

1 complaint, but provided plaintiff an opportunity to amend to “allege a basis for this court’s
2 jurisdiction, as well as a cognizable legal theory and sufficient facts in support of that cognizable
3 legal theory.” *Id.* The order provided that “[s]hould plaintiff choose to file an amended
4 complaint, the amended complaint shall clearly set forth the allegations against defendant and
5 shall specify a basis for this court’s subject matter jurisdiction.” *Id.*

6 Plaintiff subsequently filed a first amended complaint. ECF No. 14. The amended
7 complaint alleges that a few years prior to initiating this action, plaintiff opened a Visa Direct
8 Deposit account with Netspend. *Id.* at 1. After opening the account plaintiff was arrested and
9 incarcerated. *Id.* While imprisoned, plaintiff deposited four social security checks totaling more
10 than \$3,000. He claims, however, that between May 2013 and March 2014 there were \$2,281 in
11 fraudulent charges made to the account. *Id.* Plaintiff made several attempts to contact Netspend,
12 but it has refused to explain what happened to plaintiff’s money. *Id.* at 2. Plaintiff now requests
13 that Netspend be ordered to honor its “contract of being federaly [sic] insured against frudulant
14 [sic] charges” *Id.* at 3. He claims that this court has subject matter jurisdiction over the case
15 because the “account was federaly [sic] insured against identity [sic] theft.” *Id.*

16 As previously explained to plaintiff, although pro se pleadings are liberally construed, *see*
17 *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be
18 dismissed for failure to state a claim if it fails to set forth “enough facts to state a claim to relief
19 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007)
20 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s
21 obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
22 conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual
23 allegations must be enough to raise a right to relief above the speculative level on the assumption
24 that all of the complaint’s allegations are true.” *Id.* (citations omitted). Dismissal is appropriate
25 based either on the lack of cognizable legal theories or the lack of pleading sufficient facts to
26 support cognizable legal theories. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
27 1990).

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1 Under this standard, the court must accept as true the allegations of the complaint in
2 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976) and construe the
3 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
4 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
5 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a
6 complaint to include a short and plain statement of the claim showing that the pleader is entitled
7 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
8 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v.*
9 *Gibson*, 355 U.S. 41 (1957)).

10 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
11 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,
12 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,
13 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction
14 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
15 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be
16 authorized by a federal statute that both regulates a specific subject matter and confers federal
17 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity
18 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the
19 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*
20 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction
21 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
22 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
23 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

24 Like plaintiff’s original complaint, his amended complaint fails to adequately allege a
25 basis for this court’s jurisdiction. Plaintiff does not establish that this case involves a federal
26 question, as he fails to identify any specific federal statute or law that defendant allegedly
27 violated. Furthermore, the allegations in the complaint indicate that plaintiff’s damages total,

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1 at most, are approximately \$3,000; far less than the \$75,000 required for diversity jurisdiction.
2 See 28 U.S.C. § 1332(a). Accordingly, the court lacks jurisdiction over this action.

3 Given the jurisdictional deficiency, as well as plaintiff's failure to remedy the deficiency
4 in his amended complaint, the court finds that further amendment would be futile. Accordingly,
5 plaintiff's complaint should be dismissed without leave to amend. *Noll v. Carlson*, 809 F.2d
6 1446, 1448 (9th Cir. 1987) (While the court ordinarily would permit a pro se plaintiff to amend,
7 leave to amend should not be granted where it appears amendment would be futile).

8 Accordingly, it is hereby ORDERED that the Clerk of the Court shall randomly assign a
9 United States District Judge to this action.

10 Further, it is RECOMMENDED that plaintiff's first amended complaint be dismissed
11 without leave to amend and the Clerk be directed to close this case.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
17 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
18 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: April 27, 2017.

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21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
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