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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN D	DISTRICT OF CALIFORNIA
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11	JON HUMES,	No. 2:18-cv-0115 CKD P
12	Plaintiff,	
13	v.	ORDER AND
14	JEFF SESSIONS, et al.	FINDINGS AND RECOMMENDATIONS
15	Defendants.	
16		
17	Plaintiff is a Sacramento County Jail prisoner proceeding pro se. On April 13, 2018, the	
18	court screened plaintiff's complaint as the court is required to do under 28 U.S.C. § 1915A(a) and	
19	found as follows:	
20	In his complaint, plaintiff seeks the overturning of federal criminal	
21	laws concerning possession of marijuana. However, plaintiff fails to present any coherent argument as to why any federal law concerning	
22	possession or sale of marijuana violates the United States Constitution. Accordingly, plaintiff's complaint fails to state a claim	
23	upon which relief can be granted. Furthermore, plaintiff fails to point to anything suggesting he has standing to challenge any federal	
24	marijuana law. To satisfy the requirements of standing, a plaintiff must have suffered, or be threatened with "an actual injury traceable	
25	to the defendant and likely to be redressed by a favorable judicial decision." <u>Mujahid v. Daniels</u> , 413 F.3d 991, 994 (9th Cir. 2005).	
26 27	For these reasons, plaintiff's complaint will be dismissed. Plaintiff will be given one opportunity to state an actionable claim in an amended complaint	
28	amended complaint Plaintiff has now filed an amended complaint.	
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1 As the court has already informed plaintiff, pursuant to 28 U.S.C. § 1915A(a), the court 2 must dismiss a complaint or portion thereof if a prisoner has raised claims that are legally 3 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek 4 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). 5 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 6 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th 7 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an 8 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 9 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 10 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th 11 Cir. 1989); Franklin, 745 F.2d at 1227. 12 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon 13 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in 14 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467 15 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt 16 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under 17 this standard, the court must accept as true the allegations of the complaint in question, Hospital 18 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light 19 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v. 20 McKeithen, 395 U.S. 411, 421 (1969). 21 In his amended complaint, plaintiff again asks that federal criminal laws concerning use 22 and sale of marijuana be repealed. He also seeks damages for monetary harm suffered by him 23 because of those laws. 24 Laws related to the regulation of cannabis were created by Congress pursuant to the 25 Controlled Substances Act, 21 U.S.C. § 811. The Supreme Court has held that the creation of 26 laws related to the criminalization of cannabis possession and sale were a valid exercise of 27 Congress's authority under the Commerce Clause found in Article I, Section 8, Clause 3 of the 28 Constitution. See Gonzales v. Raich, 545 U.S. 1, 22 (2005). As for damages, members of

1	Congress have absolute immunity "with respect to any speech, debate, vote, report or action done	
2	in session." Scheuer v. Rhodes, 416 U.S. 232, 240 (1974).	
3	For these reasons, plaintiff has no claim for injunctive relief or for damages arising from	
4	the laws related to possession and sale of cannabis found in or emanating from the Controlled	
5	Substances Act. Plaintiff has again failed to state a claim upon which relief can be granted in this	
6	court. Plaintiff will not be given leave to attempt to cure the defects in his pleadings a second	
7	time, as that appears futile.	
8	In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court	
9	assign a district court judge to this case.	
10	IT IS HEREBY RECOMMENDED that:	
11	1. Plaintiff's amended complaint be dismissed;	
12	2. This case be closed; and	
13	3. This case be identified as a "strike" for purposes of 28 U.S.C. § 1915(g).	
14	These findings and recommendations are submitted to the United States District Judge	
15	assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days	
16	after being served with these findings and recommendations, plaintiff may file written objections.	
17	Such a document should be captioned "Objections to Magistrate Judge's Findings and	
18	Recommendations." Plaintiff is advised that failure to file objections within the specified time	
19	may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th	
20	Cir. 1991).	
21	Dated: June 27, 2018 Carph U. Delany	
22	CAROLYN K. DELANEY	
23	UNITED STATES MAGISTRATE JUDGE	
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