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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JONATHAN CORRELL, on behalf
12 of himself and all others similarly
13 situated,

14 Plaintiffs,

15 v.

16 AMAZON.COM, INC., and DOES
17 I-10,

18 Defendant.

Case No.: 3:21-cv-01833 BTM

**ORDER GRANTING MOTION TO
DISMISS PLAINTIFFS'
COMPLAINT UNDER FED. R.
CIV. P. 12(b)(1) WITH LEAVE TO
AMEND**

[ECF No. 13]

19 Before the court is Defendant Amazon.com., Inc's ("Amazon") Motion to
20 Dismiss under the Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiff
21 Jonathan Correll ("Correll") opposes the motion. For the reasons discussed below,
22 the Court **GRANTS** Defendant's motion to dismiss under Fed. R. Civ. P. 12(b)(1)
23 with leave to amend.

24
25 **I. BACKGROUND**

26 Correll, on behalf of himself and a potential class, filed suit against Amazon
27 alleging unequal treatment and discrimination in Amazon's Seller Certification
28 program, Guided Buying policy, and other orientation-based incentive programs

1 for retailers. (ECF No. 1 (“Complaint”).) Plaintiffs’ Complaint asks for injunctive
2 relief and damages under California Civil Code §§ 51 and 51.5 (“Unruh Civil Rights
3 Act”). (Id.)

4 The parties agree that Amazon currently has policies in place to promote,
5 encourage, and incentivize minority certified sellers. (ECF No. 1, 13-15.)
6 Amazon asserts it created these initiatives “to increase the diversity of its seller
7 population so that customers have the greatest possible choice.” (ECF No.
8 13, 12.) The specific incentive programs challenged by the complaint
9 include: 1) Amazon’s “Seller Certification” program, which allows sellers to list
10 certifications on their site based on their businesses ownership, including
11 women, veteran, LGBT or minority-owned business certificates; 2) Amazon’s
12 “Guided Buyer policy,” which allows Amazon Business customers to “prioritize
13 products sold by sellers with particular certifications”; 3) Amazon’s spotlight
14 pages, which highlight selected business and their products on curated
15 ‘themed’ sites, including “Discover Women-Owned Businesses”, “Buy Black”
16 for Black History Month, “Shop Hispanic & Latino Goods” for Hispanic Heritage
17 Month; and 4) the “Black Business Accelerator Program” which offers limited
18 free advertising, image services, credit assistance, and eligibility for potential
19 cash grants to select certified sellers. (ECF No. 13, 4-5; ECF No. 1, 3.) The
20 complaint alleges that through these programs Amazon “direct[s] consumers
21 away from Amazon’s disfavored sellers...and towards Amazon’s preferred
22 and privileged sellers” based on the sellers’ identity. (ECF No. 1, 2-3.) Plaintiff
23 pleads that he visited Amazon’s website in the summer and fall of 2021 with
24 the intent to use Amazon’s sales services. (ECF No. 1 at 17.) There, Plaintiff
25 encountered Amazon’s programs which Plaintiff asserts “denied and deprived
26 heterosexual White males” among other groups “the full and equal
27 accommodations, advantages, facilities, privileges, or services based on their
28 sexual orientation, race, and sex.” (Id. at 17.) After viewing these programs,

1 through the website. (Id.) Plaintiff's Complaint does not plead facts sufficient to
2 identify Plaintiff's products, seller history, or that he was "able and ready" to sell
3 products on Amazon's website prior to viewing the incentive programs. (Id.)
4

5 **II. DISCUSSION**

6 Amazon moves to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of Article
7 III standing and 12(b)(6) for failure to state a claim. (ECF No. 13. ("Def.'s
8 MTD").) The court addresses both motions in turn.
9

10 **A. Motion to Dismiss for lack of subject-matter jurisdiction under Fed. R.** 11 **Civ. P. 12(b)(1)**

12 **I. Legal Standard**

13 Amazon challenges the Complaint, in part, on the ground that Plaintiff lacks
14 Article III standing. (Id.) Standing is an element of subject matter jurisdiction.
15 Therefore, Amazon moves to dismiss Plaintiffs' Complaint for lack of subject
16 matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).
17

18 A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial
19 attack, the challenger asserts that the allegations contained in a complaint are
20 insufficient on their face to invoke federal jurisdiction. *Safe Air for Everyone v.*
21 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Generally, on a 12(b)(1) motion
22 regarding subject matter jurisdiction, unlike a 12(b)(6) motion, a court need not
23 defer to a plaintiff's factual allegations. *Id.* But the Supreme Court has held that
24 where a 12(b)(1) motion to dismiss is based on lack of standing, the Court must
25 defer to the plaintiff's factual allegations and must "presume that general
26 allegations embrace those specific facts that are necessary to support the claim."
27 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotation
28 marks omitted). "At the pleading stage, general factual allegations of injury

1 resulting from the defendant's conduct may suffice." *Id.* at 560. In short, a
2 12(b)(1) motion to dismiss for lack of standing can only succeed if the plaintiff
3 has failed to make "general factual allegations of injury resulting from the
4 defendant's conduct." *Id.*

5 6 **II. Article III Standing**

7 Standing is a necessary element of federal court jurisdiction under Article III
8 of the U.S. Constitution. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Article III of
9 the U.S. Constitution authorizes federal courts to exercise jurisdiction over "Cases"
10 and "Controversies." U.S. Const. art. III, § 2. A litigant must have standing in order
11 for their suit to meet the case-or-controversy requirement for federal jurisdiction.
12 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "Standing is a necessary
13 element of federal-court jurisdiction" and accordingly a "threshold question in every
14 federal case." *Thomas v. Mundell*, 572 F.3d 756, 760 (9th Cir. 2009) (Citing *Warth*,
15 422 U.S. at 498.). "The party invoking federal jurisdiction, not the district court,
16 bears the burden of establishing Article III standing." *Carroll v. Nakatani*, 342 F.3d
17 934, 945 (9th Cir. 2003). As discussed below, a complaint can not proceed in
18 federal court without Article III standing, even if a similarly situated complaint could
19 proceed in state court.

20 Standing requires that the plaintiff (1) suffered an injury in fact; (2) show the
21 defendant's causal connection to the injury; and (3) demonstrate that the injury
22 would be redressed by a favorable decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330,
23 337 (2016). That is, a plaintiff must allege "such a personal stake in the outcome
24 of the controversy as to warrant his invocation of federal court jurisdiction and to
25 justify exercise of the court's remedial powers on his behalf." *Warth*, 422 U.S. at
26 498-99. A plaintiff must have suffered an 'injury in fact'— "an invasion of a legally
27 protected interest' that is 'concrete and particularized' and 'actual or imminent, not
28 conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at

560). A "particularized" injury is one that "affect[s] the plaintiff in a personal and individual way." *Id.* The Article III requirement that an injury is "actual or imminent" "ensure[s] that the alleged injury is not too speculative for Article III purposes---that the injury is certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

Plaintiff contends that because he viewed identity-based incentive programs on the Amazon Seller site that he could not qualify for, he was subject to discrimination, and accordingly suffered an injury in fact. (ECF No. 1 at 17.) However, while Plaintiff contends he visited the Amazon seller site, he pleads no facts to show he was 'able and ready' to sell. (*Id.*) Accordingly, Plaintiff does not plead a particularized injury sufficient to support an inference of injury-in-fact.

Generalized grievances have long been considered insufficient to confer standing under Article III. *Carroll*, 342 F. 3d at 940 (stating "The Supreme Court has repeatedly refused to recognize a generalized grievance against allegedly illegal government conduct as sufficient to confer standing" (citing *United States v. Hays*, 515 U.S. 737, 743 (1995))). In *Allen v. Wright*, 468 U.S. 737, 755 (1984), plaintiffs challenged the Internal Revenue Service for its failure to deny tax-exempt status to racially discriminatory private schools. The Supreme Court held the parties lacked standing, stating the "asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court." *Id.*; see also *Valley Forge College v. Americans United*, 454 U.S. 464, 482-83 (1982) ("[t]his Court repeatedly has rejected claims of standing predicated on the right, possessed by every citizen, to require that the Government be administered according to law." (internal quotation marks and citation omitted))"

In *Carroll v. Nakatani*, 342 F.3d at 947, the Ninth Circuit held that a plaintiff raising an equal protection challenge of the Hawaii Constitution lacked Article III standing because "the existence of [a] classification...is not sufficient to recognize

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