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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUNE M. KREINZENBECK,

Plaintiff,

No. CIV S-11-0904 GEB GGH PS

vs.

HEWLETT PACKARD,

Defendant.

ORDER

_____ /

Plaintiff, proceeding in this action pro se, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302(21), pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an affidavit making the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the request to proceed in forma pauperis will be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28

1 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
3 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
4 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
5 Cir. 1989); Franklin, 745 F.2d at 1227.

6 A complaint must contain more than a “formulaic recitation of the elements of a
7 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
8 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
9 “The pleading must contain something more...than...a statement of facts that merely creates a
10 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
11 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
12 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
13 v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127
14 S.Ct. 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows
15 the court to draw the reasonable inference that the defendant is liable for the misconduct
16 alleged.” Id.

17 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519,
18 520-21, 92 S. Ct. 594, 595-96 (1972); Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th
19 Cir. 1988). Unless it is clear that no amendment can cure the defects of a complaint, a pro se
20 plaintiff proceeding in forma pauperis is entitled to notice and an opportunity to amend before
21 dismissal. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin, 745 F.2d at 1230.

22 The court is unable to determine a jurisdictional basis for this action. A federal
23 court is a court of limited jurisdiction, and may adjudicate only those cases authorized by the
24 Constitution and by Congress. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114
25 S. Ct. 1673, 1675 (1994). U.S. Const. Art. III, § 1 provides that the judicial power of the United
26 States is vested in the Supreme Court, “and in such inferior Courts as the Congress may from

1 time to time ordain and establish.” Congress therefore confers jurisdiction upon federal district
2 courts, as limited by U.S. Const. Art. III, § 2. See Ankenbrandt v. Richards, 504 U.S. 689, 697-
3 99, 112 S. Ct. 2206, 2212 (1992). Lack of subject matter jurisdiction may be raised at any time
4 by either party or by the court. See Attorneys Trust v. Videotape Computer Products, Inc., 93
5 F.3d 593, 594-95 (9th Cir. 1996).

6 The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer “federal
7 question” and “diversity” jurisdiction, respectively. Statutes which regulate specific subject
8 matter may also confer federal jurisdiction. See generally, W.W. Schwarzer, A.W. Tashima & J.
9 Wagstaffe, Federal Civil Procedure Before Trial § 2:5. Unless a complaint presents a plausible
10 assertion of a substantial federal right, a federal court does not have jurisdiction. See Bell v.
11 Hood, 327 U.S. 678, 682, 66 S. Ct. 773, 776 (1945). A federal claim which is so insubstantial as
12 to be patently without merit cannot serve as the basis for federal jurisdiction. See Hagans v.
13 Lavine, 415 U.S. 528, 537-38, 94 S. Ct. 1372, 1379-80 (1974).

14 For diversity jurisdiction pursuant to 28 U.S.C. § 1332, each plaintiff must be
15 diverse from each defendant, and the amount in controversy must exceed \$75,000. For federal
16 question jurisdiction pursuant to 28 U.S.C. § 1331, the complaint must either (1) arise under a
17 federal law or the United States Constitution, (2) allege a “case or controversy” within the
18 meaning of Article III, section 2, or (3) be authorized by a jurisdiction statute. Baker v. Carr, 369
19 U.S. 186, 198, 82 S. Ct. 691, 699-700, 7 L. Ed. 2d 663 (1962).

20 In this case, plaintiff alleges that defendant Hewlett Packard committed a security
21 breach which caused a “virus worm” to infect her HP laptop computer and programs. The
22 security breach also exposed plaintiff’s private information, including email and passwords. As a
23 result, a hacker was able to infiltrate her documents and files, and obtain her personal
24 identification. Plaintiff seeks \$4,000 in damages for replacement of her computer system.

25 The complaint asserts no basis for jurisdiction. It does not raise a federal question
26 but is limited to a small claims property dispute which should be adjudicated in state court. Only

1 if plaintiff can allege a violation of her constitutional rights or federal law can she maintain an
2 action for which there is federal jurisdiction. Although plaintiff may be diverse from defendant,
3 her alleged damages are far below the minimum required amount for diversity jurisdiction, which
4 is more than \$75,000.

5 Good cause appearing, IT IS ORDERED that: plaintiff's request for leave to
6 proceed in forma pauperis is granted.

7 IT IS HEREBY ORDERED that this action be dismissed for lack of subject
8 matter jurisdiction with leave to amend. If plaintiff files an amended complaint she must cure
9 the jurisdictional defects noted above. Any amended complaint shall be filed within 28 days of
10 the filed date of this order.

11 DATED: May 2, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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