



1 the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks  
2 monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

3 While a claim supported by “unlikely” facts cannot be dismissed, a claim may be properly  
4 dismissed sua sponte if the allegations are found to be “fanciful,” “fantastic,” or “delusional,” or  
5 if they rise to the level of the irrational or the wholly incredible. Denton v. Hernandez, 504 U.S.  
6 25, 33 (1992). Examples of factually frivolous claims include those describing fantastic or  
7 delusional scenarios. See Neitzke v. Williams, 490 U.S. 319, 328 (1989).

8 In the objections, plaintiff claims that the Magistrate Judge erred when he found his  
9 claims that numerous defendants have tainted his food and improperly labeled him a “delusional  
10 schizoid” and ignored his complaints implausible. The Eighth Amendment imposes duties on  
11 prison officials to provide prisoners with the basic necessities of life such as food, clothing,  
12 shelter, sanitation, medical care and personal safety. See, e.g., Farmer v. Brennan, 511 U.S. 825,  
13 832-33 (1994). A prison official violates the Eighth Amendment when two requirements are met:  
14 (1) the deprivation alleged must be, objectively, sufficiently serious, and (2) the prison official  
15 possesses a sufficiently culpable state of mind. Id. at 834. Here, the Court finds plaintiff has  
16 failed to state a cognizable claim for relief under 42 U.S.C. § 1983. Specifically, plaintiff's  
17 claims of psychological and physical injury are subject to dismissal under 28 U.S.C. § 1915A  
18 because the particular allegations made “rise to the level of the irrational or the wholly  
19 incredible.” See Denton, 504 U.S. at 33.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. The [Findings and Recommendations](#), filed June 30, 2009, is adopted in full;
- 22 2. This action shall proceed on Plaintiff's claims against defendants Luna, Price,  
23 Wilber, Vikjord, Aspieda, Magvass, Vanzant, Hamilton, Cortez, Frescura, Elize,  
24 Alvarez and Hernandez for violation of the First and Eighth Amendments, and for  
25 violation of section 52.1 of the California Civil Code;
- 26 3. Claims One, Two, Three, Four, Five, Six, Eight, Ten, Eleven, Twelve, Thirteen,  
27 Fourteen and Sixteen are dismissed, with prejudice, for failure to state a claim  
28 upon which relief may be granted; and

1           4.       Claim Nine is dismissed without prejudice for violation of Rule 18(a).

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IT IS SO ORDERED.

Dated: August 5, 2009

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE