

1 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 cause of
7 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*, 556 U.S. 662, 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 alleged.”
16 *Id.*

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

22 The complaint alleges that defendant Lopez, a downtown guide in Sacramento, discovered
23 that plaintiff, a self-employed handyman for various merchants in Old Sacramento, was
24 incarcerated for fifty days in the fall of 2014. Plaintiff asserts that Lopez told defendant Paul and
25 other merchants about plaintiff’s incarceration, resulting in their rejection of him, and lost work.
26 As a consequence of defendant Lopez’s slander, plaintiff claims he was accosted by police, and
27 asked to leave based on a report by Lopez and Paul that plaintiff had stolen candy from Paul’s
28 store and given it to children. (ECF No. 1.) The complaint alleges the following violations:

1 “conspiracy, fraud, perjury, slander, defamation, hate crime under color of authority, and 18
2 U.S.C. § 242.”

3 The court is unable to determine a jurisdictional basis for this action. A federal court is a
4 court of limited jurisdiction, and may adjudicate only those cases authorized by the Constitution
5 and by Congress. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673,
6 1675 (1994). U.S. Const. Art. III, § 1 provides that the judicial power of the United States is
7 vested in the Supreme Court, “and in such inferior Courts as the Congress may from time to time
8 ordain and establish.” Congress therefore confers jurisdiction upon federal district courts, as
9 limited by U.S. Const. Art. III, § 2. See Ankenbrandt v. Richards, 504 U.S. 689, 697-99, 112 S.
10 Ct. 2206, 2212 (1992). Lack of subject matter jurisdiction may be raised at any time by either
11 party or by the court. See Attorneys Trust v. Videotape Computer Products, Inc., 93 F.3d 593,
12 594-95 (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 For diversity jurisdiction pursuant to 28 U.S.C. § 1332, each plaintiff’s state citizenship
22 must be diverse from each defendant, and the amount in controversy must exceed \$75,000. For
23 federal question jurisdiction pursuant to 28 U.S.C. § 1331, the complaint must either (1) arise
24 under a federal law or the United States Constitution, (2) allege a “case or controversy” within the
25 meaning of Article III, section 2, or (3) be authorized by a jurisdiction statute. Baker v. Carr, 369
26 U.S. 186, 198, 82 S. Ct. 691, 699-700, 7 L. Ed. 2d 663 (1962).

27 In his complaint, plaintiff has failed to allege a violation of a federal statute. Almost all of
28 his claims allege violations of state law. The alleged violation of a federal criminal statute, 18

1 U.S.C. § 242, may not be brought against any of the defendants because it is limited to state
2 officials who act under color of law to willfully deprive a person of constitutional rights. Hope v.
3 Pelzer, 536 U.S. 730, 739 (2002). None of the named defendants in this case are state officials.

4 Furthermore, plaintiff has no standing to pursue alleged violations of 18 U.S.C. § 242.
5 Criminal statutes do not provide a private right of action. See, e.g., Ellis v. City of San Diego,
6 176 F.3d 1183, 1189 (9th Cir.1999) (district court properly dismissed claims brought under the
7 California Penal Code because the statutes do not create enforceable individual rights). It is also
8 well established that private actions are maintainable under federal criminal statutes in only very
9 limited circumstances. Cort v. Ash, 422 U.S. 66, 79, 95 S.Ct. 2080, 2088, 45 L.Ed.2d 26 (1975);
10 Bass Angler Sportsman Soc. v. United States Steel Corp., 324 F.Supp. 412, 415 (S.D.Ala.1971),
11 citing United States v. Claflin, 97 U.S. 546, 24 L.Ed. 1082 (1878); United States v. Jourden, 193
12 F. 986 (9th Cir.1912). See also Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.1980) (18 U.S.C.
13 §§ 241, 242 provide no private right of action and cannot form basis for civil suit). Therefore,
14 plaintiff may not pursue such claims under this federal criminal statute.

15 Nor is there diversity jurisdiction. Plaintiff is a resident of Sacramento, and the complaint
16 does not allege that any defendants are citizens of another state. According to the complaint,
17 defendant Lopez is employed as a downtown guide in Sacramento, by the Sacramento Downtown
18 Partnership. Defendant Paul is owner of the Candy Barrel store in Old Sacramento.

19 Finally, there appears to be no possible basis for jurisdiction under 42 U.S.C. § 1983.
20 Plaintiff will not be able to show that a Sacramento City downtown partnership is a state actor.

21 It is also clear that leave to amend would be futile in light of the clear jurisdictional
22 deficiencies outlined above. For these reasons, the court recommends that this action be
23 dismissed with no leave to amend

24 Good cause appearing, IT IS ORDERED that: Plaintiff's request for leave to proceed in
25 forma pauperis is granted.

26 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen

1 (14) days after being served with these findings and recommendations, plaintiff may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
4 failure to file objections within the specified time may waive the right to appeal the District
5 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: February 20, 2015

7 /s/ Gregory G. Hollows

8 UNITED STATES MAGISTRATE JUDGE

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10 GGH:076/Peden0244.fr

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