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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

IRON MIKE LANDRUM SR.,	)	Case No. 2:17-cv-01821-JCM-NJK
Plaintiff(s),	)	
vs.	)	ORDER
MICHAEL GERARD TYSON,	)	
Defendant(s).	)	

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Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a complaint. Docket No. 1-1.<sup>1</sup>

**I. In Forma Pauperis Application**

Plaintiff has submitted the affidavit required by § 1915(a). Docket No. 1. The Court concludes that Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. §

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<sup>1</sup> Plaintiff filed a complaint, Docket No. 1-1, and a motion for preliminary injunction. Docket No. 2. The Court construes the motion for preliminary injunction as an amended complaint. Local Rule 15-1(a) requires that an amended complaint be complete in itself without reference to any other document in order to make the amended complaint complete. Because Plaintiff is *pro se* and for the purposes of this order only, the Court will nonetheless reference the complaint filed in Docket No. 1-1 and the amended complaint filed in Docket No. 2. However, Plaintiff is advised that he must comply with the requirements for an amended complaint, as set forth in section III below.

1 1915(a). The Clerk’s Office is further **INSTRUCTED** to file the complaint on the docket. The  
2 Court will now review Plaintiff’s complaint.

### 3 **II. Screening Complaint**

4 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the  
5 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action  
6 is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks  
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When  
8 a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the  
9 complaint with directions as to curing its deficiencies, unless it is clear from the face of the  
10 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d  
11 1103, 1106 (9th Cir. 1995).

12 Fed. R. Civ. P. 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
13 complaint for failure to state a claim upon which relief can be granted. Review under Fed. R. Civ.  
14 P. 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d  
15 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the  
16 grounds for the court’s jurisdiction, a short and plain statement of the claim showing that the pleader  
17 is entitled to relief, and a demand for the relief sought. Fed. R. Civ. P. 8(a); *Bell Atlantic Corp. v.*  
18 *Twombly*, 550 U.S. 544, 555 (2007). Although Fed. R. Civ. P. 8 does not require detailed factual  
19 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the elements  
20 of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S.  
21 265, 286 (1986)). The court must accept as true all well-pled factual allegations contained in the  
22 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.  
23 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do not  
24 suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from  
25 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations  
26 of a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers.  
27 *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se*  
28 pleadings is required after *Twombly* and *Iqbal*).

1 1. Grounds for the Court’s Jurisdiction

2 The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before  
3 it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3).  
4 Federal courts are courts of limited jurisdiction and possess only that power authorized by the  
5 Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed  
6 to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc.*  
7 *v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party  
8 asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.”  
9 *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General Motors*  
10 *Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

11 A. Federal Question Jurisdiction

12 Pursuant to 28 U.S.C. § 1331, federal courts have original jurisdiction over “all civil actions  
13 arising under the Constitution, laws, or treaties of the United States.” Cases “arise under” federal  
14 law either when federal law creates the cause of action or where the vindication of a right under state  
15 law necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*,  
16 277 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal question jurisdiction exists is based on the  
17 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a federal  
18 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v.*  
19 *Williams*, 482 U.S. 386, 392 (1987).

20 In this case, Plaintiff states he is bringing a claim for trademark infringement but does not  
21 identify a federal cause of action, or otherwise raise a federal question.<sup>2</sup> Docket No. 2 at 2, 4  
22 (identifying claims for trademark infringement). The *pro se* complaint form Plaintiff has submitted  
23 requires a plaintiff to “list the specific federal statutes, federal treaties, and/or provisions of the  
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25 <sup>2</sup> While the Court also has jurisdiction over civil cases in which there is diversity among the  
26 parties, Plaintiff does not claim diversity jurisdiction. *See Matheson v. Progressive Specialty Ins.*  
27 *Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“Jurisdiction founded on 28 U.S.C. § 1332 requires that  
28 the parties be in complete diversity and the amount in controversy exceed \$75,000”). To establish  
diversity, the plaintiff must be a citizen of a different state than each defendant. *See Allstate Ins. Co.*  
*v. Hughes*, 358 F.3d 1089, 1095 (9th Cir. 2004). Plaintiff, a citizen of Nevada, alleges that  
Defendant is a citizen of Nevada. Docket No. 1-1 at 2.

1 United States Constitution that are at issue” in the case to establish jurisdiction. Docket Nos. 1-1  
2 at 3, 2 at 3. Plaintiff provides a state certificate of registration for his trademark that he alleges  
3 Defendant violated, but fails to provide a basis for federal jurisdiction over the violation of a state  
4 registered trademark. *See* Docket Nos. 1-1, 1-2 at 2.<sup>3</sup>

5 **III. Conclusion**

6 Accordingly, **IT IS ORDERED** that:

- 7 1. Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not  
8 be required to pay the filing fee of four hundred dollars (\$400.00).
- 9 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
10 prepayment of any additional fees or costs or the giving of a security therefor. This  
11 order granting leave to proceed *in forma pauperis* shall not extend to the issuance  
12 and/or service of subpoenas at government expense.
- 13 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until  
14 **November 6, 2017**, to file an amended complaint, if he believes the noted  
15 deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff  
16 is informed that the Court cannot refer to a prior pleading (i.e., any prior complaint)  
17 in order to make the amended complaint complete. This is because, as a general rule,  
18 an amended complaint supersedes the original complaint. Local Rule 15-1(a)  
19 requires that an amended complaint be complete in itself without reference to any  
20 prior pleading. Once a plaintiff files an amended complaint, the original complaint  
21 no longer serves any function in the case. Therefore, in an amended complaint, as in  
22 an original complaint, each claim and the involvement of each defendant must be  
23 sufficiently alleged.

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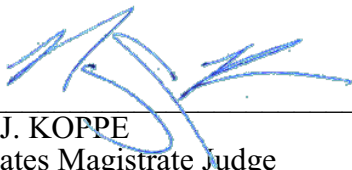
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27 <sup>3</sup> Although Plaintiff included a statement of his claims, because Plaintiff has not provided  
28 grounds for the Court’s jurisdiction, the Court has not determined if the complaint states a claim that  
satisfies Fed. R. Civ. P. 8. Plaintiff must ensure that his amended complaint satisfies the standards  
for a statement of claims as set in section II of this order.

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4. **Failure to comply with this order will result in the recommended dismissal of this case.**

IT IS SO ORDERED.

DATED: October 5, 2017



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NANCY J. KOPPE  
United States Magistrate Judge