



1 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
2 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
3 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
4 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
5 1915(b)(2).

## 6 **II. Screening Requirement**

7 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any portion  
8 thereof, that may have been paid, the court shall dismiss the case at any time if the court  
9 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be  
10 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

## 11 **III. Pleading Standard**

12 Section 1983 "provides a cause of action for the deprivation of any rights, privileges, or  
13 immunities secured by the Constitution and laws of the United States." Wilder v. Virginia Hosp.  
14 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of  
15 substantive rights, but merely provides a method for vindicating federal rights conferred  
16 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

17 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a  
18 right secured by the Constitution or laws of the United States was violated and (2) that the alleged  
19 violation was committed by a person acting under the color of state law. See West v. Atkins, 487  
20 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

21 A complaint must contain "a short and plain statement of the claim showing that the  
22 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
23 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
24 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
25 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual  
26 matter, accepted as true, to state a claim to relief that is plausible on its face." Id. Facial  
27 plausibility demands more than the mere possibility that a defendant committed misconduct and,  
28 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

1 **IV. Plaintiff's Allegations**

2 This action proceeds against defendants California Corrections Health Care Services  
3 ("CCHSC") and the California Department of Corrections ("CDCR").

4 Plaintiff's allegations may be fairly summarized as follows:

5 On May 16, 2016, plaintiff received a letter titled "Notice of Data Breach." Compl. Ex. A  
6 (ECF No. 1 at 7). Per this letter, an unencrypted laptop was stolen from a CCHCS workforce  
7 member's personal vehicle. Although the laptop was password protected, it was unclear if any  
8 sensitive information was on the laptop. To the extent there was sensitive information, it was  
9 unclear if any of that included plaintiff's information. If plaintiff's information was included, the  
10 information would have included confidential medical, mental health, and custodial information  
11 from between 1996 and 2014.

12 Plaintiff claims his Fourth Amendment rights and rights under California law were  
13 violated by the negligence of CDCR and CCHSC. He seeks damages.

14 **V. Discussion**

15 Plaintiff's complaint must be dismissed for four reasons: First, plaintiff is required to  
16 establish standing for each claim he asserts. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 352  
17 (2006). If a plaintiff has no standing, the court has no subject matter jurisdiction. Nat'l Wildlife  
18 Fed'n v. Adams, 629 F.2d 587, 593 n.11 (9th Cir. 1980) ("[B]efore reaching a decision on the  
19 merits, we [are required to] address the standing issue to determine if we have jurisdiction.").

20 There are three requirements that must be met for a plaintiff to have standing: (1) the  
21 plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which  
22 is both concrete and particularized and actual or imminent; (2) there must be a causal connection  
23 between the injury and the conduct complained of; and (3) it must be likely that the injury will be  
24 redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992);  
25 Wash. Legal Found. v. Legal Found. of Wash., 271 F.3d 835, 847 (9th Cir. 2001) (en banc).

26 Here, plaintiff has not shown he has standing to sue because the complaint demonstrates  
27 only that the theft of the state's laptop has the potential to injure plaintiff. Plaintiff alleges no  
28 actual misuse of his personal information stemming from the theft.

1           Second, the violation of state tort law, state regulations, rules and policies of the CDCR,  
2 or other state law is not sufficient to state a claim for relief under § 1983. To state a claim under §  
3 1983, there must be a deprivation of federal constitutional or statutory rights. See Paul v. Davis,  
4 424 U.S. 693 (1976). Although the court may exercise supplemental jurisdiction over state law  
5 claims, plaintiff must first have a cognizable claim for relief under federal law. See 28 U.S.C. §  
6 1367.

7           Third, the complaint fails to state a claim for violation of the Fourth Amendment, which  
8 governs the reasonableness of government searches and seizures. Here, no government search or  
9 seizure is alleged. Nor does the complaint state a claim under the Due Process Clause, which  
10 protects prisoners from being deprived of property without due process of law. Wolff v.  
11 McDonnell, 418 U.S. 539, 556 (1974). “It is well established that negligent conduct is ordinarily  
12 not enough to state a claim alleging a denial of liberty or property under the Fourteenth  
13 Amendment. See Doe v. Beard, 2014 WL 3507196, \*6 (C.D. Cal. July 14, 2014), citing Daniels  
14 v. Williams, 474 U.S. 327, 330 (1986); Davidson v. Cannon, 474 U.S. 344, 347 (1986) (“[T]he  
15 Due Process Clause of the Fourteenth Amendment is not implicated by the lack of due care of an  
16 official causing unintended injury to life, liberty or property. In other words, where a government  
17 official is merely negligent in causing the injury, no procedure for compensation is  
18 constitutionally required.”).

19           Finally, the Eleventh Amendment serves as a jurisdictional bar to suits brought by private  
20 parties against a state or state agency unless the state or the agency consents to such suit. See  
21 Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978)( per curiam);  
22 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). Because the State of California  
23 has not consented to suit, plaintiff’s claims against CCHCS and CDCR must be dismissed.

24           For these reasons, the complaint fails to state a cognizable claim under § 1983.

## 25 **VI. Leave to Amend**

26           If the court finds that a complaint should be dismissed for failure to state a claim, the court  
27 has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-  
28 30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the

1 defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see  
2 also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given  
3 leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely  
4 clear that the deficiencies of the complaint could not be cured by amendment.”) (citing Noll v.  
5 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear  
6 that a complaint cannot be cured by amendment, the court may dismiss without leave to amend.  
7 Cato, 70 F.3d at 1005-06.

8 The undersigned finds that, as set forth above, plaintiff lacks standing and his allegations  
9 show only speculative injury. Because the complaint does not state a cognizable federal claim, the  
10 court lacks supplemental jurisdiction over any state law claims. As it appears amendment would  
11 be futile, the undersigned will recommend that this action be dismissed without leave to amend.

## 12 **VI. Conclusion**

13 Accordingly, it is HEREBY ORDERED that plaintiff’s in forma pauperis application  
14 (ECF No. 2) is granted. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this  
15 action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28  
16 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to  
17 the Director of the California Department of Corrections and Rehabilitation filed concurrently  
18 herewith; and

19 IT IS HEREBY RECOMMENDED that the complaint be dismissed without leave to  
20 amend.

21 These findings and recommendations are submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
23 after being served with these findings and recommendations, plaintiff may file written objections  
24 with the court. Such a document should be captioned “Objections to Magistrate Judge's Findings

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1 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
2 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
3 (9th Cir. 1991).

4 Dated: March 31, 2017

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6   
7 DEBORAH BARNES  
8 UNITED STATES MAGISTRATE JUDGE

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