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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RICHARD C. SAPIEN,

12 Plaintiff,

13 v.

14 AUDREY CHAPPELLE, et al.,

15 Defendants.
16
17

CASE NO. 1:16-cv-0910-DAD-MJS

**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

(ECF No. 1)

**FIRST AMENDED COMPLAINT DUE
WITHIN THIRTY (30) DAYS**

18 Plaintiff is proceeding pro se and in forma pauperis in this action filed on June 24,
19 2016. Plaintiff's complaint is before the Court for screening.

20 **I. Screening Requirement**

21 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any
22 portion thereof, that may have been paid, the court shall dismiss the case at any time if
23 the court determines that . . . the action or appeal . . . fails to state a claim upon which
24 relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

25 **II. Pleading Standard**

26 A complaint must contain "a short and plain statement of the claim showing that
27 the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
28 are not required, but "[t]hreadbare recitals of the elements of a cause of action,

1 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
2 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
3 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief
4 that is plausible on its face.” Id. Facial plausibility demands more than the mere
5 possibility that a defendant committed misconduct and, while factual allegations are
6 accepted as true, legal conclusions are not. Id. at 677-78.

7 **III. Plaintiff’s Allegations**

8 Plaintiff brings this action against Audrey Chappelle, “Sedgwick Claim
9 Management [unintelligible]”; Jeremy Lusk, Attorney; Tobin-Lucks LLP; Foster Farms,
10 Cherry Plant, Inc.; and Stericycle, Inc.

11 Plaintiff’s allegations, which are factually sparse, may be fairly summarized as
12 follows:

13 Plaintiff, who worked at Foster Farms “Cherry Plant” during an unspecified period
14 of time, broke his collar bone on November 15, 2011.

15 Plaintiff accuses (1) Stericycle of failing to inform Plaintiff about a “Q.M.E.” report
16 from July 5, 2007, and (2) Foster Farms of failing to inform Plaintiff about a “Q.M.E.”
17 report from October 13, 2014. According to Plaintiff, a “Q.M.E. is a certified doctor that
18 dispute [sic] difference between emplo[y]er and employee and always be followed with
19 the request of the Q.M.E. for the employee.” Compl. at 6.

20 Plaintiff asserts jurisdiction is proper in this Court under diversity citizenship and
21 federal question—specifically, the Health Insurance Portability and Accountability Act
22 (“HIPAA”).

23 Plaintiff does not specify the relief that he seeks.

24 **IV. Analysis**

25 “Federal courts are courts of limited jurisdiction. They possess only that power
26 authorized by Constitution and statute, which is not to be expanded by judicial decree. It
27 is to be presumed that a cause lies outside this limited jurisdiction, and the burden of
28

1 establishing the contrary rests upon the party asserting jurisdiction.” Kokkonen v.
2 Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (citations omitted).

3 Federal courts are constitutionally required to raise issues related to federal
4 subject matter jurisdiction and may do so sua sponte. Arbaugh v. Y&H Corp., 546 U.S.
5 500, 514 (2006). A federal court must satisfy itself of its jurisdiction over the subject
6 matter before proceeding to the merits of the case. Ruhrgas AG v. Marathon Oil Co., 526
7 U.S. 574, 577, 583 (1999). Plaintiff bears the burden of demonstrating that jurisdiction is
8 properly before the Court. See Thornhill Publ'g Co. v. General Tel. & Elec. Corp., 594
9 F.2d 730, 733 (9th Cir. 1979).

10 The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer “federal
11 question” and “diversity” jurisdiction, respectively. Federal question jurisdiction requires
12 that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
13 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3)
14 be authorized by a federal statute that both regulates a specific subject matter and
15 confers federal jurisdiction. Baker v. Carr, 369 U.S. 186, 198 (1962).

16 Plaintiff asserts that this case is before the Court pursuant to HIPAA. HIPAA does
17 not provide a private cause of action. Webb v. Smart Document Solutions, LLC, 499
18 F.3d 1078, 1082 (9th Cir. 2007) (“HIPAA itself does not provide for a private right of
19 action”) (citing 65 Fed. Reg. 82601 (Dec. 28, 2000)). There does not appear to be any
20 other source of federal jurisdiction under the allegations asserted in the Complaint.

21 To invoke the Court's diversity jurisdiction, a plaintiff must specifically allege the
22 diverse citizenship of all parties and that the matter in controversy exceeds \$75,000. 28
23 U.S.C. § 1332(a); Bautista v. Pan American World Airlines, Inc., 828 F.2d 546, 552 (9th
24 Cir. 1987). Section 1332 of Title 28 requires complete diversity of citizenship and the
25 presence “of a single plaintiff from the same State as a single defendant deprives the
26 district court of original diversity jurisdiction over the entire action.” Abrego Abrego v. The
27 Dow Chemical Co., 443 F.3d 676, 679 (9th Cir. 2006) (citations omitted).

1 It appears that diversity jurisdiction is also lacking. Plaintiff has not specified the
2 amount in controversy in the pleading. In addition, Plaintiff has not shown that the parties
3 are completely diverse. To the contrary, the Complaint indicates that Plaintiff and at least
4 some of the Defendants are residents of California. (Compl. at 2-3.)

5 Accordingly, the Complaint must be dismissed.

6 **V. Conclusion and Order**

7 The Court will grant Plaintiff an opportunity to file an amended complaint. Noll v.
8 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff opts to amend, he must
9 address the deficiencies noted in this Screening Order. Iqbal, 556 U.S. at 677-78.
10 Plaintiff must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its
11 face.’” Id. at 678 (quoting Twombly, 550 U.S. at 555).

12 Plaintiff should note that although he has been given the opportunity to amend, it
13 is not for the purposes of adding new claims. George, 507 F.3d at 607. Plaintiff should
14 carefully read this Screening Order and focus his efforts on curing the deficiencies set
15 forth above.

16 Finally, Plaintiff is advised that Local Rule 220 requires that an amended
17 complaint be complete in itself without reference to any prior pleading. As a general rule,
18 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
19 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no
20 longer serves any function in the case. Therefore, in an amended complaint, as in an
21 original complaint, each claim and the involvement of each defendant must be
22 sufficiently alleged. The amended complaint should be clearly and boldly titled “First
23 Amended Complaint,” refer to the appropriate case number, and be an original signed
24 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.
25 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a
26 right to relief above the speculative level” Twombly, 550 U.S. at 555 (citations
27 omitted).

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's June 24, 2016, Complaint is dismissed with leave to amend;
2. Within thirty (30) days from the service of this order, Plaintiff shall a first amended complaint curing the deficiencies identified by the Court in this Screening Order;
3. The Clerk of Court is directed to send Plaintiff a copy of his complaint filed on June 24, 2016, and a copy of the Pro Se Packet; and
4. If Plaintiff fails to file a first amended complaint or otherwise respond to this Order, the Court will dismiss this action, with prejudice, for failure to comply with a court order and failure to prosecute.

IT IS SO ORDERED.

Dated: March 21, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE