



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22 and sale of marijuana be repealed.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)(1). 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

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23 \_\_\_\_\_  
24 CAROLYN K. DELANEY  
25 UNITED STATES MAGISTRATE JUDGE