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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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| JON HUMES, Plaintiff, v. JEFF SESSIONS, Defendant. | No. 2:18-cv-0115 CKD P <u>ORDER</u> |
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Plaintiff is a Sacramento County Jail 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. Since plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than
14 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
17 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
18 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
21 at 678. When considering whether a complaint states a claim upon which relief can be granted,
22 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
23 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
24 U.S. 232, 236 (1974).

25 In his complaint, seeks the overturning of federal criminal laws concerning possession of
26 marijuana. However, plaintiff fails to present any coherent argument as to why any federal law
27 concerning possession or sale of marijuana violates the United States Constitution. Accordingly,
28 plaintiff’s complaint fails to state a claim upon which relief can be granted. Furthermore, plaintiff

1 fails to point to anything suggesting he has standing to challenge any federal marijuana law. To
2 satisfy the requirements of standing, a plaintiff must have suffered, or be threatened with “an
3 actual injury traceable to the defendant and likely to be redressed by a favorable judicial
4 decision.” Mujahid v. Daniels, 413 F.3d 991, 994 (9th Cir. 2005).

5 For these reasons, plaintiff’s complaint will be dismissed. Plaintiff will be given one
6 opportunity to state an actionable claim in an amended complaint. Plaintiff is informed that the
7 court cannot refer to a prior pleading in order to make plaintiff’s amended complaint complete.
8 Local Rule 220 requires that an amended complaint be complete in itself without reference to any
9 prior pleading. This is because, as a general rule, an amended complaint supersedes the original
10 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
11 complaint, the original pleading no longer serves any function in the case. Therefore, in an
12 amended complaint, as in an original complaint, each claim and the involvement of each
13 defendant must be sufficiently alleged.

14 Finally, the court notes that plaintiff has filed a motion asking that the court waive the
15 filing fee for this case and provide plaintiff with \$500 per month to “facilitate discovery and other
16 advances.” Both requests will be denied as prisoners are required to pay filing fees in full for
17 civil actions they file, see 28 U.S.C. § 1915(b)(1), and the court generally has no authority to
18 provide funds to pro se litigants for discovery or other litigation expenses.

19 In accordance with the above, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 21 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
22 shall be collected and paid in accordance with this court’s order to the Sacramento County Sheriff
23 filed concurrently herewith.
- 24 3. Plaintiff’s complaint is dismissed.
- 25 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
26 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
27 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
28 number assigned this case and must be labeled “Amended Complaint.” Failure to file an

1 amended complaint in accordance with this order will result in a recommendation that this action
2 be dismissed.

3 5. Plaintiff's "motion to dismiss filing fees" (ECF No. 4) is denied.

4 6. Plaintiff's "motion for funds" (ECF No. 5) is denied.

5 Dated: April 13, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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