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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. CRUMMER  
Plaintiff,  
v.  
J. LEWIS,  
Defendant.

No. 2:17-cv-1559-EFB P

ORDER GRANTING IFP AND  
RECOMMENDATION OF DISMISSAL  
PURSUANT TO 28 U.S.C. § 1915A

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, seeks leave to proceed in forma pauperis.

**I. Application to Proceed In Forma Pauperis**

Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

**II. Screening Requirement**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which

1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
2 relief.” *Id.* § 1915A(b).

3 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
4 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
5 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
6 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
7 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

8 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
9 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
10 U.S. 662, 679 (2009).

11 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
12 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
13 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
14 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
15 678.

16 Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
17 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
18 content that allows the court to draw the reasonable inference that the defendant is liable for the  
19 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a  
20 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
21 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the  
22 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

### 23 **III. Screening Order**

24 Plaintiff’s complaint (ECF No. 1) alleges that the California Correctional Health Care  
25 Services (“CCHCS”) notified plaintiff by letter of a “potential breach” of his personal information  
26 and medical records when an unencrypted laptop was stolen from the vehicle of a CCHCS  
27 employee. ECF No. 1 at 3, Ex A. Plaintiff fears that the disclosure of his personal information  
28 “can be exploited, manipulated, and used fraudulently.” *Id.* at 4. Plaintiff claims he filed an

1 administrative appeal regarding the potential breach but no relief has been provided to him. *Id.* at  
2 3. Plaintiff lists J. Lewis as the defendant but does not allege what Lewis did or failed to do, to  
3 violate plaintiff’s rights. An exhibit to the complaint reveals only that Lewis issued a response to  
4 plaintiff’s appeal at the Director’s Level of review. *Id.* Ex. B. As set forth below, the complaint  
5 must be dismissed because it demonstrates a lack of standing and otherwise fails to state a  
6 cognizable claim under 42 U.S.C § 1983.

7 Plaintiff is required to establish standing for each claim he asserts. *DaimlerChrysler*  
8 *Corp. v. Cuno*, 547 U.S. 332, 352 (2006). If a plaintiff has no standing, the court has no subject  
9 matter jurisdiction. *Nat’l Wildlife Fed’n v. Adams*, 629 F.2d 587, 593 n. 11 (9th Cir. 1980)  
10 (“[B]efore reaching a decision on the merits, we [are required to] address the standing issue to  
11 determine if we have jurisdiction.”). There are three requirements that must be met for a plaintiff  
12 to have standing: (1) the plaintiff must have suffered an “injury in fact”—an invasion of a legally  
13 protected interest which is both concrete and particularized and actual or imminent; (2) there must  
14 be a causal connection between the injury and the conduct complained of; and (3) it must be  
15 likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*,  
16 504 U.S. 555, 560-61 (1992); *Wash. Legal Found. v. Legal Found. of Wash.*, 271 F.3d 835, 847  
17 (9th Cir. 2001) (en banc).

18 The constitutional right to informational privacy extends to medical information.  
19 *Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th Cir. 1998) (“The  
20 constitutionally protected privacy interest in avoiding disclosure of personal matters clearly  
21 encompasses medical information and its confidentiality.”) (citing *Doe v. Attorney Gen. of the*  
22 *United States*, 941 F.2d 780, 795 (9th Cir. 1991)). In this case, however, the disclosure of  
23 plaintiff’s medical information, and therefore any injury, is entirely speculative. Plaintiff has not  
24 shown he has actual standing to sue because the complaint demonstrates only a “potential” breach  
25 of plaintiff’s personal information. It is unknown whether the stolen laptop contained any  
26 sensitive information at all and even if it did, plaintiff alleges no actual misuse of such  
27 information. Plaintiff cannot state a claim for relief based upon the speculative breach of his  
28 sensitive information. Any claim for violation of his constitutional right to informational privacy

1 should be dismissed without prejudice for lack of standing. *See Fleck & Assocs., Inc. v. City of*  
2 *Phoenix*, 471 F.3d 1100, 1106-07 (9th Cir. 2006) (dismissal for lack of standing is without  
3 prejudice).

4 In addition, plaintiff fails to state a claim for relief pursuant to § 1983. To state a claim  
5 under § 1983, a plaintiff must allege: (1) the violation of a federal constitutional or statutory right;  
6 and (2) that the violation was committed by a person acting under the color of state law. *See West*  
7 *v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). The  
8 complaint does not identify any violation of a federal constitutional or statutory right.<sup>1</sup> There are  
9 also no allegations showing how defendant Lewis caused or participated in any violation of  
10 plaintiff's rights. *See Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects  
11 another to the deprivation of a constitutional right if he does an act, participates in another's act or  
12 omits to perform an act he is legally required to do that causes the alleged deprivation).  
13 Moreover, plaintiff fails to state a cognizable claim based upon the allegation that he has not  
14 received adequate relief through the administrative appeals process. Inmates have no standalone  
15 rights with respect to the administrative grievance process. *Ramirez v. Galaza*, 334 F.3d 850, 860  
16 (9th Cir. 2003); *Williams v. Cate*, No. 1:09-cv-00468-0WW-YNP PC, 2009 U.S. Dist. LEXIS  
17 107920, 2009 WL 3789597, at \*6 (E.D. Cal. Nov. 10, 2009) ("Plaintiff has no protected liberty  
18 interest in the vindication of his administrative claims.").

19 Plaintiff alleges that the failure to protect his private information was "reckless and  
20 dangerous." ECF No. 1 at 4. Even construing the complaint liberally as asserting a claim under  
21 the Due Process Clause, which protects prisoners from being deprived of property without due  
22 process of law, the allegations would not support such a claim. "It is well established that  
23 negligent conduct is ordinarily not enough to state a claim alleging a denial of liberty or property  
24 under the Fourteenth Amendment." *See Doe v. Beard*, 2014 U.S. Dist. LEXIS 95643, 2014 WL  
25 3507196, \*6 (C.D. Cal. July 14, 2014), *citing Daniels v. Williams*, 474 U.S. 327, 330 (1986);

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26 <sup>1</sup> Plaintiff does claim that there has been a "breach of the Health Information Portability  
27 and Accountability Act" (HIPAA). ECF No. 1 at 4. HIPAA, however, does not provide a private  
28 right of action. *See Webb v. Smart Document Solutions, LLC*, 499 F.3d 1078, 1081 (9th Cir.  
2007). Thus any claim based a violation of HIPAA must be dismissed.

1 *Davidson v. Cannon*, 474 U.S. 344, 347 (1986) (“[T]he Due Process Clause of the Fourteenth  
2 Amendment is not implicated by the lack of due care of an official causing unintended injury to  
3 life, liberty or property. In other words, where a government official is merely negligent in  
4 causing the injury, no procedure for compensation is constitutionally required.”).

5 For these reasons, the complaint demonstrates that plaintiff has no standing to pursue a  
6 federal claim and otherwise fails to demonstrate a violation of plaintiff’s federal rights.

7 Leave to amend in this case would be futile, as the complaint reveals that there is no  
8 actual or concrete injury to plaintiff. Because these deficiencies cannot be cured by further  
9 amendment, the complaint must be dismissed without leave to amend. *Silva v. Di Vittorio*, 658  
10 F.3d 1090, 1105 (9th Cir. 2011) (“Dismissal of a pro se complaint without leave to amend is  
11 proper only if it is absolutely clear that the deficiencies of the complaint could not be cured by  
12 amendment.” (internal quotation marks omitted)); *Doe v. United States*, 58 F.3d 494, 497 (9th  
13 Cir. 1995) (“[A] district court should grant leave to amend even if no request to amend the  
14 pleading was made, unless it determines that the pleading could not be cured by the allegation of  
15 other facts.”). Further, the dismissal is without prejudice should plaintiff’s claims ever ripen to an  
16 actual case or controversy arising from an injury due to an actual disclosure of any of his  
17 information.

#### 18 **IV. Order and Recommendation**

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is granted.
- 21 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in  
22 accordance with the notice to the California Department of Corrections and Rehabilitation  
23 filed concurrently herewith.
- 24 3. The Clerk of the Court shall randomly assign a United States District Judge to this action.

25 Further, IT IS HEREBY RECOMMENDED that this action be dismissed without  
26 prejudice pursuant to 28 U.S.C. § 1915A and the Clerk be directed to close the case.

27 These findings and recommendations are submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written  
2 objections with the court and serve a copy on all parties. Such a document should be captioned  
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
4 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
5 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 DATED: May 15, 2018.

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9 EDMUND F. BRENNAN  
10 UNITED STATES MAGISTRATE JUDGE  
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