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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARRY LAMON, CASE NO. 1:07-cv-00493 AWI DLB PC

Plaintiff, ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, AND DISMISSING

CERTAIN CLAIMS AND DEFENDANTS

JOHN TILTON, et al., (Doc. 65)

Defendants.

Plaintiff Barry Lamon ("plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On June 30, 2009, the Magistrate Judge filed a <u>Findings and Recommendations</u> that recommended certain claims and defendants be dismissed and other claims be allowed to proceed. The Findings and Recommendations were served on plaintiff and contained notice to plaintiff that any objection to the Findings and Recommendations was to be filed within thirty days. Plaintiff filed an <u>Objection</u> to the Findings and Recommendations on July 13, 2009.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis. The court is obligated to review a complaint filed in forma pauperis and must dismiss it if it determines that

the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). While a claim supported by "unlikely" facts cannot be dismissed, a claim may be properly dismissed sua sponte if the allegations are found to be "fanciful," "fantastic," or "delusional," or if they rise to the level of the irrational or the wholly incredible. <u>Denton v. Hernandez</u>, 504 U.S. 25, 33 (1992). Examples of factually frivolous claims include those describing fantastic or delusional scenarios. See Neitzke v. Williams, 490 U.S. 319, 328 (1989).

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

## Accordingly, IT IS HEREBY ORDERED that:

- 1. The Findings and Recommendations, filed June 30, 2009, is adopted in full;
- 2. This action shall proceed on Plaintiff's claims against defendants Luna, Price, Wilber, Vikjord, Aspieda, Magvass, Vanzant, Hamilton, Cortez, Frescura, Elize, Alvarez and Hernandez for violation of the First and Eighth Amendments, and for violation of section 52.1 of the California Civil Code;
- 3. Claims One, Two, Three, Four, Five, Six, Eight, Ten, Eleven, Twelve, Thirteen, Fourteen and Sixteen are dismissed, with prejudice, for failure to state a claim 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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3	IT IS SO ORDERED.
4	Dated: August 5, 2009 /s/ Anthony W. Ishii CHIEF UNITED STATES DISTRICT JUDGE
5	CHIEF UNITED STATES DISTRICT JUDGE
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