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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT DAVIS,

Plaintiff,

v.

MICHELLE SHAFFIE,

Defendant.<sup>1</sup>

No. 2:17-cv-0924 GEB KJN P

ORDER

I. Introduction

Plaintiff is a former Sacramento County Jail inmate, later transferred to state custody. Plaintiff requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

II. Request to Proceed In Forma Pauperis

On May 9, 2017, plaintiff was ordered to file a certified copy of his jail trust account statement in support of his request to proceed in forma pauperis, and was cautioned that failure to do so would result in a recommendation that this action be dismissed. On June 30, 2017, the undersigned recommended that this action be dismissed based on plaintiff's failure to provide a

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<sup>1</sup> Although plaintiff appeared to include the Office of the Public Defender as a defendant in the caption of his complaint, he only identified public defender Michelle Shaffie as a defendant in the defendants' section of the complaint.

1 certified trust account statement. On July 7, 2017, a certified prisoner trust account statement was  
2 filed. Therefore, the findings and recommendations are vacated. Plaintiff submitted a declaration  
3 that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in  
4 forma pauperis is granted.

5 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C.  
6 §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in  
7 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct  
8 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
9 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly  
10 payments of twenty percent of the preceding month's income credited to plaintiff's trust account.  
11 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
12 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
13 § 1915(b)(2).

### 14 III. Screening Standards

15 The court is required to screen complaints brought by prisoners seeking relief against a  
16 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
17 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
18 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
19 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

20 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
21 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
22 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
23 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
24 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
25 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
26 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
27 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably

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1 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at  
2 1227.

3 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
4 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
5 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
6 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

7 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a  
8 formulaic recitation of the elements of a cause of action;” it must contain factual allegations  
9 sufficient “to raise a right to relief above the speculative level.” Id. at 555. However, “[s]pecific  
10 facts are not necessary; the statement [of facts] need only ‘give the defendant fair notice of what  
11 the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551 U.S. 89, 93  
12 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).

13 In reviewing a complaint under this standard, the court must accept as true the allegations of the  
14 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most  
15 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
16 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

#### 17 IV. Plaintiff’s Complaint

18 Plaintiff names Michelle Shaffie, Sacramento County Public Defender, as the sole  
19 defendant. Plaintiff alleges defendant committed professional negligence in representing plaintiff  
20 in his criminal proceedings. As relief, plaintiff asks the court to “start [his] case over with a new  
21 panel attorney,” and award monetary damages. (ECF No. 1 at 3.)

#### 22 V. Discussion

23 The undersigned has reviewed plaintiff’s complaint and finds it must be dismissed. From  
24 the face of the complaint it is clear that plaintiff sues his appointed public defender who is  
25 immune from suit, and plaintiff’s allegations fail to state a cognizable civil rights claim.

26 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal  
27 constitutional or statutory right; and (2) that the violation was committed by a person acting under  
28 the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d

1 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the  
2 facts establish the defendant's personal involvement in the constitutional deprivation or a causal  
3 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.  
4 See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44  
5 (9th Cir. 1978). Plaintiff may not sue any official on the theory that the official is liable for the  
6 unconstitutional conduct of his or her subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).  
7 He must identify the particular person or persons who violated his rights. He must also plead facts  
8 showing how that particular person was involved in the alleged violation.

9 Plaintiff's court-appointed attorney cannot be sued under § 1983. See Polk County v.  
10 Dodson, 454 U.S. 312, 318-19 (1981) (public defenders do not act under color of state law for  
11 purposes of § 1983 when performing a lawyer's traditional functions). Any potential claims for  
12 legal malpractice do not come within the jurisdiction of the federal courts. Franklin v. Oregon,  
13 662 F.2d 1337, 1344 (9th Cir. 1981).

14 Plaintiff's request for equitable relief, i.e., to have his criminal proceedings begin anew, is  
15 also improper. Claims that, if successful, would secure a plaintiff's immediate release, fall within  
16 the "core of habeas" and cannot be brought in a § 1983 action. See Ramirez v. Galaza, 334 F.3d  
17 850, 856 (9th Cir. 2003). The Ninth Circuit has clarified that "habeas is available only for state  
18 prisoner claims that lie at the core of habeas (and is the exclusive remedy for such claims), while  
19 § 1983 is the exclusive remedy for state prisoner claims that do not lie at the core of habeas."  
20 Nettles v. Grounds, 830 F.3d 922 (9th Cir. 2016). Accordingly, this section 1983 suit is an  
21 inappropriate vehicle for seeking a new criminal trial.

22 Moreover, if plaintiff seeks to challenge the constitutionality of a conviction or the fact of  
23 his confinement, he may not do so in this action unless he demonstrates that the conviction or  
24 sentence has been invalidated. In Heck v. Humphrey, 512 U.S. 477 (1994), the United States  
25 Supreme Court held that a suit for damages on a civil rights claim concerning an allegedly  
26 unconstitutional conviction or imprisonment cannot be maintained absent proof "that the  
27 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared  
28 invalid by a state tribunal authorized to make such determination, or called into question by a

1 federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck, 512 U.S. at 486.

2 Under Heck, the court is required to determine whether a judgment in plaintiff's favor in this case  
3 would necessarily invalidate his conviction or sentence. Id. If plaintiff is claiming that his  
4 federal constitutional rights were violated and as a result he was convicted and incarcerated,  
5 plaintiff may not recover damages in this action unless he can prove that his conviction has been  
6 reversed.

7 Plaintiff is granted leave to file an amended complaint, if he can allege a cognizable legal  
8 theory against a proper defendant and sufficient facts in support of that cognizable legal theory.  
9 Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must afford pro  
10 se litigants an opportunity to amend to correct any deficiency in their complaints). Should  
11 plaintiff choose to file an amended complaint, the amended complaint shall clearly set forth the  
12 claims and allegations against each defendant. Any amended complaint must cure the  
13 deficiencies identified above and also adhere to the following requirements:

14 Any amended complaint must identify as a defendant only persons who personally  
15 participated in a substantial way in depriving him of a federal constitutional right. Johnson v.  
16 Duffy, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if he  
17 does an act, participates in another's act or omits to perform an act he is legally required to do  
18 that causes the alleged deprivation).

19 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

20 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. George  
21 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

22 Any amended complaint must be written or typed so that it so that it is complete in itself  
23 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This requirement is because  
24 an amended complaint supersedes any earlier filed complaint, and once an amended complaint is  
25 filed, the earlier filed complaint no longer serves any function in the case. See Forsyth v.  
26 Humana, 114 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original,  
27 the latter being treated thereafter as non-existent.””) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th  
28 Cir. 1967)).

1 The court cautions plaintiff that failure to comply with the Federal Rules of Civil  
2 Procedure, this court's Local Rules, or any court order may result in this action being dismissed  
3 with prejudice. See E.D. Cal. Local Rule 110.

4 Accordingly, IS HEREBY ORDERED that:

5 1. The June 30, 2017 findings and recommendations (ECF No. 8) are vacated;  
6 2. Plaintiff's request for leave to proceed in forma pauperis is granted;  
7 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
8 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
9 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
10 Director of the California Department of Corrections and Rehabilitation filed concurrently  
11 herewith.

12 4. Plaintiff's complaint is dismissed.

13 5. Within thirty days from the date of this order, plaintiff shall complete the attached  
14 Notice of Amendment and submit the following documents to the court:

15 a. The completed Notice of Amendment; and

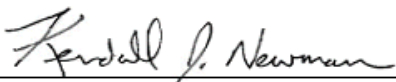
16 b. An original and one copy of the Amended Complaint.

17 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the  
18 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must  
19 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

20 Failure to file an amended complaint in accordance with this order may result in the  
21 dismissal of this action.

22 6. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights  
23 action by a prisoner.

24 Dated: July 12, 2017

25   
26 KENDALL J. NEWMAN  
27 UNITED STATES MAGISTRATE JUDGE

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Defendant.

No. 2:17-cv-0924 GEB KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

DATED: \_\_\_\_\_ Amended Complaint

\_\_\_\_\_  
Plaintiff