

1 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
2 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
3 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
4 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
5 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at
6 1227.

7 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
8 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
9 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
10 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
11 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a
12 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
13 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.
14 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the
15 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.
16 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
17 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
18 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
19 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
20 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

21 *Allegations in Amended Complaint*

22 Named as defendants are Dian Paterson, Terry Baker, Sandra Gibson, Marthy Giggs,
23 Veronica Williams, Cindy Paterson, Debbie Paterson, Cindy Williamson and Dian Williamson.
24 (ECF No. 14 at 1.) In the caption of the amended complaint, plaintiff alleges legal claims of
25 embezzlement, defalcation, extortion and racketeering fraud. (Id.) Plaintiff alleges that
26 defendants Dian Paterson and Terry Baker conspired to steal \$1,000,000 of plaintiff’s trust fund
27 by “misleading 5 alias names as the same names as Dian’s that they utilize to abstract the money
28 to go and b[uy] some meth.” (Id. at 2.) Plaintiff alleges that defendants admitted the truth on

1 camera. (Id.) Plaintiff alleges that defendants committed the crime of embezzlement, conspiracy
2 and racketeering fraud. (Id.) Plaintiff alleges that the money was withdrawn from the Credit
3 Union Bank for a check that was signed off by Dian, plaintiff's dad's trademark and Sergeant
4 Williamson. (Id.)

5 Plaintiff alleges that defendants Terry Baker and Dian also tried to "abstract" \$12,000,000
6 from Bank of America a second time. (Id. at 3.) Plaintiff alleges that Dian confessed that she
7 forged a check. (Id.) Plaintiff also alleges that Ricky Mandeville (who plaintiff identifies as
8 another defendant) and defendant Dian Paterson tried to get the bankrupt county shut down in
9 Sacramento. (Id. at 4.) Plaintiff alleges that defendants Dian Paterson and Ricky Mandeville
10 tried to get the county jail shut down in order to scam money for themselves. (Id.)

11 *Discussion*

12 Plaintiff brings claims for embezzlement, defalcation, extortion and racketeering fraud.
13 Plaintiff does not identify any federal statute or right that provides a private cause of action for
14 embezzlement, aka defalcation, or extortion. Accordingly, plaintiff's embezzlement and
15 extortion claims should be dismissed. See Samzelius v. Bank of America, 2012 WL 12949683,
16 at *9 (N.D. Cal. Oct. 9, 2012) ("Extortion is a federal criminal offense, and there is no private
17 right of action for extortion."); Retanan v. California Department of Corrections and
18 Rehabilitation, 2012 WL 1833888, at *5 (E.D. Cal. May 18, 2012) (there is no private right of
19 action under the federal embezzlement statute).

20 The Racketeer Influenced and Corrupt Organizations Act ("RICO") provides for a civil
21 remedy. Plaintiff appears to claim that defendants violated the RICO statute by fraudulently
22 obtaining money from plaintiff's prison trust account, his Credit Union Bank account and
23 possibly his Bank of America account. However, for the reasons stated herein, the undersigned
24 finds that plaintiff has not alleged facts that support a civil RICO claim.

25 A civil RICO claim requires allegations establishing the following: "(1) conduct (2) of an
26 enterprise (3) through a pattern (4) of racketeering activity (known as predicate acts) (5) causing
27 injury to plaintiff's business or property." Living Designs, Inc. v. E.I. Dupont de Nemours and
28 Co., 431 F.3d 353, 361 (9th Cir. 2005).

1 The undersigned finds that plaintiff has not plead sufficient facts demonstrating the
2 existence of an enterprise. “To show the existence of an enterprise under the second element,
3 plaintiffs must plead that the enterprise has (A) a common purpose, (B) a structure or
4 organization, and (C) longevity necessary to accomplish the purpose.” Eclectic Properties E.,
5 LLC v. Marcus & Millichap Co., 751 F.3d 990, 997 (9th Cir. 2014). Plaintiff fails to plead the
6 existence of an enterprise with a common purpose, a structure or organization and longevity
7 necessary to accomplish the purpose.

8 The undersigned also finds that plaintiff’s allegations regarding predicate acts, i.e., the
9 alleged fraud by defendants to obtain money from plaintiff’s accounts, are vague and conclusory.
10 Plaintiff does not specifically allege when, where or how the alleged fraud occurred. Edwards v.
11 Marin Park, Inc., 356 F.3d 1058, 1066 (9th Cir. 2004) (applying heightened pleading standard of
12 Federal Rule of Civil Procedure 9 to RICO predicate acts of fraud; complaint must state the time,
13 place, and specific content of the false representations as well as the identities of the parties to the
14 misrepresentation); Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir.1988)
15 (“The allegations of predicate acts in the complaint concerning those elements of RICO are
16 entirely general; no specifics of time, place, or nature of the alleged communications are pleaded.
17 This is a fatal defect under Fed. R. Civ. P. 9(b), which requires that circumstances constituting
18 fraud be stated with particularity.”).

19 Plaintiff may be seeking to bring suit for violations of criminal statutes, although plaintiff
20 fails to identify any specific criminal statutes allegedly violated. Generally criminal statutes do
21 not provide a private cause of action. “[T]he fact that a federal statute has been violated and some
22 person harmed does not automatically give rise to a private cause of action in favor of that
23 person.” Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979) (quoting Cannon v.
24 University of Chicago, 441 U.S. 677, 688 (1979). Any party asserting a private right of action
25 under a criminal statute bears the burden of establishing its existence. Bailey v. Clarke, 2012 WL
26 6720628, at *2 (S.D. Cal. Dec.21, 2012) (citing Stupy v. United States Postal Serv., 951 F.2d
27 1079, 1081 (9th Cir.1991)). Plaintiff fails to meet his burden of asserting a private right of action
28 under any criminal statute because he fails to identify any criminal statute allegedly violated.

1 Plaintiff also alleges that defendants Dian Paterson and Ricky Mandeville tried to get the
2 county jail shut down in order to scam money for themselves. The legal grounds of this claim are
3 unclear. In addition, plaintiff's claim that defendants Paterson and Mandeville tried to "scam
4 money for themselves" is vague and conclusory as plaintiff alleges no specific facts supporting
5 this claim. For all of these reasons, the undersigned recommends dismissal of this claim against
6 defendants Paterson and Mandeville. Fed. R. Civ. P. 8(a)(2).

7 In conclusion, the undersigned recommends that this action be dismissed because it is
8 clear that plaintiff cannot cure the pleadings defects discussed above. Akhtar v. Mesa, 698 F.3d
9 1202, 1212 (9th Cir. 2012) ("A district court should not dismiss a pro se complaint without leave
10 to amend unless 'it is absolutely clear that the deficiencies of the complaint could not be cured by
11 amendment.'") (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir. 1998) (per
12 curiam)).

13 Motion for Emergency Transfer

14 Plaintiff requests an emergency transfer to the federal hospital for the criminally insane.
15 (ECF No. 13.) The undersigned construes plaintiff's request as a motion for injunctive relief.

16 The grounds of plaintiff's motion for emergency transfer are unclear. Plaintiff makes
17 allegations regarding a "severe brain tumor impairment." However, it is unclear whether
18 plaintiff claims that plaintiff, himself, or defendant Dian Paterson suffers from the brain tumor.
19 Plaintiff also appears to seek a scan of defendant Paterson's brain.

20 To obtain preliminary injunctive relief, plaintiff must show "that he is likely to succeed on
21 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
22 balance of equities tips in his favor, and that an injunction is in the public interest." Winter v.
23 Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008).

24 Because the undersigned recommends dismissal of this action for the reasons discussed
25 above, the undersigned finds that plaintiff has not demonstrated a likelihood of success on the
26 merits of this action. For this reason, plaintiff's motion for emergency transfer, construed as a
27 motion for injunctive relief, should be denied.

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