

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

2 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
3 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
4 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
5 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
6 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
7 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
8 Cir. 1989); Franklin, 745 F.2d at 1227.

9 In order to avoid dismissal for failure to state a claim a complaint must contain more than
10 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
11 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
12 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
13 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
14 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
15 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
16 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
17 at 678. When considering whether a complaint states a claim upon which relief can be granted,
18 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
19 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
20 U.S. 232, 236 (1974).

21 III. Discussion

22 This action proceeds on the complaint filed October 7, 2016. Plaintiff names one
23 defendant: California Correctional Health Care Services (CCHCS). Plaintiff attaches a May 16,
24 2016 “Notice of Data Breach” stating that, on April 25, 2016, an unencrypted laptop was stolen
25 from a CCHCS employee’s personal vehicle. The laptop was password protected, but may have
26 contained confidential data related to plaintiff’s custody and care between 1996 and 2014. (ECF
27 No. 1 at 7.) Plaintiff asserts that this incident has put him at risk of having his personal
28 information misused, and that prison officials responsible for the incident have violated California

1 law and plaintiff's federal constitutional rights.

2 First, plaintiff is required to establish standing for each claim he asserts. DaimlerChrysler
3 Corp. v. Cuno, 547 U.S. 332, 352 (2006). If a plaintiff has no standing, the court has no subject
4 matter jurisdiction. Nat'l Wildlife Fed'n v. Adams, 629 F.2d 587, 593 n. 11 (9th Cir. 1980)
5 (“[B]efore reaching a decision on the merits, we [are required to] address the standing issue to
6 determine if we have jurisdiction.”). There are three requirements that must be met for a plaintiff
7 to have standing: (1) the plaintiff must have suffered an “injury in fact”—an invasion of a legally
8 protected interest which is both concrete and particularized and actual or imminent; (2) there must
9 be a causal connection between the injury and the conduct complained of; and (3) it must be
10 likely that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife,
11 504 U.S. 555, 560-61 (1992); Wash. Legal Found. v. Legal Found. of Wash., 271 F.3d 835, 847
12 (9th Cir. 2001) (en banc). Here, plaintiff has not shown he has standing to sue because the
13 complaint demonstrates only that the theft of the state's laptop has the potential to injure plaintiff.
14 Plaintiff alleges no actual misuse of his personal information stemming from the theft.

15 Second, the violation of state tort law, state regulations, rules and policies of the CDCR,
16 or other state law is not sufficient to state a claim for relief under § 1983. To state a claim under §
17 1983, there must be a deprivation of federal constitutional or statutory rights. See Paul v. Davis,
18 424 U.S. 693 (1976). Although the court may exercise supplemental jurisdiction over state law
19 claims, plaintiff must first have a cognizable claim for relief under federal law. See 28 U.S.C. §
20 1367.

21 Third, the complaint fails to state a claim under the Due Process Clause, which protects
22 prisoners from being deprived of property without due process of law. Wolff v. McDonnell, 418
23 U.S. 539, 556 (1974). “It is well established that negligent conduct is ordinarily not enough to
24 state a claim alleging a denial of liberty or property under the Fourteenth Amendment. See Doe
25 v. Beard, 2014 WL 3507196, *6 (C.D. Cal. July 14, 2014), citing Daniels v. Williams, 474 U.S.
26 327, 330 (1986); Davidson v. Cannon, 474 U.S. 344, 347 (1986) (“[T]he Due Process Clause of
27 the Fourteenth Amendment is not implicated by the lack of due care of an official causing
28 unintended injury to life, liberty or property. In other words, where a government official is

1 merely negligent in causing the injury, no procedure for compensation is constitutionally
2 required.”).

3 Finally, the Eleventh Amendment serves as a jurisdictional bar to suits brought by private
4 parties against a state or state agency unless the state or the agency consents to such suit. See
5 Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978)(per curiam);
6 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). Because the State of California
7 has not consented to suit, plaintiff’s claims against CCHCS must be dismissed.

8 For these reasons, the complaint fails to state a cognizable claim under § 1983.

9 IV. No Leave to Amend

10 If the court finds that a complaint should be dismissed for failure to state a claim, the court
11 has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-
12 30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the
13 defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see
14 also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given
15 leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely
16 clear that the deficiencies of the complaint could not be cured by amendment.”) (citing Noll v.
17 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear
18 that a complaint cannot be cured by amendment, the court may dismiss without leave to amend.
19 Cato, 70 F.3d at 1005-06.

20 The undersigned finds that, as set forth above, plaintiff lacks standing and his allegations
21 show only speculative injury. Because the complaint does not state a cognizable federal claim,
22 the court lacks supplemental jurisdiction over any state law claims. As it appears amendment
23 would be futile, the undersigned will recommend that this action be dismissed without leave to
24 amend.

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

1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted; and
2. The Clerk of Court is directed to assign a district judge to this action.

IT IS HEREBY RECOMMENDED that the complaint be dismissed without prejudice and this case closed.

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

Dated: November 1, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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