



1 vehicle. Defendant Lewis informed plaintiff that he had taken steps to mitigate these types of  
2 events by providing information security training for staff and reinforcing information security  
3 practices. Plaintiff alleges that defendant Lewis later informed him that his personal and  
4 confidential information was released to an unauthorized party.

5 Plaintiff alleges that the alleged disclosure of his private information violated the  
6 Fourteenth and Fourth Amendments. Plaintiff also alleges that the alleged disclosure of his  
7 private information violated California Code of Civil Procedure § 56.36 and California Health  
8 and Safety Code § 1280.15.

9 The undersigned observes that the court has received several complaints from inmates  
10 alleging the potential disclosure of confidential information as a result of the theft of the laptop  
11 from the vehicle of a CCHCS employee, identified by plaintiff as defendant Matolon. As far as  
12 the undersigned is aware, in all of the other cases, the inmates alleged that they were informed of  
13 a “potential” breach of information. The inmates were informed that CCHCS did not know  
14 whether any sensitive information was contained in the laptop and, even if it was, it was not  
15 known whose information may have been included.<sup>1</sup>

16 A plaintiff whose personal information has been stolen, but not misused, has standing to  
17 raise a Fourth Amendment claim. See Krottner v. Starbucks Corporation, 628 F.3d 1139, 1140  
18 (9th Cir. 2010) (appellants, whose personal information had been stolen, but not misused, had  
19 suffered an injury sufficient to confer standing under Article III, Section 2 of the Constitution).  
20 As far as the undersigned is aware, all of the other cases filed in this court by inmates regarding  
21 the stolen laptop have been dismissed for lack of standing because no inmate alleged that their  
22 information was actually stolen. Instead, the inmates alleged that CCHCS informed them that  
23 their confidential information may have been stolen, i.e., a “potential” breach of information.  
24 Many inmates attached to their complaints copies of the letters from CCHCS containing this  
25 information.

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27 <sup>1</sup> For example, see Hoffman v. CCHCS, 2: 16-cv-1691 MCE AC P (ECF No. 8 at 3 (the  
28 notification to the plaintiff stated that it was unknown if any sensitive information was contained  
on the laptop).

1 In the amended complaint, plaintiff alleges that defendant Lewis notified him of a  
2 “potential breach” of plaintiff’s personal information. (ECF No. 9 at 11.) Plaintiff goes on to  
3 allege that the laptop contained plaintiff’s confidential, personal information. (Id.)

4 Plaintiff’s claim that defendant Lewis informed him of a “potential” breach is consistent  
5 with the claims raised by inmates in the other, related cases, who alleged that they were informed  
6 that CCHCS did not know whether any sensitive information was contained in the laptop.  
7 However, plaintiff also alleges that the laptop contained his personal information. It is not  
8 entirely clear whether plaintiff is claiming that defendant Lewis informed him of a “potential”  
9 breach of information, i.e., CCHCS informed plaintiff that his confidential information may have  
10 been on the laptop, or whether defendant Lewis informed plaintiff of an “actual” breach, i.e.,  
11 CCHCS informed plaintiff that the laptop contained his personal information. Accordingly, the  
12 amended complaint is dismissed so that plaintiff may clarify this point. Without this information,  
13 the undersigned cannot determine whether plaintiff has standing to raise his Fourth Amendment  
14 claim against defendant Matolon. If plaintiff files a second amended complaint, he should  
15 include the communication he received from defendant Lewis regarding the alleged breach of  
16 information.

17 The undersigned also finds that plaintiff has not stated a potentially colorable Fourth  
18 Amendment claim against defendant Lewis. Plaintiff does not allege how defendant Lewis  
19 caused his personal information to be disclosed. Plaintiff does not allege, for example, that  
20 defendant Lewis participated in defendant Matolon’s removal of the laptop from the prison to his  
21 car, from where it was taken. Plaintiff instead alleges that defendant Lewis informed plaintiff that  
22 he, defendant Lewis, had taken steps to prevent such an event from occurring, such as by  
23 providing information security training.

24 The Civil Rights Act under which this action was filed provides as follows:

25 Every person who, under color of [state law] . . . subjects, or causes  
26 to be subjected, any citizen of the United States . . . to the  
27 deprivation of any rights, privileges, or immunities secured by the  
28 Constitution . . . shall be liable to the party injured in an action at  
law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the

1 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
2 Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983  
3 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no  
4 affirmative link between the incidents of police misconduct and the adoption of any plan or policy  
5 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another  
6 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an  
7 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is  
8 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,  
9 588 F.2d 740, 743 (9th Cir. 1978).

10 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
11 their employees under a theory of respondeat superior and, therefore, when a named defendant  
12 holds a supervisory position, the causal link between him and the claimed constitutional  
13 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)  
14 (no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d  
15 438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.  
16 denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of  
17 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673  
18 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal  
19 participation is insufficient).

20 Because plaintiff has failed to link defendant Lewis to the alleged deprivation, the Fourth  
21 Amendment claim against defendant Lewis is dismissed.

22 Plaintiff alleges that defendants violated the Fourteenth Amendment when they “took  
23 steps to inflict intentional mental and emotional injury” by not protecting his information.

24 The Due Process Clause protects prisoners from being deprived of property without due  
25 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). “It is well established that  
26 negligent conduct is ordinarily not enough to state a claim alleging a denial of liberty or property  
27 under the Fourteenth Amendment. See Doe v. Beard, 2014 WL 3507196, \*6 (C.D. Cal. July 14,  
28 2014), citing Daniels v. Williams, 474 U.S. 327, 330 (1986); Davidson v. Cannon, 474 U.S. 344,

1 347 (1986) (“[T]he Due Process Clause of the Fourteenth Amendment is not implicated by the  
2 lack of due care of an official causing unintended injury to life, liberty or property. In other  
3 words, where a government official is merely negligent in causing the injury, no procedure for  
4 compensation is constitutionally required.”).


5 Plaintiff has pled no facts suggesting that defendants intentionally caused the loss of his  
6 personal information. Instead, the allegations suggest that the alleged loss of his personal  
7 information was a result of negligence. Accordingly, plaintiff does not state a potentially  
8 colorable due process claim.

9 The complaint also alleges violations of California's Confidentiality of Medical  
10 Information Act (“CMIA”) and California Health and Safety Code § 1280.15. The CMIA  
11 authorizes a suit for money damages by “an individual...against a person or entity who has  
12 negligently released confidential information or records concerning him or her....” Cal. Civ. Code  
13 § 56.36(b). Because plaintiff has not stated a cognizable claim for relief under federal law, the  
14 undersigned need not consider plaintiff’s claim pursuant to CMIA.

15 California Health and Safety Code § 1280.15, on the other hand, does not appear to  
16 authorize a private action, but requires notification of any unlawful or unauthorized access of a  
17 patient's medical information and authorizes the State Department of Health Services to issue  
18 administrative penalties for failing to prevent such access. Accordingly, plaintiff has not stated a  
19 potentially colorable claim pursuant to this section.

20 Accordingly, IT IS HEREBY ORDERED that plaintiff’s amended complaint (ECF No. 9)  
21 is dismissed with thirty days to file a second amended complaint; failure to file a second amended  
22 complaint within that time will result in a recommendation of dismissal of this action.

23 Dated: April 10, 2017

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26 KENDALL J. NEWMAN  
27 UNITED STATES MAGISTRATE JUDGE

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