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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIJUE McGHEE,  
Plaintiff,  
v.  
SCOTT KERNAN,  
Defendant.

No. 2:17-cv-0383 JAM CKD P

ORDER &  
FINDINGS AND RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis and has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).

II. Screening Standard

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

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
9 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
10 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
12 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
13 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
14 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
15 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
16 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
17 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),  
18 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
19 U.S. 232, 236 (1974).

### 20 III. Discussion

21 Plaintiff commenced this action on February 21, 2017. (ECF No. 1.) On March 14,  
22 2017, before the original complaint was screened, plaintiff filed an amended complaint (ECF No.  
23 9), which supersedes the original complaint.

24 Like numerous other prisoner actions in this district, plaintiff’s complaint concerns a May  
25 20, 2016 “Notice of Data Breach,” which informed inmates that a password-protected state  
26 laptop, possibly containing inmates’ personal information, was stolen from a prison staffer’s  
27 vehicle. (See ECF No. 1 at 19.) Plaintiff claims this incident has put him at risk of having his  
28 confidential information misused, and that prison officials responsible for the incident have

1 violated his legal rights.

2 Plaintiff is required to establish standing for each claim he asserts. DaimlerChrysler Corp.  
3 v. Cuno, 547 U.S. 332, 352 (2006). If a plaintiff has no standing, the court has no subject matter  
4 jurisdiction. Nat'l Wildlife Fed'n v. Adams, 629 F.2d 587, 593 n. 11 (9th Cir. 1980) (“[B]efore  
5 reaching a decision on the merits, we [are required to] address the standing issue to determine if  
6 we have jurisdiction.”). There are three requirements that must be met for a plaintiff to have  
7 standing: (1) the plaintiff must have suffered an “injury in fact”—an invasion of a legally  
8 protected interest which is both concrete and particularized and actual or imminent; (2) there must  
9 be a causal connection between the injury and the conduct complained of; and (3) it must be  
10 likely that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife,  
11 504 U.S. 555, 560-61 (1992); Wash. Legal Found. v. Legal Found. of Wash., 271 F.3d 835, 847  
12 (9th Cir. 2001) (en banc). Here, plaintiff has not shown he has standing to sue because the  
13 complaint demonstrates only that the theft of the state’s laptop has the potential to injure plaintiff.  
14 Plaintiff alleges no actual misuse of his personal information stemming from the theft.

15 Insofar as plaintiff alleges that prison officials were negligent, mere negligence does not  
16 amount to a cause of action under § 1983.

17 For these reasons, the complaint fails to state a cognizable claim.

#### 18 IV. No Leave to Amend

19 If the court finds that a complaint should be dismissed for failure to state a claim, the court  
20 has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-  
21 30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the  
22 defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see  
23 also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given  
24 leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely  
25 clear that the deficiencies of the complaint could not be cured by amendment.”) (citing Noll v.  
26 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear  
27 that a complaint cannot be cured by amendment, the court may dismiss without leave to amend.  
28 Cato, 70 F.3d at 1005-06.

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

6           In accordance with the above, IT IS HEREBY ORDERED that plaintiff's request to  
7 proceed in forma pauperis is granted.

8           IT IS HEREBY RECOMMENDED that the complaint be dismissed without prejudice and  
9 this case closed.

10           These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
12 after being served with these findings and recommendations, plaintiff may file written objections  
13 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
14 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
15 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
16 (9th Cir. 1991).

17 Dated: March 22, 2017

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20 CAROLYN K. DELANEY  
21 UNITED STATES MAGISTRATE JUDGE  
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