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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT L. SIMMONS,
Plaintiff,
v.
SCOTT KERNAN,
Defendant.

No. 2:17-cv-0629 CKD P

ORDER AND
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). However, the court will not assess a filing fee at this time. Instead, the undersigned will recommend summary dismissal of the complaint.

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

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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 where 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); Franklin, 745 F.2d at 1227.

10 In order to avoid dismissal for failure to state a claim a complaint must contain more than
11 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
12 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
13 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
14 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
15 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
16 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
17 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
18 at 678. When considering whether a complaint states a claim upon which relief can be granted,
19 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and
20 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
21 U.S. 232, 236 (1974).

22 III. Discussion

23 In his complaint, plaintiff alleges a laptop computer was stolen from an unidentified
24 defendant and that the laptop contained “personal and confidential identification numbers and
25 information” pertaining to plaintiff. Plaintiff references a letter from California Correctional
26 Health Care Services informing plaintiff of a “potential breach” of his information on February
27 25, 2016, when an unencrypted laptop was stolen from the vehicle of one of their employees.

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

14 Also, the complaint fails to state a claim for relief under federal law. The Fourth
15 Amendment governs the reasonableness of government searches and seizures. Here, no
16 government search or seizure is alleged. The Due Process Clause of the Fourteenth Amendment
17 protects prisoners from being deprived of property without due process of law. Wolff v.
18 McDonnell, 418 U.S. 539, 556 (1974). However, “[i]t is well established that negligent conduct
19 is ordinarily not enough to state a claim alleging a denial of liberty or property under the
20 Fourteenth Amendment. See Doe v. Beard, 2014 WL 3507196, *6 (C.D. Cal. July 14, 2014),
21 citing Daniels v. Williams, 474 U.S. 327, 330 (1986); Davidson v. Cannon, 474 U.S. 344, 347
22 (1986) (“[T]he Due Process Clause of the Fourteenth Amendment is not implicated by the lack of
23 due care of an official causing unintended injury to life, liberty or property. In other words, where
24 a government official is merely negligent in causing the injury, no procedure for compensation is
25 constitutionally required.”).

26 Plaintiff asserts he is not satisfied with the resolution of certain matters he pursued
27 through his prison’s grievance process with respect to the stolen laptop. However, plaintiff does
28 not state a valid claim for violation of due process under the Fourteenth Amendment as plaintiff

1 suggests because plaintiff has no constitutional right to a prison grievance procedure at all and
2 therefore no right to a particular outcome. *Ramirez v. Galazza*, 334 F.3d 850, 860 (9th Cir.
3 2003).

4 Because plaintiff fails to state a claim upon which relief can be granted under federal law,
5 the court does not have jurisdiction over any claims arising under California law. 28 U.S.C. §
6 1330 et seq.

7 IV. No Leave to Amend

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

18 The undersigned finds that, as set forth above, plaintiff lacks standing and plaintiff’s
19 allegations show only speculative injury. Furthermore, the court does not believe any addition of
20 facts to plaintiff’s complaint could save the claims he presents. As it appears amendment would
21 be futile, the court will recommend dismissal of plaintiff’s complaint without leave to amend.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 6) is granted; and
24 2. The Clerk of the Court assign a district court judge to this case.

25 IT IS HEREBY RECOMMENDED that:

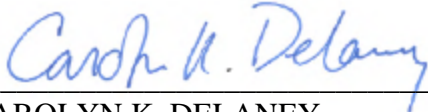
- 26 1. Plaintiff’s complaint be dismissed; and
27 2. This case be closed.

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

Dated: April 5, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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