



1 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
2 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
3 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
4 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
5 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
6 1915(b)(2).

## 7 **SCREENING**

### 8 **I. Legal Standards**

9 The court is required to screen complaints brought by prisoners seeking relief against a  
10 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §  
11 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims  
12 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
13 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
14 U.S.C. § 1915A(b)(1) & (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
17 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
20 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

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

25 However, in order to survive dismissal for failure to state a claim a complaint must  
26 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain  
27 factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic,  
28 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the

1 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
2 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
3 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

4 The Civil Rights Act under which this action was filed provides as follows:

5 Every person who, under color of [state law] . . . subjects, or causes  
6 to be subjected, any citizen of the United States . . . to the deprivation  
7 of any rights, privileges, or immunities secured by the Constitution .  
8 . . shall be liable to the party injured in an action at law, suit in equity,  
9 or other proper proceeding for redress.

10 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
12 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
13 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the  
14 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
15 omits to perform an act which he is legally required to do that causes the deprivation of which  
16 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
18 their employees under a theory of respondeat superior and, therefore, when a named defendant  
19 holds a supervisory position, the causal link between him and the claimed constitutional  
20 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
21 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations  
22 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
23 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

## 24 **II. Allegations in the Complaint**

25 Plaintiff claims the events giving rise to his claims occurred while he was incarcerated at  
26 the Lassen County Jail. (ECF No. 1 at 1.) He names as defendants Amy Foster and John Bohls.  
27 Plaintiff characterizes his claim as one for sexual harassment and alleges that he believes Foster  
28 sexually molests him via a police issue satellite. (ECF No. 1 at 2.) He alleges that if the "satellite  
link up log" is checked he is certain it will reflect that Foster has been using the satellite regularly  
since March 4, 2018. He further states that if it is not Foster it is someone else in the jail claiming

1 to be Foster. He claims these actions threaten his safety. Plaintiff further claims that Bohls is  
2 allowing Foster to harm plaintiff. (ECF No. 1 at 5.) Plaintiff requests an investigation into his  
3 claims and detention of the individual who is at fault. (ECF No. 1 at 6.)

### 4 **III. Does Plaintiff State a Claim under § 1983?**

5 “[T]he in forma pauperis statute . . . ‘accords judges not only the authority to dismiss a  
6 claim based on an indisputably meritless legal theory, but also the unusual power to pierce the  
7 veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are  
8 clearly baseless.’” Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at  
9 327). “Examples of the latter class are claims describing fantastic or delusional scenarios, claims  
10 with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328. Allegations that  
11 are fanciful, fantastic, or delusional give rise to claims that are factually frivolous. Denton, 504  
12 U.S. at 32-33 (citing Neitzke, 490 U.S. at 325, 327-28). The district court is therefore authorized  
13 to make a finding of factual frivolousness “when the facts alleged rise to the level of the irrational  
14 or the wholly incredible.” Denton, 504 U.S. at 33.

15 In the present case, plaintiff claims defendant Foster is using a satellite that produces  
16 “sound and what feels like hands touching” him and that she demands he perform sexual favors  
17 and acts.” (ECF No. 1 at 2.) He also claims that he can respond to Foster using his thoughts. (Id.  
18 at 4.)

19 These allegations are implausible on their face and there is no indication that they are  
20 grounded in reality. Plaintiff’s claims fall within the category of those “describing fantastic or  
21 delusional scenarios” and should be dismissed. See Monroe v. Arpaio, No. CV053441 PHX-  
22 NVM (VAM), 2005 WL 3054067, at \*2-3 (D.Ariz. Nov. 14, 2005) (dismissing with prejudice, at  
23 screening, inmate’s claim that he told jail officials he had a “mind-reader device on him” but they  
24 did not transfer him to a secure facility or set up a “scrambler” to block radio, microwave or  
25 satellite transmissions); Payne v. Contra Costa Sheriff’s Dep’t, No. C 02-2382 CRB (PR), 2002  
26 WL 1310748, at \*1-2 (N.D. Cal. June 10, 2002) (dismissing inmate’s complaint at screening  
27 where he alleged that the defendant sheriff department subjected him to harassment and torture  
28 through the use of telepathy and mind control); Waldrop v. Dep’t of Corr., No. CIV S-06-1260

1 DFL EFB P, 2006 WL 2926754 at \*1 (dismissing action where plaintiff alleged California  
2 Department of Corrections and Rehabilitation placed radio transmitters in his ears and used  
3 satellite transmissions to monitor him).

4 **IV. Leave to Amend**

5 For the reasons stated above, plaintiff's complaint should be dismissed. The undersigned  
6 has carefully considered whether plaintiff may amend the complaint to state a claim upon which  
7 relief can be granted. "Valid reasons for denying leave to amend include undue delay, bad faith,  
8 prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d  
9 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau,  
10 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the  
11 court does not have to allow futile amendments). Here, given the defects noted above, the  
12 undersigned finds that granting plaintiff leave to amend would be futile.

13 **V. Conclusion**

14 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted;  
16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
17 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §  
18 1915(b)(1). All fees shall be collected and paid in accordance with this court's order  
19 to the Director of the California Department of Corrections and Rehabilitation filed  
20 concurrently herewith.


21 IT IS HEREBY RECOMMENDED that:

- 22 3. Plaintiff's complaint (ECF No. 1) be dismissed without prejudice; and  
23 4. This action be dismissed.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
26 after being served with these findings and recommendations, any party may file written  
27 objections with the court and serve a copy on all parties. Such a document should be captioned  
28 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the

1 objections shall be served and filed within fourteen days after service of the objections. The  
2 parties are advised that failure to file objections within the specified time may waive the right to  
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: January 10, 2019

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6   
7 DEBORAH BARNES  
8 UNITED STATES MAGISTRATE JUDGE

9 DLB:12

10 DLB:1/Orders/Prisoner/Civil.Rights/rut1847.scm

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