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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT F. MILES,
Plaintiff,
v.
CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES, et al.,
Defendants.

No. 2:16-cv-1323 KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not, however, filed an in forma pauperis affidavit or paid the required filing fee of \$350.00 plus the \$50.00 administrative fee.¹ See 28 U.S.C. §§ 1914(a), 1915(a). Therefore, plaintiff will be provided the opportunity either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the required fees totaling \$400.00.

Plaintiff is cautioned that the in forma pauperis application form includes a section that must be completed by a prison official, and the form must be accompanied by a certified copy of

¹ If leave to file in forma pauperis is granted, plaintiff will still be required to pay the filing fee but will be allowed to pay it in installments. Litigants proceeding in forma pauperis are not required to pay the \$50.00 administrative fee.

1 plaintiff's prison trust account statement for the six-month period immediately preceding the
2 filing of this action.²

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Plaintiff shall submit, within thirty days from the date of this order, an affidavit in
5 support of his request to proceed in forma pauperis on the form provided by the Clerk of Court, or
6 the required fees in the amount of \$400.00; plaintiff's failure to comply with this order will result
7 in a recommendation that this action be dismissed; and

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12 ² Because it appears that plaintiff cannot allege an actual injury, plaintiff may choose to avoid
13 incurring this filing fee by voluntarily dismissing this action and filing an action in a state court in
14 California. Here, plaintiff alleges that the California Correctional Health Care Services
15 ("CCHCS") and California Department of Corrections and Rehabilitation breached the
16 confidentiality of his medical records in violation of California Health and Safety Code
17 § 1280.15. (ECF No. 1 at 3.) Plaintiff claims that this breach placed him at extreme risk of
18 identity theft. (ECF No. 1 at 4.) Plaintiff seeks monetary relief under California Civil Code
19 § 56.36 and Health and Safety Code § 1280.15. (ECF No. 1 at 6.) Plaintiff provided a May 16,
20 2016 letter from CCHCS informing plaintiff of a "potential breach" of his information on
21 February 25, 2016, when an unencrypted laptop was stolen from a CCHCS staff person's vehicle.
22 (ECF No. 1 at 7.) Although not encrypted, the laptop was password protected. (*Id.*)

23 Article III of the Constitution limits the jurisdiction of federal courts to actual "Cases" and
24 "Controversies." U.S. Const. art. III, § 2. "One element of the case-or-controversy requirement
25 is that plaintiff [] 'must establish that [he has] standing to sue.'" *Clapper v. Amnesty Int'l USA*,
26 133 S. Ct. 1138, 1146, 185 L. Ed. 2d 264 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 818, 117
27 S. Ct. 2312 (1997)). To satisfy Article III standing, plaintiff must have suffered an injury in fact
28 -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b)
actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection
between the injury and the conduct complained of -- the injury has to be fairly traceable to the
challenged action of the defendant, and not the result of the independent action of some third
party not before the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130
(1992) (citations omitted) (internal quotation marks, brackets and ellipses omitted).

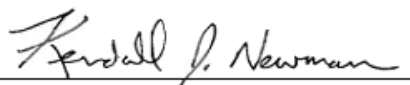
Here, the letter provided by plaintiff demonstrates only a "potential" breach; the laptop was
secured by a password, and plaintiff alleges no actual misuse of his personal information
stemming from the theft. Indeed, plaintiff states that he is "at risk" of injury. Moreover, the
damages plaintiff seeks are available to him under state law. Unless plaintiff can allege actual
injury, the court cannot exercise supplemental jurisdiction over any state law claims.

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2. The Clerk of the Court is directed to send plaintiff a new Application to Proceed In
Forma Pauperis By a Prisoner.

Dated: June 21, 2016

mile1323.3a


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE