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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATHAN TURNER,  
Plaintiff,  
v.  
DR. MATOLON,  
Defendant.

No. 2:16-cv-1426 JAM KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and 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 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff filed an amended complaint.

I. Application to Proceed in Forma Pauperis

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). However, the court will not assess a filing fee at this time. Instead, the undersigned recommends summary dismissal of the complaint.

II. Screening

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

3 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
5 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
7 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
8 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
9 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
10 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
11 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at  
12 1227.

13 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
14 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
15 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
16 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
17 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a  
18 formulaic recitation of the elements of a cause of action;” it must contain factual allegations  
19 sufficient “to raise a right to relief above the speculative level.” Id. at 555. However, “[s]pecific  
20 facts are not necessary; the statement [of facts] need only ‘give the defendant fair notice of what  
21 the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551 U.S. 89, 93  
22 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).  
23 In reviewing a complaint under this standard, the court must accept as true the allegations of the  
24 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most  
25 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
26 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

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1 III. Amended Complaint

2 Plaintiff names Dr. Matolon, a mental health supervisor at the California Correctional  
3 Health Care Services (“CCHCS”), as the sole defendant. However, plaintiff alleges that Dr.  
4 Matolon and her employers conspired to interfere with, and violate, plaintiff’s civil rights by not  
5 following regulations and California law concerning the security of sensitive and confidential  
6 medical records. (ECF No. 6 at 3.) Plaintiff alleges that the CCHCS<sup>1</sup> “willfully allowed its  
7 employers to access, store confidential data on unencrypted laptops and computers with  
8 impunity.” (Id.) Plaintiff claims his allegations are “beyond the scope of negligence” because the  
9 acts were taken “deliberately,” and were “against the law.” (Id.)

10 Plaintiff alleges his injuries are discrimination against a prisoner by “conspiring to  
11 violate” his equal protection rights and by not protecting his confidential information as required  
12 by law, and by the deprivation of his personal and confidential information without due process,  
13 in violation of the Fourteenth Amendment. (ECF No. 6 at 3, 5.) He seeks money damages.

14 Appended to plaintiff’s original complaint is a copy of the May 16, 2016 letter to plaintiff  
15 from CCHCS, advising him that a password-protected, but unencrypted, laptop was stolen from a  
16 CCHCS workforce member’s personal vehicle, and that:

17 We do not know if any sensitive information was contained in the  
18 laptop. To the extent any sensitive information may have been  
19 contained in the laptop, we do not know if the information included  
20 any of your information. If your information was included, the  
nature of the information may have included confidential medical,  
mental health, and custodial information.

21 (ECF No. 1 at 8.)

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24 <sup>1</sup> Plaintiff could not amend to name CCHCS as a defendant because state agencies, such as  
25 CCHCS, are immune from suit under the Eleventh Amendment. See Will v. Michigan Dep’t of  
26 State Police, 491 U.S. 58, 66 (1989); Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995)  
27 (per curiam) (holding that prisoner’s Eighth Amendment claims against CDCR for damages and  
28 injunctive relief were barred by Eleventh Amendment immunity); Pennhurst State Sch. & Hosp.  
v. Halderman, 465 U.S. 89, 100 (1984) (Eleventh Amendment immunity extends to state  
agencies); see also Hafer v. Melo, 502 U.S. 21, 30 (1991) (clarifying that Eleventh Amendment  
does not bar suits against state officials sued in their individual capacities, nor does it bar suits for  
prospective injunctive relief against state officials sued in their official capacities).

1 IV. Standing

2 Article III of the Constitution limits the jurisdiction of federal courts to actual “Cases” and  
3 “Controversies.” U.S. Const. art. III, § 2. “One element of the case-or-controversy requirement’  
4 is that plaintiff [ ] ‘must establish that [he has] standing to sue.’” Clapper v. Amnesty Int’l USA,  
5 133 S. Ct. 1138, 1146 (2013) (quoting Raines v. Byrd, 521 U.S. 811, 818(1997)). To satisfy  
6 Article III standing, plaintiff must have suffered an injury in fact -- an invasion of a legally  
7 protected interest which is (a) concrete and particularized, and (b) actual or imminent, not  
8 conjectural or hypothetical. Second, there must be a causal connection between the injury and the  
9 conduct complained of -- the injury has to be fairly traceable to the challenged action of the  
10 defendant, and not the result of the independent action of some third party not before the court.  
11 Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (citations omitted) (internal quotation  
12 marks, brackets and ellipses omitted).

13 “HIPAA itself does not provide for a private right of action.” Webb v. Smart Document  
14 Solutions, LLC, 499 F.3d 1078, 1082 (9th Cir. 2007) (citing Standards for Privacy of Individually  
15 Identifiable Health Information, 65 Fed. Reg. 82462-01, 82601 (Dec. 28, 2000) (to be codified at  
16 45 C.F.R. pt. 160 and 164) (“Under HIPAA, individuals do not have a right to court action.”)).

17 While potential future harm can in some instances confer standing, plaintiff must face “a  
18 credible threat of harm” that is “both real and immediate, not conjectural or hypothetical.”  
19 Krottner v. Starbucks Corp., 628 F.3d 1139, 1143 (9th Cir. 2010) (citations and internal quotation  
20 marks omitted) (holding that threat of potential identity theft created by theft of a laptop known to  
21 contain plaintiffs’ unencrypted names, addresses, and social security numbers was sufficient to  
22 confer standing, but that “more conjectural or hypothetical” allegations would make threat “far  
23 less credible”); Clapper, 133 S. Ct. at 1147 (“[A]n injury must be concrete, particularized, and  
24 actual or imminent.”) (citation and internal quotation marks omitted). Plaintiff’s allegations are  
25 based upon a notification which states that it is unknown whether *any* sensitive information is  
26 contained in the laptop and that even if there is sensitive information in the laptop, the scope of  
27 the information, including whether any of plaintiff’s information is contained therein, is  
28 unknown. In other words, whether plaintiff’s sensitive information has been compromised is

1 unknown. Plaintiff cannot state a claim for relief based upon the speculative breach of his  
2 sensitive information. Thus, his claim for violation of his constitutional right to informational  
3 privacy should be dismissed without prejudice for lack of standing. See Fleck & Assoc., Inc. v.  
4 City of Phoenix, 471 F.3d 1100, 1106-07 (9th Cir. 2006) (dismissal for lack of standing is without  
5 prejudice).

#### 6 V. Potential State Law Claims

7 In his declaration, plaintiff asserts that under California Code of Regulations, Title 11,  
8 Section 999.129, all laptops are to be encrypted. (ECF No. 7 at 3.) However, any violation of  
9 state tort law, state regulations, rules and policies of the department of corrections, or other state  
10 law, is not sufficient to state a claim for relief under § 1983. To state a claim under § 1983, there  
11 must be a deprivation of federal Constitutional or statutory rights. See Paul v. Davis, 424 U.S.  
12 693 (1976); Galen v. County of Los Angeles, 477 F.3d 652, 662 (9th Cir. 2007) (“Section 1983  
13 requires [plaintiff] to demonstrate a violation of federal law, not state law.”). Although the court  
14 may exercise supplemental jurisdiction over state law claims, plaintiff must first have a  
15 cognizable claim for relief under federal law. See 28 U.S.C. § 1367.

16 Because plaintiff lacks standing to pursue his federal claims, this court declines to  
17 exercise supplemental jurisdiction over any putative state law claim.<sup>2</sup> Carnegie-Mellon Univ. v.  
18 Cohill, 484 U.S. 343, 350 (1988) (when federal claims are eliminated before trial, district courts  
19 should usually decline to exercise supplemental jurisdiction).

#### 20 VI. No Leave to Amend

21 If the court finds that a complaint should be dismissed for failure to state a claim, the court  
22 has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-  
23 30 (9th Cir. 2000) (*en banc*). Leave to amend should be granted if it appears possible that the  
24 defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see  
25 also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given  
26 leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely

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27 <sup>2</sup> The court takes no position on whether plaintiff would be able to successfully pursue his claims  
28 in state court.

1 clear that the deficiencies of the complaint could not be cured by amendment.”) (citing Noll v.  
2 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear  
3 that a complaint cannot be cured by amendment, the Court may dismiss without leave to amend.  
4 Cato, 70 F.3d at 1005-06.

5 The undersigned finds that, as set forth above, plaintiff lacks standing and that amendment  
6 would be futile because the notification on which plaintiff’s allegations are based establishes only  
7 speculative injury that is neither real nor immediate. Because plaintiff lacks standing to pursue  
8 his federal claims, the court should decline to exercise supplemental jurisdiction over plaintiff’s  
9 state law claims and dismiss the complaint in its entirety.

10 VII. Conclusion

11 The undersigned recommends that the complaint be dismissed without prejudice because  
12 the facts show, at most, that plaintiff’s sensitive information might have been stolen. Thus,  
13 plaintiff’s injury is too speculative to support a claim. Because the undersigned recommends that  
14 plaintiff’s federal claims be dismissed, the court should also decline to exercise supplemental  
15 jurisdiction over plaintiff’s state law claims.


16 IT IS HEREBY ORDERED that plaintiff’s request to proceed in forma pauperis is  
17 granted; and

18 IT IS RECOMMENDED that this action be dismissed without prejudice.

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

26 Dated: December 5, 2016

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE