

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEONARD J. ROSS, II,
Plaintiff,
v.
CALIFORNIA HEALTH CARE
SERVICES, et al.,
Defendants.

No. 2:17-cv-0202 KJN P

ORDER

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 consented to proceed before the undersigned for all purposes. See 28 U.S.C. § 636(c). On March 10, 2017, plaintiff provided a signature page which was incorporated into his complaint. (ECF No. 6.)

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 summarily dismisses the complaint.

///

1 II. Screening

2 The court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
4 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
9 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
10 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
11 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
12 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
13 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
14 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
15 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at
16 1227.

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

1 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
2 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

3 III. Complaint

4 Plaintiff alleges that the California Health Care Services (“CHCS”) and the California
5 Department of Corrections and Rehabilitation (“CDCR”) conspired to violate plaintiff’s
6 constitutional rights by allowing the use of unencrypted laptops. Plaintiff alleges that the law
7 requires anyone handling medical records to safeguard and protect such confidential information.
8 Plaintiff alleges a laptop was left unattended in a personal vehicle from which it was stolen.
9 Attached to the complaint is a letter from CHCS notifying plaintiff of this “potential breach.”
10 The letter states that it is unknown if “any sensitive information was contained in the laptop” and
11 that the laptop was password protected. Plaintiff asserts a violation of his Sixth Amendment
12 right to be secure in his information. He seeks damages as relief.

13 IV. Named Defendants

14 Plaintiff fails to name a proper defendant. State agencies, such as CDCR and CCHCS, are
15 immune from suit under the Eleventh Amendment. See Will v. Michigan Dep’t of State Police,
16 491 U.S. 58, 66 (1989); Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam)
17 (holding that prisoner’s Eighth Amendment claims against CDCR for damages and injunctive
18 relief were barred by Eleventh Amendment immunity); Pennhurst State Sch. & Hosp. v.
19 Halderman, 465 U.S. 89, 100 (1984) (Eleventh Amendment immunity extends to state agencies);
20 see also Hafer v. Melo, 502 U.S. 21, 30 (1991) (clarifying that Eleventh Amendment does not bar
21 suits against state officials sued in their individual capacities, nor does it bar suits for prospective
22 injunctive relief against state officials sued in their official capacities).

23 However, assuming that plaintiff could substitute appropriate individuals as defendants,
24 the speculative allegations of the complaint still fail to establish that plaintiff has standing
25 because he cannot show an injury-in-fact.

26 V. Standing

27 Article III of the Constitution limits the jurisdiction of federal courts to actual “Cases” and
28 “Controversies.” U.S. Const. art. III, § 2. “One element of the case-or-controversy requirement’

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

10 “HIPAA^[1] itself does not provide for a private right of action.” Webb v. Smart Document
11 Solutions, LLC, 499 F.3d 1078, 1082 (9th Cir. 2007) (citing Standards for Privacy of Individually
12 Identifiable Health Information, 65 Fed. Reg. 82462-01, 82601 (Dec. 28, 2000) (to be codified at
13 45 C.F.R. pt. 160 and 164) (“Under HIPAA, individuals do not have a right to court action.”)).

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

28 ¹ Health Insurance Portability and Accountability Act of 1996.

1 sensitive information. Thus, his claim for violation of his constitutional right to informational
2 privacy is dismissed without prejudice for lack of standing. See Fleck & Assoc., Inc. v. City of
3 Phoenix, 471 F.3d 1100, 1106-07 (9th Cir. 2006) (dismissal for lack of standing is without
4 prejudice).

5 VI. No Leave to Amend

6 If the court finds that a complaint should be dismissed for failure to state a claim, the court
7 has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-
8 30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the
9 defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see
10 also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given
11 leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely
12 clear that the deficiencies of the complaint could not be cured by amendment.”) (citing Noll v.
13 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear
14 that a complaint cannot be cured by amendment, the Court may dismiss without leave to amend.
15 Cato, 70 F.3d at 1005-06.


16 The undersigned finds that, as set forth above, plaintiff lacks standing to bring his federal
17 claims, and that amendment would be futile because the notification on which plaintiff’s
18 allegations are based establishes only speculative injury that is not real or immediate. Because
19 plaintiff lacks standing to pursue his federal claims, the court declines to exercise supplemental
20 jurisdiction over plaintiff’s state law claims and dismisses the complaint without prejudice.

21 VIII. Conclusion

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. Plaintiff’s request to proceed in forma pauperis is granted; and
24 2. This action is dismissed without prejudice.

25 Dated: April 14, 2017

26 
27 _____
28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

ross0202.laptop