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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DWAYNE LUCAS,
Plaintiff,
v.
KAREN BROWN, et al.,
Defendants.

Case No. 1:16-cv-01799-DAD-SAB (PC)
ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND FOR FAILURE TO
STATE A CLAIM
(ECF No. 6)
THIRTY DAY DEADLINE

Plaintiff Dwayne Lucas is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s complaint, filed October 31, 2016. (ECF No. 6.)

I.
SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

A complaint must contain “a short and plain statement of the claim showing that the

1 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
2 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
3 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
4 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
5 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
6 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

7 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
8 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
9 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
10 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
11 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
12 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
13 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
14 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572
15 F.3d at 969.

16 II.

17 DISCUSSION

18 Plaintiff brings this action against Karen Brown, Chief Executive Officer at Kern Valley
19 State Prison and J. Lewis, Deputy Director of Policy and Risk Management Services, Inmate
20 Correspondence and Appeals Branch alleging that on May 16, 2016 he received notice that his
21 personal information was potentially breached when an unencrypted laptop was stolen from a
22 staff member’s vehicle. Plaintiff is seeking monetary damages of \$1,000.00.

23 A. Jurisdiction

24 Federal courts are courts of limited jurisdiction and their power to adjudicate is limited to
25 that granted by Congress. U.S v. Sumner, 226 F.3d 1005, 1009 (9th Cir. 2000). Pursuant to 28
26 U.S. C. § 1331, federal courts have original over “all civil actions arising under the Constitution,
27 laws, or treaties of the United States. “A case ‘arises under’ federal law either where federal law
28 creates the cause of action or where the vindication of a right under state law necessarily turns on

1 some construction of federal law.” Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088
2 (9th Cir. 2002) (internal punctuation omitted) (quoting Franchise Tax Bd. v. Construction
3 Laborers Vacation Trust, 463 U.S. 1, 8–9 (1983) (citations omitted)). “[T]he presence or
4 absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which
5 provides that federal jurisdiction exists only when a federal question is presented on the face of
6 the plaintiff’s properly pleaded complaint.” Republican Party of Guam, 277 F.3d at 1089
7 (citations omitted). For this action to arise under federal law, Plaintiff must establish that
8 “federal law creates the cause of action” or his “asserted right to relief depends on the resolution
9 of a substantial question of federal law.” K2 America Corp. v. Roland Oil & Gas, LLC, 653
10 F.3d 1024, 1029 (9th Cir. 2011). Plaintiff has identified no federal right that was violated by the
11 potential breach of his personal information to establish federal jurisdiction.

12 **B. Standing**

13 Additionally, for each form of relief sought in federal court, Plaintiff must establish
14 standing. Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010), cert.denied, 131 S. Ct.
15 503 (2010). This requires Plaintiff to “show that he is under threat of suffering ‘injury in fact’
16 that is concrete and particularized; the threat must be actual and imminent, not conjectural or
17 hypothetical; it must be fairly traceable to challenged conduct of the defendant; and it must be
18 likely that a favorable judicial decision will prevent or redress the injury.” Summers v. Earth
19 Island Institute, 555 U.S. 488, 493 (2009) (citation omitted); Mayfield, 599 F.3d at 969 (citation
20 omitted).

21 “An injury sufficient to satisfy Article III must be concrete and particularized and actual
22 or imminent, not conjectural or hypothetical.” Susan B. Anthony List v. Driehaus, 134 S. Ct.
23 2334, 2341 (2014) (internal punctuation and citation omitted). “An allegation of future injury
24 may suffice if the threatened injury is ‘certainly impending,’ or there is a ‘substantial risk’ that
25 the harm will occur.” Susan B. Anthony List, 134 S. Ct. at 2341(quoting Clapper v. Amnesty
26 Int’l USA, 133 S.Ct. 1138, 1147, 1150, n.5 (2013)). Plaintiff has not shown that there is a
27 substantial risk that harm will occur from the data breach to establish standing in this action.

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1 **C. Section 1983**

2 Further, Section 1983 provides a cause of action for the violation of a plaintiff's
3 constitutional or other federal rights by persons acting under color of state law. Nurre v.
4 Whitehead, 580 F.3d 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178,
5 1185 (9th Cir. 2006); Jones, 297 F.3d at 934. There is no respondeat superior liability under
6 section 1983, and therefore, each defendant is only liable for his or her own misconduct. Iqbal,
7 556 U.S at 677 (2009).

8 To state a claim under section 1983, Plaintiff must demonstrate that each defendant
9 personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 677; Simmons v.
10 Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588
11 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297 F.3d at 934. In a section 1983 action, the complaint
12 must allege that every defendant acted with the requisite state of mind to violate underlying
13 constitutional provision. OSU Student Alliance v. Ray, 699 F.3d 1053, 1070 (9th Cir. 2012).

14 Plaintiff's complaint is devoid of any factual allegations against Defendants Brown and
15 Lewis. Even if this Court had jurisdiction and Plaintiff could establish standing, Plaintiff has
16 failed to state a cognizable claim against Defendants Brown and Lewis.

17 **D. Leave to Amend**

18 Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend shall be freely
19 given when justice so requires. Fed. R. Civ. P. 15(a)(2). Therefore, Plaintiff shall be granted an
20 opportunity to file an amended complaint to correct the deficiencies identified by this order.

21 **III.**

22 **CONCLUSION AND ORDER**

23 Plaintiff's complaint fails to state a cognizable claim against any named defendant. The
24 Court will provide Plaintiff with the opportunity to file an amended complaint curing the
25 deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th
26 Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in
27 his amended complaint. George, 507 F.3d at 607 (no "buckshot" complaints).

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1 If Plaintiff opts to amend, his amended complaint should be brief. Fed. R. Civ. P. 8(a).
2 Plaintiff must identify how each individual defendant caused the deprivation of Plaintiff's
3 constitutional or other federal rights: "The inquiry into causation must be individualized and
4 focus on the duties and responsibilities of each individual defendant whose acts or omissions are
5 alleged to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th
6 Cir. 1988).

7 Although Plaintiff's factual allegations will be accepted as true and "the pleading
8 standard Rule 8 announces does not require 'detailed factual allegations,' " "a complaint must
9 contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its
10 face.' " Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). "A claim has facial
11 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
12 inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. With
13 respect to exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P. 10(c),
14 they are not necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). In other
15 words, it is not necessary at this stage to submit evidence to prove the allegations in Plaintiff's
16 complaint because at this stage Plaintiff's factual allegations will be accepted as true.

17 Plaintiff is advised that an amended complaint supersedes the original complaint.
18 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
19 567 (9th Cir. 1987). The amended complaint must be "complete in itself without reference to the
20 prior or superseded pleading." Local Rule 220. Plaintiff is warned that "[a]ll causes of action
21 alleged in an original complaint which are not alleged in an amended complaint are waived."
22 King, 814 F.2d at 567 (citing London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981));
23 accord Forsyth, 114 F.3d at 1474.

24 Based on the foregoing, it is HEREBY ORDERED that:

- 25 1. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 26 2. Plaintiff's complaint, filed October 31, 2016, is dismissed with leave to amend;
- 27 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
28 amended complaint curing the deficiencies identified by the Court in this order;

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and

4. If Plaintiff fails to comply with this order, this action will be dismissed for failure to state a claim.

IT IS SO ORDERED.

Dated: May 9, 2017


UNITED STATES MAGISTRATE JUDGE