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**NOT FOR PUBLICATION**

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 EUREKA DIVISION

JAMES A. JENKINS,

No. 1:14-CV-3522 (NJV)

Plaintiff,

ORDER RE MOTION TO DISMISS  
 SECOND AMENDED COMPLAINT  
 (Doc. 38.)

v.

KATHLEEN MICKS, ACTING  
 DISTRICT ATTORNEY, et al.,

Defendants.

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This is a civil rights action arising out of the seizure of marijuana, by officers of the Del Norte Sheriff's Office, that is alleged to have been authorized for medical use under the California Compassionate Use Act. The case is currently before the court on Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint. The Second Amended Complaint was received by the court on December 15, 2014, and Defendants filed their Motion to Dismiss on December 30, 2014. (Docs. 37, 38.) Plaintiff filed objections on January 14, 2015, to which Defendants filed a reply on January 20, 2015. (Docs. 41, 42.) The court entered an order on January 30, 2015, vacating the hearing on Defendants' motion and taking the matter under submission on the papers. (Doc. 44.) For the reasons stated below, the court will grant Defendants' Motion and dismiss the Second Amended Complaint.<sup>1</sup>

**LEGAL STANDARD**

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While Rule 8 "does not require 'detailed factual

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<sup>1</sup>The alleged facts underlying this case are set forth in the court's order of November 14, 2014, and the court does not find it necessary to repeat them here.

1 allegations,” a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim  
2 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937,1949 (2009)  
3 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570, 127 S.Ct. 1955, 1955). Facial  
4 plausibility is established “when the plaintiff pleads factual content that allows the court to draw the  
5 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

6 We construe the complaint liberally because it was drafted by a pro se plaintiff. *Balistreri v.*  
7 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). However, a Rule 12(b)(6) motion should  
8 be granted "if the plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts  
9 to support a cognizable legal theory." *Id.* The court, in determining the sufficiency of a claim, will  
10 accept "factual allegations in the complaint as true and construe the pleadings in the light most  
11 favorable to the non-moving party." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011). When  
12 granting a motion to dismiss, the court is generally required to provide pro se litigants with “an  
13 opportunity to amend the complaint to overcome deficiencies unless it is clear that they cannot be  
14 overcome by amendment.” *Eldridge v. Block*, 832 F.2d 1132, 1135-36 (9th Cir. 1987). In  
15 determining whether amendment would be futile, the court examines whether the complaint could be  
16 amended to cure the defect requiring dismissal “without contradicting any of the allegations of [the]  
17 original complaint.” *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990). Leave to  
18 amend should be liberally granted, but an amended complaint cannot allege facts inconsistent with  
19 the challenged pleading. *Id.* at 296-97.

## 20 DISCUSSION

21 On November 14, 2014, the court entered an order granting Defendants' Motion to Dismiss  
22 the Amended Complaint filed September 3, 2014. (Doc. 36.) In its order, the court expressly  
23 granted Defendants' motion to dismiss Plaintiff's federal claims to the extent that Plaintiff sought  
24 "money damages," and dismissed those claims for lack of jurisdiction. *Id.* at 10. The court also held  
25 that, "[i]t is clear that amendment in this case would be futile except as to the sixth cause of action  
26 based on right to free exercise of religion." *Id.* Thus, the Amended Complaint was dismissed  
27 without leave to amend except as to that claim. *Id.*

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1 In its order dismissing Plaintiff's Amended Complaint, the court explained as follows in  
2 regard to Plaintiff's sixth cause of action alleging a violation of the right to the free exercise of  
3 religion under the First Amendment:

4 "The free exercise inquiry asks whether government has placed a substantial burden  
5 on the observation of a central religious belief or practice and, if so, whether a compelling  
6 governmental interest justifies the burden." *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989).  
7 Although Plaintiff includes a section with the above caption in his amended complaint, he  
8 provides no argument as how the criminalization of marijuana has placed a substantial  
9 burden on the observation of his central religious belief or practice. Therefore the court finds  
10 that Plaintiff has failed to state a claim for violation of his right to free exercise of religion  
11 under the First Amendment. It is not clear, however, that Plaintiff's pleading deficiencies on  
12 this cause of action cannot be overcome. The court will grant Defendants' motion to dismiss  
13 as to this claim with leave to file a Second Amended Complaint as to this cause of action  
14 only, should Plaintiff be able to meet the *Hernandez* standard.

15 Order Re Motion to Dismiss, 9:19-20:2. (Doc. 36).

16 In his Second Amended Complaint now at issue, Plaintiff asserts the following causes of  
17 action: 1) violation of Section 1 of the California Constitution; 2) violation of Article 1, Section 19  
18 of the California Constitution; and 3) Violation of Article 1, Section 4 of the California Constitution  
19 and the First Amendment of the United States Constitution. In his third cause of action, Plaintiff  
20 provides a discussion of the use of cannabis by different cultures and religions, including the Native  
21 American Church. He states that he believes that for him, "Cannabis enhances the truth of the  
22 universe," that this plant is a "beneficial and life sustaining herb," and that "by consuming Cannabis  
23 [he] is communing with nature." Second Amended Complaint, p. 12-13. He also expresses his  
24 views regarding the regulation of Cannabis by governmental entities, and some of his political and  
25 religious beliefs. No where, however, does Plaintiff allege that he has a central religious belief or  
26 practice that is burdened by the criminalization of marijuana. The court finds, therefore, that  
27 Plaintiff has failed to state a free exercise of religion claim under the First Amendment. Having  
28 previously allowed Plaintiff an opportunity to amend so as to state such a claim, the court now finds  
that further amendment would be futile.

The court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28  
U.S.C. § 1367. Because the court finds that dismissal of Plaintiff's single federal claim is  
warranted, "the principles of judicial economy, convenience and fairness to the parties, and comity  
weigh against retaining supplemental jurisdiction." *Gray v. City & Cnty. of San Francisco*, C 13-

1 03513 WHA, 2014 WL 546349, at \*1 (N.D. Cal. Feb. 7, 2014). *See United Mine Workers of*  
2 *America v. Gibbs*, 383 U.S. 715, 726 (1966) (“[I]f the federal claims are dismissed before trial, even  
3 though not insubstantial in a jurisdiction sense, the state claims should be dismissed as well.”).  
4 Accordingly, the court will not retain supplemental jurisdiction over Plaintiff’s state law claims, and  
5 will dismiss these claims without prejudice to Plaintiff’s right to reassert these claims in state court.

6 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 7 1) Defendants’ motion to dismiss is GRANTED as to Plaintiff’s claim for violation of the Free  
8 Exercise Clause of the First Amendment set forth in his third cause of action and this claim is  
9 DISMISSED WITH PREJUDICE;
- 10 2) Defendants’ motion to dismiss is GRANTED as to Plaintiff’s state claims set forth in his first,  
11 second and third cause of action and these claims are DISMISSED without prejudice to Plaintiff’s  
12 right to assert these claims in state court.
- 13 3) The Clerk shall enter judgment accordingly and close this case.

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16 Dated: February 5, 2015

  
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NANDOR J. VADAS  
United States Magistrate Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

JAMES A. JENKINS,  
Plaintiff,

No. 1:14-CV-3522 NJV

v.

CERTIFICATE OF SERVICE

KATHLEEN MICKS, ACTING  
DISTRICT ATTORNEY, et al.,  
Defendants.

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I, the undersigned, hereby certify that on February 5, 2015, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail.

James A. Jenkins  
P. O. Box 658  
Blue Lake, CA 95525

*/s/ Linn Van Meter*

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Linn Van Meter  
Administrative Law Clerk to  
the Honorable Nandor J. Vadas