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

CHARMANE SMITH,

Plaintiff,

No. CIV. S-11-0963 KJM GGH PS

vs.

INTEL CORPORATION,

Defendant.

ORDER and

FINDINGS AND RECOMMENDATIONS

_____ /

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.

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

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

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

23 Plaintiff alleges that “a group of computer hackers have used vulnerabilities in
24 Intel products, services, & hardware to hijack control of computer hard drives, telephones, utility
25 accounts, computer peripherals, & have damaged household electronics & appliances.” (Compl.
26 at 2.) The complaint seeks to pin liability on Intel for the actions of these alleged hackers based

1 on legal theories such as strict liability, tortious interference, vicarious liability, and negligence.
2 (Id.) Plaintiff seeks \$2,800,000,000.00 in damages.

3 The court is unable to determine a jurisdictional basis for this action. A federal
4 court is a court of limited jurisdiction, and may adjudicate only those cases authorized by the
5 Constitution and by Congress. See Kokkonen v. Guardian Life Ins. Co, 511 U.S. 375, 377, 114
6 S. Ct. 1673, 1675 (1994). U.S. Const. Art. III, § 1 provides that the judicial power of the United
7 States is vested in the Supreme Court, “and in such inferior Courts as the Congress may from
8 time to time ordain and establish.” Congress therefore confers jurisdiction upon federal district
9 courts, as limited by U.S. Const. Art. III, § 2. See Ankenbrandt v. Richards, 504 U.S. 689, 697-
10 99, 112 S. Ct. 2206, 2212 (1992). Lack of subject matter jurisdiction may be raised at any time
11 by either party or by the court. See Attorneys Trust v. Videotape Computer Products, Inc., 93
12 F.3d 593, 594-95 (9th Cir. 1996).

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

21 Plaintiff has alleged federal question jurisdiction; however, the complaint does not
22 support such a basis as plaintiff has failed to raise a violation of federal law. While diversity
23 jurisdiction is possible given plaintiff’s residence in Tennessee, this complaint should be
24 dismissed on the separate ground that the court has no jurisdiction over claims which are
25 palpably frivolous. See Bell v. Hood, 327 U.S. 678, 682-83 (1946) (finding that unless a
26 complaint presents a plausible assertion of a substantial federal right, a federal court does not

1 have jurisdiction). A federal claim which is so insubstantial as to be patently without merit
2 cannot serve as the basis for federal jurisdiction. See Hagans v. Lavine, 415 U.S. 528, 587-38,
3 94 S. Ct. 1372, 1379-80 (1974). Such a patently frivolous claim is unlikely to be cured on
4 amendment. Therefore, the amended complaint should be dismissed without leave to amend.

5 Accordingly, IT IS HEREBY ORDERED that plaintiff's application to proceed in
6 forma pauperis is granted.

7 Further, it is RECOMMENDED that this action be dismissed.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
10 fourteen (14) days after being served with these findings and recommendations, plaintiff may file
11 written objections with the court and serve a copy on all parties. Such a document should be
12 captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is
13 advised that failure to file objections within the specified time may waive the right to appeal the
14 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: July 5, 2011

16 /s/ Gregory G. Hollows
17 UNITED STATES MAGISTRATE JUDGE

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