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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TERRANCE TURNER,
*individually and on behalf of the
Proposed Claim, and victims of
the allegations & charges, and
The People of The United States
of America,*

Plaintiff,

Case No.: 23-cv-1771-WQH-JLB

ORDER

v.

LUXOTITICA RETAIL NORTH
AMERICA, INC., DBA LENS
CRAFTERS, ZENNI OPTICAL,
GLASSES.COM, AND OTHER
UNKNOWN MISCELLANEOUS
COMPANIES; ZENNI OPTICAL;
FEDERAL TRADE
COMMISSION; FBI – SAN
DIEGO FIELD OFFICE;
USSOCOM; FBI; CIA; SECRET
SERVICE; IRS; SEC; and DHS,

Defendants.

HAYES, Judge:

The matter before the Court is the Motion to Proceed In Forma Pauperis (“IFP”) (ECF No. 2) filed by Plaintiff Terrance Turner.

1 **I. BACKGROUND**

2 On September 25, 2023, Plaintiff, proceeding pro se, initiated this action by filing a
3 Complaint against Luxotitica Retail North America, Inc., dba Lens Crafters, Zenni Optical,
4 Glasses.com, and Other Unknown Miscellaneous Companies; Zenni Optical; Federal
5 Trade Commission; FBI – San Diego Field Office; USSOCOM; FBI; CIA; Secret Service;
6 IRS; SEC; and DHS.¹ (ECF No. 1.) Plaintiff also filed a Motion to Proceed IFP pursuant
7 to 28 U.S.C. § 1915(a). (ECF No. 2.)

8 **II. MOTION TO PROCEED IN FORMA PAUPERIS**

9 All parties instituting a civil action in a district court of the United States, other than
10 a petition for writ of habeas corpus, must pay a filing fee of \$402.00. *See* 28 U.S.C.
11 § 1914(a); CivLR 4.5. An action may proceed despite a party’s failure to pay only if the
12 party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*
13 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “To proceed in forma pauperis is a privilege
14 not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). “An affidavit in support
15 of an IFP application is sufficient where it alleges that the affiant cannot pay the court costs
16 and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th
17 Cir. 2015). “[A] plaintiff seeking IFP status must allege poverty ‘with some particularity,
18 definiteness and certainty.’” *Id.* (quoting *United States v. McQuade*, 647 F.2d 938, 940 (9th
19 Cir. 1981)).

20 Plaintiff states in his application to proceed IFP that he is not presently employed
21 and the last wages he received was \$800 and \$300 in May 2023. (ECF No. 2 at 2.) Plaintiff
22 states that he is “attempting to gain employment.” *Id.* Plaintiff states that he has a bank
23

24
25 ¹ Plaintiff alleges that jurisdiction is proper in the Northern District of California and the captions of the
26 Complaint and IFP Motion state “Northern District of California.” (ECF No. 1 at 1; ECF No. 2 at 1.)
27 However, Plaintiff’s filings were mailed to the Southern District of California. (*See* ECF No. 1-3 at 1.) At
28 least one Defendant is located in San Diego, California, based upon the Complaint. (ECF No. 1-2.) Further,
it is unclear based upon the allegations in the Complaint where the alleged conduct occurred such that the
Court could determine whether the Southern District of California is the proper venue. The Court does not
dismiss the Complaint on venue grounds at this time. *See* 28 U.S.C. § 1391(b).

1 account with a balance of \$2000 and \$200 in cash. *Id.* at 3. Plaintiff states that his monthly
2 expenses include \$3000 for rent, \$500 for food, and \$50 for utility payments. *Id.* Plaintiff
3 states that his debts are unknown at this time. *Id.*

4 After considering Plaintiff’s application, the Court finds Plaintiff has sufficiently
5 shown an inability to pay the filing fee and may proceed IFP pursuant to 28 U.S.C.
6 § 1915(a).

7 **III. INITIAL SCREENING OF THE COMPLAINT**

8 **A. Factual Allegations in the Complaint**

9 Plaintiff alleges that Defendant Lens Crafters and other Defendants “are currently
10 making Americans go blind due to their rampant changes in the medical system, in the field
11 of eyewear and eyecare products.” (ECF No. 1 at 4.) Plaintiff alleges that due to COVID-
12 19, “many Americans are going blind due to a number of co-inhabiting, co-effecting, co-
13 contraindicating, side-effects applying reasons and effects,” including “vehicle operators
14 and car drivers with incorrect headlight beam utilities and products, mouth breathers and
15 other forms of sickness putting crap, detritus in the air, atoms, particles, molecules,
16 bacteria, fungii, virii, and other harmful pathogens causing microbial and micromolecule
17 level sickness in the body that cannot be remanded or treated without advanced series of
18 chemicals.” *Id.* Plaintiff alleges that “[t]elevisions, computer screens, anything that
19 displays output the wrong wavelength combinations, wrong brainwave entrainment effects,
20 wrong colors, too much input for the eye” in addition to “[t]oo much sickness in the air.”
21 *Id.* Plaintiff alleges that “[t]hese general reasons[] are causing many eyewear
22 manufacturers and utility services that operate in the same market, and same industry ‘to
23 go out of stock’ on many items.” *Id.* at 5. Plaintiff alleges “there is a lack of quality control
24 in many products,” as evidenced by “vehicles that have bad, odd, weird, and failing
25 geometry and wrong and incorrect and off[] center gravity configurations.” *Id.*

26 Plaintiff alleges that “[f]ood is bad in grocery stores.” *Id.*

27 Plaintiff alleges that blue filtering light is not safe for eyes, “products on the
28 websites” have frames that are too round, and manufacturers are adding “too much tilt in

1 different directions in the frame.” *Id.* at 6. Plaintiff alleges that “[t]he eyeglasses and
2 eyewear are not what are represented on the website.” *Id.* at 7. Plaintiff alleges that “[t]he
3 company should issue a disclaimer” and certain products “should be banned from the
4 market.” *Id.* at 8. Plaintiff alleges that “[t]hese companies know of the harmful effects that
5 they are causing,” “are distorting market products for some agenda that serves the purpose
6 of several attacking nation states,” and “are destroying the country’s economy.” *Id.* at 8–9.

7 Plaintiff brings the following ten claims: (1) 15 U.S.C. § 45, unfair methods of
8 competition unlawful; (2) 15 U.S.C. § 13, discrimination in price, services, or facilities;
9 (3) Uniform Commercial Code § 2-314, implied warranty merchantability, usage of trade;
10 (4) 15 U.S.C. § 2308, implied warranties; (5) 15 U.S.C. § 2310, remedies in consumer
11 disputes; (6) 15 U.S.C. § 13A, discrimination in rebates, discounts, or advertising service
12 charges, underselling in particular localities; (7) 15 U.S.C. § 2051, congressional findings
13 and declaration of purpose; (8) 15 U.S.C. § 2056, consumer product safety standards;
14 (9) 15 U.S.C. § 2068, prohibited acts; and (10) 15 U.S.C. § 50, offenses and penalties. (*See*
15 ECF No. 1 at 9–13.)

16 **B. Legal Standard**

17 Pursuant to 28 U.S.C. 1915, the Court is required to screen cases filed by parties
18 proceeding IFP. *See Calhoun v. Stahl*, 254 F.3d 845, 845 (2001) (per curiam) (holding that
19 “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners” and also apply
20 to non-prisoners). 28 U.S.C. § 1915(e)(2) states that

21 (2) Notwithstanding any filing fee, or any portion thereof, that may have been
22 paid, the court shall dismiss the case at any time if the court determines that—

23 (A) the allegation of poverty is untrue; or

24 (B) the action or appeal—

25 (i) is frivolous or malicious;

26 (ii) fails to state a claim on which relief may be granted; or

27 (iii) seeks monetary relief against a defendant who is immune
28 from such relief.

28 U.S.C. § 1915(e)(2). The Court of Appeals for the Ninth Circuit has explained that “[i]t
is true that 1915(e)(2)’s provision for dismissal for failure to state a claim itself penalizes

1 indigent non-prisoner plaintiffs for the alleged abuses of prisoner plaintiffs.” *Lopez v.*
2 *Smith*, 203 F.3d 1122, 1129 n.10 (9th Cir. 2000). However, the Court of Appeals elaborated
3 that “Congress inserted 1915(e)(2) into the in forma pauperis statute, and [courts] must
4 follow this clear statutory direction.” *Id.*

5 The standard used to evaluate whether a complaint states a claim is a liberal one,
6 particularly when the action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97, 106
7 (1976). “However, a liberal interpretation ... may not supply elements of the claim that
8 were not initially pled.” *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
9 Cir. 1982). “The standard for determining whether a plaintiff has failed to state a claim
10 upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule
11 of Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
12 F.3d 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires a complaint to “contain sufficient
13 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Detailed factual allegations are not required
15 but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Id.* “[T]he mere possibility of misconduct” or “an
17 unadorned, the defendant-unlawfully-harmed me accusation” falls short of meeting this
18 plausibility standard. *Id.* at 678–79. “Determining whether a complaint states a plausible
19 claim for relief [is] ... a context-specific task that requires the reviewing court to draw on
20 its judicial experience and common sense.” *Id.* at 679.

21 C. Discussion

22 With respect to Defendants Federal Trade Commission, FBI – San Diego Field
23 Office, USSOCOM, FBI, CIA, Secret Service, IRS, SEC, and DHS, Plaintiff has not
24 alleged facts in the Complaint to support any claims against these Defendants.

25 As an initial matter concerning Defendants Luxotitica Retail North America, Inc.,
26 dba Lens Crafters, Zenni Optical, Glasses.com, Other Unknown Miscellaneous Companies
27 and Zenni Optical, Plaintiff does not make allegations to indicate who each claim is brought
28

1 against, nor does he include any allegations as to each of these Defendants' conduct. For
2 this reason alone, the Complaint must be dismissed for failure to state a claim.

3 Plaintiff asserts his first claim pursuant to 15 U.S.C. § 45, the Federal Trade
4 Commission Act. However, this Act does not recognize a private right of action. *See* 15
5 U.S.C. § 45(a)(2) (“The Commission is hereby empowered and directed to prevent persons,
6 partnerships, or corporations ... from using unfair methods of competition in or affecting
7 commerce and unfair or deceptive acts or practices in or affecting commerce.”); *Carlson v.*
8 *Coca Cola Co.*, 483 F.2d 179, 280 (9th Cir. 1973); *see also Carreno v. 360 Painting LLC*,
9 No. 3:19 CV 02239 LAB BGS, 2020 WL 4673826, at *3 (S.D. Cal. Aug. 12, 2020).

10 Plaintiff asserts his second claim pursuant to 15 U.S.C. § 13. A claim under Section
11 13(a) requires the plaintiff to allege (1) two or more contemporaneous sales by the same
12 seller, (2) at different prices, (3) of commodities of like grade and quality, (4) where at
13 least one of the sales was made in interstate commerce, (5) the discrimination had the
14 requisite effect upon competition generally, and (6) the discrimination caused injury to the
15 plaintiff. *Rutledge v. Elec. Hose & Rubber Co.*, 511 F.2d 668, 677 (9th Cir. 1975). Plaintiff
16 has not asserted facts to adequately allege each element required under Section 13(a).

17 Plaintiff asserts his third claim pursuant to Uniform Commercial Code § 2-314.
18 Plaintiff has not specified under which state law this claim is brought, but in liberally
19 construing Plaintiff's Complaint and applying California law, California Commercial Code
20 § 2314 requires that “a plaintiff asserting breach of warranty claims must stand in vertical
21 privity with the defendant,” and “[a] buyer and seller stand in privity if they are in adjoining
22 links of the distribution chain. *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1023
23 (9th Cir. 2008). Plaintiff has not alleged privity with any of the Defendants.

24 Plaintiff asserts his fourth claim pursuant to 15 U.S.C. § 2308, which states that
25 No supplier may disclaim or modify ... any implied warranty to a consumer
26 with respect to such consumer product if (1) such supplier makes any written
27 warranty to the consumer with respect to such consumer product, or (2) at the
28 time of sale, or within 90 days thereafter, such supplier enters into a service
contract with the consumer which applies to such consumer product.

1 15 U.S.C. §2308(a). However, Plaintiff has not alleged facts that he is a consumer of
2 Defendants’ products, that any Defendant modified or disclaimed any implied warranty,
3 that there was a written warranty, or that a service contract was entered into.

4 Plaintiff asserts his fifth claim pursuant to 15 U.S.C. § 2310. Section 2310(d)
5 provides for a civil action by a consumer for damages, stating that “a consumer who is
6 damaged by the failure of a supplier, warrantor, or service contractor to comply with any
7 obligation under this chapter, or under a written warranty, implied warranty, or service
8 contract, may bring suit for damages and other legal and equitable relief,” subject to
9 jurisdictional requirements. 15 U.S.C. § 2310(d). Plaintiff has not alleged facts to support
10 a claim under this code section. Specifically, Plaintiff has not alleged that he was damaged
11 or that any Defendant did not comply with an obligation under this chapter, written
12 warranty, implied warranty, or service contract.

13 Plaintiff asserts his sixth claim pursuant to 15 U.S.C. § 13A, which provides that it
14 is unlawful to sell “goods at unreasonably low prices for the purposes of destroying
15 competition or eliminating a competitor.” 15 U.S.C. § 13A; *see also William Inglis & Sons*
16 *Baking Co. v. ITT Continental Baking Co.*, 668 F.2d 1014, n.48 (9th Cir. 1981) (“15 U.S.C.
17 § 13a ... directly proscribes ‘unreasonably low prices.’”). Plaintiff fails to allege facts that
18 any Defendant sold goods at unreasonably low prices for the purpose of destroying its
19 competition.

20 Plaintiff asserts his seventh cause of action pursuant to 15 U.S.C. § 2051, which is
21 titled “Congressional findings and declaration of purpose,” and eighth cause of action
22 pursuant to 15 U.S.C. § 2056, which is titled “Consumer products safety standards.” “[A]
23 private cause of action is allowed under [the Consumer Product Safety Act, 15 U.S.C.
24 §§ 2051–2084] only if a plaintiff alleges that an injury was caused by a defendant’s
25 knowing violation of a consumer product safety rule or other order issued by the Consumer
26 Product Safety Commission.” *Williams v. Andes Grp.—New Day Baby Powder*, No. CV
27 17-01639-CSA (PLA), 2017 WL 2785416, at *3 (C.D. Cal. June 27, 2017); *see* 15 U.S.C.
28 § 2072(a) (“Any person who shall sustain injury by reason of any knowing (including

1 willful) violation of a consumer product safety rule, or any other rule or order issued by
2 the Commission may sue any person who knowingly (including willfully) violated any
3 such rule or order....”). Plaintiff has not alleged an injury that was caused by any
4 Defendant’s knowing violation of a consumer product safety rule or order.

5 Plaintiff asserts his ninth claim pursuant to 15 U.S.C. § 2068. Section 2068 provides
6 a list of sixteen prohibited acts. Plaintiff has not alleged facts to indicate which prohibited
7 act he asserts any Defendant violated.

8 Plaintiff asserts his tenth claim pursuant to 15 U.S.C. § 50. Plaintiff cites verbatim
9 part of the text pertaining to this code section. Plaintiff’s Complaint does not contain
10 nonconclusory allegations that any Defendant “neglect[ed] or refuse[d] to attend and
11 testify, or to answer any lawful inquiry or to produce documentary evidence” or “willfully
12 ma[d]e ... any false entry or statement of fact in any report required to be made under this
13 subchapter.” 15 U.S.C. § 50.

14 The Court concludes that Plaintiff fails to allege facts stating a claim against any
15 Defendant and dismisses the Complaint without prejudice.

16 **IV. LEAVE TO AMEND**

17 As discussed, the Court finds Plaintiff’s Complaint fails to state any claim upon
18 which relief can be granted and must be dismissed sua sponte in its entirety pursuant to 28
19 U.S.C. §§ 1915(e)(2)(b)(ii) and 1915A(b)(1). Because Plaintiff is proceeding pro se, the
20 Court, having now provided him “notice of the deficiencies in his complaint,” will also
21 grant him another opportunity to fix them. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
22 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). Plaintiff is also
23 reminded that an amended complaint must be a complete document in and of itself. *See*
24 S.D. Cal. CivLR 15.1(a) (stating that an amended pleading “must be complete in itself
25 without reference to the superseded pleading”); *Hal Roach Studios, Inc. v. Richard Feiner*
26 *& Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the
27 original.”).

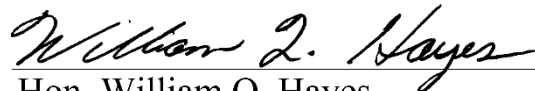
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1 **V. CONCLUSION**

2 IT IS HEREBY ORDERED that the Motion to Proceed In Forma Pauperis (ECF No.
3 2) is granted.

4 IT IS FURTHER ORDERED that the Complaint is dismissed without prejudice.
5 No later than **sixty (60) days** from the date of this Order, Plaintiff may file a first amended
6 complaint, which cures the defects in his original complaint. If no amended complaint is
7 filed, the Court will direct the Clerk of Court to close this case.

8 Dated: October 30, 2023

9 
10 Hon. William Q. Hayes
11 United States District Court
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