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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
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8 GANIYU AYINLA JAIYEOLA,
9 Plaintiff,
10 v.
11 T-MOBILE US, et al.,
12 Defendants.

Case No. [5:23-cv-05182-EJD](#)

**ORDER GRANTING MOTIONS TO
DISMISS; DENYING MOTION FOR
LEAVE TO AMEND**

Re: Dkt. Nos. 28, 38, 45, 88

13 Pro se¹ Plaintiff, Ganiyu Ayinla Jaiyeola (“Jaiyeola”), filed the present false advertising
14 action against Defendants AT&T Mobility, LLC (“AT&T”), Verizon Communications, Inc.
15 (“Verizon”), Apple Inc. (“Apple”), and T-Mobile U.S. (“T-Mobile”) (collectively, “Defendants”),
16 alleging violations of the federal Lanham Act, 15 U.S.C. § 1125(a), and California false
17 advertising law, Cal. Bus. & Prof. Code § 17500, et seq. First Am Compl. (“FAC”), ECF No. 18.

18 Before the Court are three motions to dismiss (“MTD”) filed by AT&T (joined by
19 Verizon), Apple, and T-Mobile, as well as Jaiyeola’s motion for leave to file a second amended
20 complaint (“SAC”). T-Mobile MTD, ECF No. 28; Apple MTD, ECF No. 38; AT&T MTD, ECF
21 No. 45; Verizon Joinder to AT&T MTD, ECF No. 54; Mot. for Leave, ECF No. 88.

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24 ¹ While Jaiyeola is a self-represented litigant, the Court notes that he is an experienced, educated,
25 and frequent litigant who has filed dozens of cases in federal district courts and appellate courts
26 across the country, including the Sixth, Ninth, and Tenth Circuits. See *Jaiyeola v. Apple, Inc.*, No.
27 5:23-CV-03462-EJD, 2024 WL 1329922, at *9 (N.D. Cal. Mar. 27, 2024) (citing *Jaiyeola v.*
28 *Garmin Int’l, Inc.*, No. 20-CV-2068-EFM, 2022 WL 16833253 (D. Kan. Nov. 9, 2022), *aff’d*, No.
22-3245, 2023 WL 4417480 (10th Cir. July 10, 2023) (found a vexatious litigant); *Jaiyeola v.*
Toyota Motor N. Am., No. 1:17-CV-562, 2021 WL 6061897, at *1 (W.D. Mich. Dec. 10, 2021),
aff’d sub nom. Jaiyeola v. Toyota Motor Corp., No. 21-1812, 2022 WL 17819776 (6th Cir. June
16, 2022) (found a vexatious litigant)).

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1 All four motions are fully briefed. Opp’n to T-Mobile MTD, ECF No. 40; T-Mobile
2 Reply, ECF No. 56; Opp’n to Apple MTD, ECF No. 43; Apple Reply, ECF No. 61; Opp’n to
3 AT&T MTD, ECF No. 58; AT&T Reply, 70; Verizon Joinder to AT&T Reply, ECF No. 71;
4 Apple Opp’n to Mot. for Leave, ECF No. 92; AT&T Joinder to Apple Opp’n to MTD, ECF No.
5 93; T-Mobile Joinder to Apple Opp’n to MTD, ECF No. 94; Verizon Joinder to Apple Opp’n to
6 MTD, ECF No. 95; Reply in Supp. of Mot. for Leave, ECF No. 97.

7 Having carefully reviewed the relevant documents, the Court finds this matter suitable for
8 decision without oral arguments pursuant to Civil Local Rule 7-1(b). Based on the following
9 reasons, the Court **GRANTS** Defendants’ motions to dismiss and **DENIES** Jaiyeola’s motion for
10 leave to file an amended complaint.

11 **I. BACKGROUND**

12 Jaiyeola alleges that Defendants have been airing advertisements on television and the
13 internet which state that the alloy used to create the outer material of the iPhone 15 Pro is titanium.
14 *Id.* ¶ 2. He alleges that these advertisements are false or misleading because they inform the
15 public that the iPhone 15 Pro is titanium when in fact it contains alloys of both titanium and
16 aluminum. *Id.* ¶¶ 37, 49, 55. Jaiyeola asserts that aluminum alloys have higher thermal
17 conductivities than titanium alloys. *Id.* ¶ 20. Jaiyeola quotes several news outlets stating that the
18 iPhone 15 Pro is experiencing issues with overheating. *See* FAC 7–19. Jaiyeola further alleges
19 that these false advertising practices were intended to deceive consumers and used for financial
20 gain. *Id.* ¶¶ 50, 52, 56, 58.

21 At the initiation of this suit, Jaiyeola had not purchased an iPhone 15 Pro, but alleged that
22 he had previously purchased prior iPhone iterations and would have purchased an iPhone 15 “but
23 for” Defendants’ false advertising. *Id.* ¶ 34. However, in Jaiyeola’s motion for leave to file the
24 proposed SAC, he newly alleges that, despite his knowledge of Defendants’ false advertising,
25 Jaiyeola purchased the iPhone 15 Pro on January 16, 2024, about three months into the lawsuit.
26 Mot. for Leave 5, 9.

27 Shortly after filing his original complaint, Jaiyeola filed an *Ex Parte* Emergency

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1 Application for Temporary Restraining Order and Preliminary Injunction (“TRO Application”)
2 seeking to enjoin Defendants from advertising the iPhone 15 Pro as titanium. TRO Application,
3 ECF No. 25. The Court denied the TRO Application, finding that Jaiyeola failed to show
4 likelihood of success on the merits because he had not established standing to bring his claims,
5 and he did not plead facts sufficient to state his claims. TRO Order, ECF No. 30. Jaiyeola
6 appealed to the Ninth Circuit, filing an emergency motion for injunctive relief and a request to
7 reassign this case to a different district judge, both of which were denied.² ECF No. 44.

8 **II. LEGAL STANDARD**

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief.” Fed. Rule Civ. Pro. 8(a)(2). While a plaintiff need not offer detailed
11 factual allegations to meet this standard, she is required to offer “sufficient factual matter . . . ‘to
12 state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
13 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In other words, a complaint must
14 (1) “contain sufficient allegations of underlying facts to give fair notice and to enable the opposing
15 party to defend itself effectively[,]” and (2) “plausibly suggest an entitlement to relief, such that it
16 is not unfair to require the opposing party to be subjected to the expense of discovery and
17 continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The court must
18 generally accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. at 664.
19 The court also must construe the alleged facts in the light most favorable to the plaintiff. *See*
20 *Retail Prop. Trust v. United Bd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir.
21 2014) (“[The court] must accept as true all factual allegations in the complaint and draw all
22 reasonable inferences in favor of the nonmoving party.”). However, “courts are not bound to
23 accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678.

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25 ² The Court notes that this case has an extensive procedural history that followed, though the
26 Court need not detail that history again for purposes of this Order. *See* Order Den. Mots. for Entry
27 of Default; Terminating Mot. to Strike, ECF No. 83 (summarizing Jaiyeola’s filings including
28 various motions to compel the Court to enter default against Verizon, a motion requesting a
special master, a motion requesting disqualification of the Undersigned, a motion for
reconsideration, and a motion to strike Verizon’s filings).

1 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
2 *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106
3 (1976)). But still, even pro se pleadings “must meet some minimum threshold in providing a
4 defendant with notice of what it is that it allegedly did wrong” and how they are entitled to relief.
5 *Brazil v. U.S. Dep’t of Navy*, 66 F.3d 193, 199 (9th Cir. 1995).

6 If the court concludes that a 12(b)(6) motion should be granted, the “court should grant
7 leave to amend even if no request to amend the pleading was made, unless it determines that the
8 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d
9 1122, 1127 (9th Cir. 2000) (en banc) (quotation omitted).

10 **III. DISCUSSION**

11 **A. Motions to Dismiss**

12 The Court must dismiss this action for lack of statutory standing.³

13 **1. Lanham Act**

14 “To sue under § 1125(a), a plaintiff must allege an injury to a commercial interest in
15 reputation or sales, and thus, a consumer cannot bring a claim under the Lanham Act.” *Lewis v.*
16 *Google LLC*, 851 F. App’x 723, 724 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 434 (2021)
17 (quotations and citation omitted). This is because the Lanham Act does not allow “all factually
18 injured plaintiffs to recover” for false advertising. *Lexmark Int’l, Inc. v. Static Control*
19 *Components, Inc.*, 572 U.S. 118, 129 (2014). As explained in *Lexmark International*, “[a]
20 consumer who is hoodwinked into purchasing a disappointing product may well have an injury-in-
21 fact cognizable under Article III, but he cannot invoke the protection of the Lanham Act.” *Id.* at
22 132. The plaintiff must fall within the “zone of interests” to assert a cause of action under Section
23 1125(a), meaning the plaintiff must allege an “injury to a commercial interest in reputation or
24 sales.” *Id.* at 131–32. An economic or reputational injury must flow “directly from the deception
25 wrought by the defendant’s advertising; and that that occurs when deception of consumers causes
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27 ³ Because the Court finds that Jaiyeola has failed to establish statutory standing for either claim,
28 the Court need not address Defendants’ remaining arguments regarding the failure to state a claim.
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1 them to withhold trade from the plaintiff.” *Id.* at 133.

2 As the Court indicated in its TRO Order, Jaiyeola’s FAC does not allege that he has a
3 commercial interest in reputation or sales; he is merely a consumer who purchased various Apple
4 iPhones in the past. *See* TRO Order 5. The law is very clear that a consumer such as Jaiyeola
5 cannot bring a claim under the Lanham Act. *Lewis v. Google LLC*, 851 F. App’x 723, 724 (9th
6 Cir. 2021).

7 Accordingly, the Court **GRANTS** Defendants’ motions to dismiss Count I for lack of
8 standing.

9 **2. California False Advertising Law**

10 Private standing to bring a false advertising claim under California law “is limited to any
11 person who has suffered injury in fact and has lost money or property as a result of unfair
12 competition or false advertising.” *Veera v. Banana Republic, LLC*, 6 Cal. App. 5th 907, 915 (Cal.
13 2016) (internal quotations omitted) (quoting *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310,
14 320–21 (Cal. 2011)). Therefore, to establish standing, a party bringing a false advertising claim
15 must “(1) establish a loss or deprivation of money or property sufficient to qualify as injury in
16 fact, i.e., *economic injury*, and (2) show that that economic injury was the result of, i.e., *caused by*,
17 the unfair business practice or false advertising that is the gravamen of the claim.” *Kwikset*, 51
18 Cal. 4th at 322 (emphasis in original). Although a plaintiff “need not demonstrate [the
19 misrepresentation] was the only cause” of the injury, the plaintiff must show “that the
20 misrepresentation was an immediate cause.” *In re Tobacco II Cases*, 46 Cal. 4th at 326.

21 Here, the FAC is devoid of any allegation that Jaiyeola suffered an economic injury in the
22 form of lost money or property, let alone that he suffered an economic injury *as the result of*
23 Defendants’ conduct. The FAC⁴ alleges that Jaiyeola would have purchased an iPhone 15 Pro
24 “but for” Defendants’ false advertising, but it does not allege that he actually purchased an iPhone
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26 _____
27 ⁴ Jaiyeola alleges in the proposed SAC that he recently purchased an iPhone 15 Pro, but this new
28 fact does not save his claim, as discussed below in the Court’s analysis of Jaiyeola’s motion for
leave to amend.

1 15 Pro and, for example, paid more money than he would have had he known that the iPhone 15
2 Pro was not made entirely from titanium. In other words, Jaiyeola does not allege that
3 Defendants’ false advertising caused him to lose any money or property. In the absence of an
4 economic injury, Jaiyeola is merely an uninjured plaintiff suing on behalf of the general public,
5 which California law specifically prohibits. *Branick v. Downey Savings & Loan Assn.*, 39 Cal. 4th
6 235, 240 (Cal. 2006) (“Uninjured persons may not sue[], and private persons may no longer sue on
7 behalf of the general public[].”); FAC ¶¶ 49, 50, 52, 55, 56, 58 (referring to “the general public”).

8 Jaiyeola argues in his oppositions, though notably not in his FAC, that his injury is the
9 inability to rely on future advertising, citing to *Davidson v. Kimberly-Clark Corporation*, 889 F.3d
10 956, 969 (9th Cir. 2018). *See, e.g.*, Opp’n to Apple MTD 21; Opp’n to AT&T 21. However,
11 Jaiyeola misapplies *Davidson*. While it is true that a previously deceived customer may generally
12 have standing for injunctive relief based on their inability to rely on advertising in the future, the
13 plaintiff must first be a “previously deceived customer.” *Davidson*, 889 F.3d at 969. Jaiyeola
14 cannot escape the fact that he was never deceived into an economic injury by Defendants’ alleged
15 false advertising. Jaiyeola’s remaining arguments rely on inapplicable case law. *E.g.*, Opp’n to
16 Apple MTD 17 (citing *Creative Mobile Technologies, LLC v. Flywheel Software, Inc.*, No. 16-
17 CV-02560-SI, 2017 WL 679496 (N.D. Cal. Feb. 21, 2017) (plaintiff alleging economic injury in
18 the form of lost business and income); *In re Coca-Cola Products Marketing and Sales Practice*
19 *Litigation (No. II)*, No. 20-15742, 2021 WL 3878654 (9th Cir. Aug. 31, 2021) (analyzing standing
20 under the Food, Drug and Cosmetic Act)).

21 Accordingly, the Court **GRANTS** Defendants’ motions to dismiss Count II for lack of
22 standing.

23 **B. Motion for Leave to Amend**

24 District courts are instructed to “freely give leave to amend when justice so requires.” Fed.
25 R. Civ. Pro 15(a)(2). Nevertheless, a court may deny leave to amend “due to ‘undue delay, bad
26 faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by
27 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of

1 the amendment, [and] futility of amendment.” *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d
2 522, 532 (9th Cir.2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

3 Courts have repeatedly recognized that granting leave to amend is futile where a plaintiff
4 lacks standing. *See, e.g., Wicker v. Walmart, Inc.*, 533 F. Supp. 3d 944, 952 (C.D. Cal. 2021);
5 *Golden v. Intel Corp.*, 642 F. Supp. 3d 1066, 1073 (N.D. Cal. 2022), *aff'd*, No. 2023-1257, 2023
6 WL 3262948 (Fed. Cir. May 5, 2023); *Bowler v. Home Depot USA Inc*, No. C-09-05523 JCS,
7 2010 WL 3619850, at *2 (N.D. Cal. Sept. 13, 2010).

8 Here, the Court finds that any future amendment would be futile. Jaiyeola is not merely
9 missing facts which, if given the opportunity to amend, could cure the standing deficiencies.
10 Rather, he has affirmatively pled facts in both his FAC and proposed SAC which preclude him
11 from relief.

12 Jaiyeola’s Lanham Act claim cannot be cured because Jaiyeola pled that he is a consumer,
13 not a competitor. As to the California false advertising law claim, Jaiyeola precluded himself
14 from relief by disclaiming any reliance on Defendants’ alleged false advertising. As discussed
15 above, Jaiyeola alleged that he did not purchase the iPhone 15 Pro at the initiation of this suit
16 because he knew that the iPhone 15 Pro was not made entirely of titanium, and he now pleads in
17 the proposed SAC that he recently purchased the iPhone 15 Pro despite his knowledge of the
18 materials in the iPhone 15 Pro. These facts reveal that Jaiyeola at no point relied on Defendants’
19 alleged false advertising in making his purchase and therefore suffered no economic injury as the
20 result of Defendants’ alleged false advertising. The Court cannot conceive of any new facts that
21 could overcome the deficiencies created from the facts already in the record.

22 Accordingly, the Court **DENIES** Jaiyeola’s motion for leave to file an amended complaint.

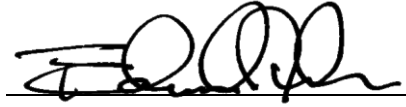
23 **IV. CONCLUSION**

24 Based on the foregoing, the Court **GRANTS** Defendants’ motions to dismiss with
25 prejudice and **DENIES** Jaiyeola’s motion for leave to file an amended complaint. The Clerk of
26 Court is instructed to close this file.

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IT IS SO ORDERED.

Dated: April 2, 2024



EDWARD J. DAVILA
United States District Judge