

1 payments of twenty percent of the preceding month's income credited to plaintiff's trust account.
2 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
3 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
4 § 1915(b)(2).

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

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
17 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
18 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
19 1227.

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
21 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
23 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
24 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
25 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
26 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific
27 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what
28 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93

1 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).
2 In reviewing a complaint under this standard, the court must accept as true the allegations of the
3 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
4 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
5 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

6 Plaintiff is incarcerated in the El Dorado County Jail. It appears that plaintiff is a pretrial
7 detainee. Named as defendants are Public Defender Warden, Judge Kingsbury, Detectives
8 Mollesworth, Herminghaus, Hannick, Kutthman and Rider, Police Officer Morrison, Sergeants
9 Bila and Kowalczyk, Correctional Officers Barbosa and Long, and Freemasons Yvonne Benson,
10 Canfield, Rezabeck, Bias and Bill Benson.

11 Plaintiff's statement of claim follows herein:

12 I am innocent with a conspiracy on my life with the Freemasons
13 corrupting El Dorado County Law Enforcement to torture and end
14 my life in a jail cell. Go through great lengths to work against me
15 to destroy my life and family. Everything about my arrest, case,
16 court proceeding, jail time and many other things have not been by
17 the book ...all of it has been a dishonor and disgrace to me and this
18 country.

19 (ECF No. 7 at 3.)

20 Plaintiff's request for relief follows herein:

21 I want my innocents [sic] and freedom back. I want the
22 Freemasons out of my life period. I want the Freemasons and Law
23 Enforcement to respect the justice system and the oath that are
24 taken to tell the truth, serve and protect.

25 (Id.)

26 Plaintiff is challenging the validity of ongoing criminal proceedings. Plaintiff appears to
27 seek federal court intervention in his criminal case.

28 Under principles of comity and federalism, a federal court should not interfere with
ongoing state criminal proceedings except under special circumstances. Younger v. Harris, 401
U.S. 37 (1971); Samuels v. Mackell, 401 U.S. 66 (1971). Abstention is proper regardless of
whether the applicant seeks declaratory relief, injunctive relief, or damages. See Mann v. Jett,
781 F.2d 1448, 1449 (9th Cir. 1986) ("When a state criminal prosecution has begun, the Younger

1 rule directly bars a declaratory judgment action” as well as a section 1983 action for declaratory
2 relief and damages “where such an action would have a substantially disruptive effect upon
3 ongoing state criminal proceedings.”); Gilbertson v. Albright, 381 F.3d 965, 984 (9th Cir. 2004)
4 (Younger abstention applies to actions for damages as it does to declaratory and injunctive relief).

5 Younger abstention is required when: (1) state judicial proceedings are pending; (2) the
6 state proceedings involve important state interests; and (3) the state proceedings afford adequate
7 opportunity to raise the constitutional issue. Middlesex Cnty. Ethics Comm. v. Garden State Bar
8 Ass’n, 457 U.S. 423, 432 (1982); Dubinka v. Judges of the Super. Ct., 23 F.3d 218, 223 (9th Cir.
9 1994). Nothing before the undersigned suggests that abstention is unwarranted here.

10 Because plaintiff’s claims are barred by the Younger abstention doctrine, the undersigned
11 recommends that this action be dismissed.

12 In accordance with the above, IT IS HEREBY ORDERED that:

13 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.

14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
15 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
16 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the El
17 Dorado County Sheriff filed concurrently herewith.

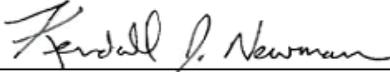
18 3. The Clerk of the Court shall appoint a district judge to this action; and

19 IT IS HEREBY RECOMMENDED that this action be dismissed.

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
22 after being served with these findings and recommendations, plaintiff may file written objections
23 with the court and serve a copy on all parties. Such a document should be captioned
24 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
25 failure to file objections within the specified time may waive the right to appeal the District
26 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

27 Dated: March 22, 2018

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE