 34. Plaintiff  
13 did not appear for trial, although Defendant Gjerde did appear.  
14 Compl. ¶¶ 35, 42. As a result of Plaintiff's non-appearance on  
15 February 7, 2011, the court ordered that Plaintiff be  
16 incarcerated in the Sacramento County Jail for 55 days. Compl. ¶  
17 42.

18 The following day, on February 8, 2011, Plaintiff appeared  
19 in court because he mistakenly believed that trial was set for  
20 that date. Compl. ¶ 47. Plaintiff was immediately taken into  
21 custody, and was booked into the Sacramento County Main Jail.  
22 Id. Plaintiff alleges that he was "compelled to live under  
23 oppressive conditions which violated his civil rights." Compl.  
24 ¶ 49. Plaintiff alleges that he was housed in a unit "typically  
25 used to house gang members, repeat felons, those accused of  
26 serious felony crimes, suicidal inmates, and those being  
27 processed." Compl. ¶ 62. Plaintiff further alleges that he was  
28 only permitted to shower twice during his incarceration and was

1 required to remain in his cell at all times, with the exception  
2 of four "recreation" occasions. Compl. ¶¶ 64-65. He had no  
3 television or radio privileges and "shared his windowless cell  
4 with bags of garbage . . . and sometimes another inmate." Compl.  
5 ¶ 66. Plaintiff alleges that he was incarcerated under "inhumane  
6 conditions" that "fell below the standard of care for inmates  
7 according to [Defendant Jones'] published statement of  
8 standards." Compl. ¶¶ 77-78. Plaintiff states that, during his  
9 incarceration, he "filed a Petition for a Writ of Habeas Corpus"  
10 and "presented a Request for a Stay of sentence pending  
11 resolution of his Habeas Petition," but was never heard on these  
12 requests. Compl. ¶¶ 68, 69, 73. On March 5, 2011, Plaintiff was  
13 released from custody. Compl. ¶ 74.

14 On March 7, 2012, Plaintiff filed the Complaint (Doc. #1)  
15 in Sacramento County Superior Court. The case was subsequently  
16 removed to this Court by Defendants on August 22, 2013.  
17 Plaintiff's Complaint includes the following causes of action:  
18 (1) Malpractice against Defendant County (erroneously sued as  
19 Department of Child Support Services); (2) "Negligence and  
20 Violation of Civil Rights" against Defendant Jones;  
21 (3) Malpractice against Defendant Gjerde for his representation  
22 of Plaintiff in the family law matter; (4) Malpractice against  
23 Defendant Gjerde for failure to keep his client advised;  
24 (5) Malpractice against Defendant Gjerde for the Plaintiff's loss  
25 of \$70,000 from Home Depot; (6) Malpractice against Defendant  
26 Gjerde for Plaintiff's loss of business, personal assets, and  
27 home; and (7) "Fraud and Deceit/False Promise" against Defendant  
28 Gjerde.

1 This Court has original jurisdiction under 28 U.S.C.  
2 § 1331 because Plaintiff has asserted a claim for relief under 42  
3 U.S.C. § 1983 for violation of his civil rights under the Eighth  
4 Amendment of the United States Constitution.

5  
6 II. OPINION

7 A. Legal Standard

8 A party may move to dismiss an action for failure to state a  
9 claim upon which relief can be granted pursuant to Federal Rule  
10 of Civil Procedure 12(b)(6). To survive a motion to dismiss a  
11 plaintiff must plead "enough facts to state a claim to relief  
12 that is plausible on its face." Bell Atlantic Corp. v. Twombly,  
13 556 U.S. 662, 570 (2007). In considering a motion to dismiss, a  
14 district court must accept all the allegations in the complaint  
15 as true and draw all reasonable inferences in favor of the  
16 plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),  
17 overruled on other grounds by Davis v. Scherer, 468 U.S. 183  
18 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). "First, to be  
19 entitled to the presumption of truth, allegations in a complaint  
20 or counterclaim may not simply recite the elements of a cause of  
21 action, but must sufficiently allege underlying facts to give  
22 fair notice and enable the opposing party to defend itself  
23 effectively." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir.  
24 2011), cert. denied, 132 S. Ct. 2101, 182 L. Ed. 2d 882 (U.S.  
25 2012). "Second, the factual allegations that are taken as true  
26 must plausibly suggest an entitlement to relief, such that it is  
27 not unfair to require the opposing party to be subjected to the  
28 expense of discovery and continued litigation." Id. Assertions

1 that are mere "legal conclusions" are therefore not entitled to  
2 the presumption of truth. Ashcroft v. Iqbal, 556 U.S. 662, 678  
3 (2009) (citing Twombly, 550 U.S. at 555). Dismissal is  
4 appropriate when a plaintiff fails to state a claim supportable  
5 by a cognizable legal theory. Balistreri v. Pacifica Police  
6 Department, 901 F.2d 696, 699 (9th Cir. 1990).

7       Upon granting a motion to dismiss for failure to state a  
8 claim, a court has discretion to allow leave to amend the  
9 complaint pursuant to Federal Rule of Civil Procedure 15(a).  
10 "Dismissal with prejudice and without leave to amend is not  
11 appropriate unless it is clear . . . that the complaint could not  
12 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,  
13 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

14       B. Discussion

15           1. Malpractice against Defendant County

16       Plaintiff's first cause of action is against Defendant  
17 County (on behalf of DCSS) for malpractice. Defendants argue  
18 that Plaintiff has failed to state facts upon which relief can be  
19 granted because no attorney-client relationship existed between  
20 DCSS and Plaintiff. Mot. at 7. Defendants note that California  
21 Family Code section 17406(a) expressly provides that no such  
22 relationship exists between "the local child support agency . . .  
23 and any person" as long as the agency is carrying out its  
24 statutory duties. Mot. at 8. Plaintiff responds that DCSS was  
25 the "attorney of record" in Plaintiff's child support  
26 modification proceedings, and that Defendant County is estopped  
27 from denying the existence of an attorney-client relationship,  
28 under California Evidence Code section 623. Opp. at 14-15.

1           The existence of an attorney-client relationship is an  
2 essential element of a claim for legal malpractice. Fox v.  
3 Pollack, 181 Cal.App.3d 954, 959 (1986). California Family Code  
4 section 17406(a) provides that “[i]n all actions involving  
5 paternity or support . . . the local child support agency and the  
6 Attorney General represent the public interest in establishing,  
7 modifying, and enforcing support obligations.” Cal. Fam. Code  
8 § 17406(a). Accordingly, “[n]o attorney-client relationship  
9 shall be deemed to have been created between the local child  
10 support agency . . . and any person by virtue of the action of  
11 the local child support agency . . . in carrying out these  
12 statutory duties.” Id. Therefore, in child support modification  
13 proceedings, “[t]here is no attorney-client relationship created  
14 between the [local child support agency] and the parent,” because  
15 “the ‘client’ in such actions remains the county.” Jager v.  
16 Cnty. of Alameda, 8 Cal.App.4th 294, 297 (1992).

17           Here, Plaintiff has alleged that Defendant County - through  
18 DCSS - “acted as legal counsel of record for Plaintiff” in child  
19 support modification proceedings. Compl. ¶ 11. However, there  
20 are no allegations that DCSS went beyond its statutory duties in  
21 arguing that Plaintiff’s child support payments should be  
22 modified. As DCSS was merely “carrying out these statutory  
23 duties,” no attorney-client relationship existed between  
24 Plaintiff and DCSS. Cal. Fam. Code § 17406(a).

25           Plaintiff’s reliance on California Evidence Code section 623  
26 is misplaced. As an initial matter, the California Evidence  
27 Code is not used in federal court. Furthermore, Plaintiff cites  
28 no authority suggesting that an evidentiary rule of estoppel

1 trumps an express statutory mandate regarding the non-existence  
2 of an attorney-client relationship. Moreover, section 623 does  
3 not apply to the present case, because DCSS did not  
4 "intentionally and deliberately [lead Plaintiff] to believe" that  
5 an attorney-client relationship existed. Cal. Evid. Code § 623.  
6 As discussed above, DCSS was merely carrying out its statutory  
7 duties in requesting a child support modification in Plaintiff's  
8 case. Finally, even if the doctrine of estoppel did apply, DCSS  
9 would likely be exempt from its application. See City of Long  
10 Beach v. Mansell, 3 Cal.3d 462, 493 (1970) (noting "the well-  
11 established proposition that an estoppel will not be applied  
12 against the government if to do so would effectively nullify a  
13 strong rule of policy, adopted for the benefit of the public").

14 As no attorney-client relationship existed between Plaintiff  
15 and Defendant County, Plaintiff has failed to state a claim for  
16 legal malpractice. See Jager, 8 Cal.App.4th at 297 (1992)  
17 (finding that no attorney-client relationship existed "between a  
18 parent seeking child support enforcement and the district  
19 attorney"). Therefore, Plaintiff's first cause of action is  
20 DISMISSED WITH PREJUDICE.

21 Defendants also argue that Plaintiff's claim for malpractice  
22 against Defendant County is time-barred by the applicable statute  
23 of limitations. However, as Plaintiff has failed to state a  
24 claim for malpractice, the Court need not reach this issue.

## 25 2. Negligence and § 1983 Violations

26 Plaintiff's second cause of action is against Defendant  
27 Jones for negligence and for violating Plaintiff's civil rights  
28 under 42 U.S.C. § 1983. Defendant argues that Plaintiff's second



1 cause of action, to the extent that it purports to sue Defendant  
2 Jones in an individual capacity, under a theory of either  
3 negligence or § 1983 liability, must be dismissed because  
4 Plaintiff has failed to allege any individual involvement or  
5 culpability on Defendant Jones' part. Mot. at 10-11. Plaintiff  
6 concedes that "there is insufficient evidence to support  
7 allegations against [Defendant] Jones as an individual." Opp. at  
8 10 n.5. Therefore, to the extent that Plaintiff's second cause  
9 of action is based on a theory of negligence, it is DISMISSED  
10 WITH LEAVE TO AMEND. Similarly, to the extent that Plaintiff's  
11 § 1983 claim is brought against Defendant Jones in an individual  
12 capacity, it is DISMISSED WITH LEAVE TO AMEND.

13 However, Plaintiff contends that he has alleged sufficient  
14 facts to support a § 1983 claim against Defendant Jones in his  
15 official capacity. Opp. at 10. Defendants argue that any claim  
16 against Defendant Jones in his official capacity must be  
17 dismissed because Plaintiff has failed to allege that an official  
18 county policy existed. Mot. at 11-12. Plaintiff responds by  
19 arguing that the conditions in the county jail violated the  
20 Eighth Amendment, due to (1) solitary confinement, (2) unsanitary  
21 conditions, and (3) insufficient diet and exercise. Opp. at 13-  
22 14.

23 When a government official is sued in his official capacity  
24 for a civil rights violation under § 1983, it is the legal  
25 equivalent of a suit against "the entity of which [the] officer  
26 is an agent." Monell v. Dep't of Soc. Servs. of City of New  
27 York, 436 U.S. 658, 691 (1978). Although a municipality can be  
28 sued under § 1983, "it cannot be held liable unless a municipal

1 policy or custom caused the constitutional injury." Leatherman  
2 v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit, 507  
3 U.S. 163, 166 (1993). Furthermore, the claim must allege the  
4 policy in sufficient detail, and an allegation of a general  
5 policy will not suffice. For example, in a similar case, the  
6 Ninth Circuit approvingly discussed the district court's  
7 dismissal on the ground that "the complaint did not allege a  
8 deliberate County policy with sufficient particularity." Estate  
9 of Brooks ex rel. Brooks v. United States, 197 F.3d 1245, 1247  
10 (9th Cir. 1999). This was despite the fact that the complaint  
11 had been amended to allege "that the County's conduct 'was part  
12 of a general policy of neglect'" followed by the defendant. Id.

13 Here, Plaintiff is suing Defendant Jones in his official  
14 capacity. Opp. at 10. Accordingly, the § 1983 claim is legally  
15 equivalent to a claim against the County of Sacramento. The  
16 Complaint alleges several hardships visited upon Plaintiff during  
17 his incarceration, but fails to allege that these were the result  
18 of an official municipal policy. Although Plaintiff makes an  
19 oblique reference to Defendant Jones' "published statement of  
20 standards," no such statement is attached to the Complaint.  
21 Compl. ¶ 78. Nor is it clear from the Complaint whether the  
22 alleged abuses were in compliance with Defendant Jones'  
23 "statement of standards," or whether the abuses violated those  
24 standards. Id. As Plaintiff fails to allege that an official  
25 policy existed, the second cause of action against Defendant  
26 Jones is DISMISSED WITH LEAVE TO AMEND. See Stewart v. Block,  
27 938 F. Supp. 582, 587 (C.D. Cal. 1996) (dismissing a § 1983 claim  
28 against a sheriff-defendant in his official capacity, because

1 "the conclusory allegations in the complaint do not contain facts  
2 showing that Defendant Block, in his official capacity, was  
3 responsible for a policy" which injured Plaintiff).

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5 III. ORDER

6 For the foregoing reasons, Defendants' Motion to Dismiss is  
7 GRANTED. Defendants' Motion to Dismiss Plaintiff's first cause  
8 of action is GRANTED WITH PREJUDICE. Defendants' Motion to  
9 Dismiss Plaintiff's second cause of action is GRANTED WITH LEAVE  
10 TO AMEND. Plaintiff's Amended Complaint must be filed within  
11 twenty (20) days from the date of this order. Defendants'  
12 responsive pleading is due within twenty (20) days thereafter.  
13 If Plaintiff elects not to file an Amended Complaint, the case  
14 will proceed without the first and second causes of action.

15 IT IS SO ORDERED.

16 Dated: December 19, 2013

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19 JOHN A. MENDEZ,  
20 UNITED STATES DISTRICT JUDGE  
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