



1 form pursuant to 28 U.S.C. § 1915, nor has he paid the \$400.00 filing fee. Accordingly, he will  
2 be ordered to submit an application to proceed inform a pauperis, completed and signed, or in the  
3 alternative, pay the \$400.00 filing fee for this action.

4 **Screening Requirement**

5 The Court is required to screen complaints brought by persons proceeding in pro per. 28  
6 U.S.C. § 1915A(a). Plaintiffs' Complaint, or any portion thereof, is subject to dismissal if it is  
7 frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2);  
9 28 U.S.C. § 1915(e)(2)(B)(ii).

10 A complaint must contain "a short and plain statement of the claim showing that the  
11 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
12 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,  
14 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
15 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge  
16 unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)  
17 (internal quotation marks and citation omitted).

18 While persons proceeding pro se actions are still entitled to have their pleadings liberally  
19 construed and to have any doubt resolved in their favor, the pleading standard is now higher,  
20 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), and to survive screening,  
21 Plaintiff's claims must be facially plausible, which requires sufficient factual detail to allow the  
22 Court to reasonably infer that each named defendant is liable for the misconduct alleged, *Iqbal*,  
23 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United States Secret*  
24 *Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted  
25 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the  
26 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss*,  
27 572 F.3d at 969.



1 under' federal law either where federal law creates the cause of action or 'where the vindication  
2 of a right under state law necessarily turn[s] on some construction of federal law.'" *Republican*  
3 *Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir. 2002) (quoting *Franchise Tax Bd.*  
4 *v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9, 103 S.Ct. 2841, 77 L.Ed.2d 420  
5 (1983)). The presence or absence of federal-question jurisdiction is governed by the "well-  
6 pleaded complaint rule." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 963  
7 L.Ed.2d. 318 (1987). Under the well-pleaded complaint rule, "federal jurisdiction exists only  
8 when a federal question is presented on the face of the plaintiff's properly pleaded complaint."  
9 *Id.*

10 Here, the Complaint is entitled "Complaint for Breach of Contract /& Petition for Writ of  
11 Attachment." The allegations involve a contractual relationship between an attorney and  
12 Plaintiffs. The Complaint does not contain any allegation of a violation arising under the  
13 Constitution, laws, or treaties of the United States. Accordingly, the Court lacks federal question  
14 jurisdiction.

## 15 **2. Diversity Jurisdiction**

16 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil  
17 actions in diversity cases "where the matter in controversy exceeds the sum or value of \$75,000"  
18 and where the matter is between "citizens of different states."

19 Here, Plaintiffs allege that the amount in controversy is \$13,000, which is the amount  
20 Plaintiffs paid to Attorney Martens. Therefore, the amount in controversy does not reach the  
21 jurisdictional amount required for diversity jurisdiction.

22 Plaintiffs also have not alleged the parties' citizenship is completely diverse. The  
23 contract between Plaintiff David Haring and Attorney Martens, attached to the Complaint,  
24 indicates the location of Attorney Martens' office is in Visalia, California. Plaintiffs' residence  
25 listed on the Complaint is Delano, California. The Complaint alleges that Plaintiffs and  
26 defendant are California residents, which destroys the requisite "complete diversity" in this case.  
27 *See Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 722 (9<sup>th</sup> Cir. 2008). Accordingly, this  
28 Court lacks diversity jurisdiction.

1 Plaintiffs have failed to establish that federal question jurisdiction or diversity jurisdiction  
2 exists. Accordingly, the Court finds that Plaintiffs' Complaint does not allege subject matter  
3 jurisdiction and this Court does not have jurisdiction.

### 4 **3. Supplemental Jurisdiction**

5 In the Complaint, Plaintiff contends jurisdiction arises under Title 28 of the United States  
6 Code section 1367 under the principles of supplemental jurisdiction. Plaintiffs also allege they  
7 bring this action pursuant to 28 U.S.C. section § 1391 (venue).

8 The Court has “supplemental jurisdiction over all other claims that are so related to  
9 claims in the action within such original jurisdiction that they form part of the same case or  
10 controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). Section  
11 1367 adopts the full constitutional limit of supplemental jurisdiction. *Mendoza v. Zirkle Fruit*  
12 *Co.*, 301 F.3d 1163, 1172-73 (9th Cir. 2002); *Baer v. First Options of Chicago, Inc.*, 72 F.3d  
13 1294, 1299 (7th Cir. 1995). Nonfederal claims are part of the same "case" as federal claims  
14 when they “derive from a common nucleus of operative fact and are such that a plaintiff would  
15 ordinarily be expected to try them in one judicial proceeding.” *Finley v. United States*, 490 U.S.  
16 545, 549 (1989) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)).

17 As long as all claims arise from the same nucleus of operative facts, the court can  
18 adjudicate state law claims against defendants who are not parties to the federal claim. See  
19 *Mendoza*, 301 F.3d at 1172-73. Supplemental jurisdiction is a doctrine of discretion, not of  
20 right. *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 172 (1997).

21 Plaintiffs allege a claim based on California state law breach of contract. However,  
22 because there are no valid federal claims apparent on the face of plaintiffs' well-pleaded  
23 complaint, see 28 U.S.C. § 1331, this Court lacks any jurisdiction, and therefore, does not have  
24 supplemental jurisdiction. Accordingly, unless and until plaintiff can properly allege the basis for  
25 such jurisdiction, there is no basis for this Court to exercise supplemental jurisdiction over any  
26 state law claims at this time, and the Court will not analyze plaintiff's potential state law claims  
27 here. 28 U.S.C. § 1367(c).

1 For the reasons set forth, Plaintiffs have failed to state a cognizable claim for relief.  
2 Plaintiffs shall be given the opportunity to file an amended complaint curing the deficiencies  
3 described by the Court in this order. Fed.R.Civ.P. 15(a).

4 **Standing of Kenneth Harring**

5 “To satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an  
6 ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural  
7 or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3)  
8 it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable  
9 decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81  
10 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). At a bare  
11 minimum, standing requires that plaintiff “show that [he] suffered an injury in fact, there was a  
12 causal connection between the injury and the conduct complained of, and the injury is likely to  
13 be redressed by a favorable decision.” *Davis v. Yageo Corp.*, 481 F.3d 661, 673 (9th Cir. 2007)  
14 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136 (1992)).

15 Here, the Complaint alleges a breach of contract between Plaintiff David Harring and  
16 defendant Attorney Martens. Plaintiff Kenneth Harring has not alleged injury in fact.

17 **CONCLUSION AND ORDER**

18 Plaintiffs’ Complaint fails to allege subject matter jurisdiction and standing. However,  
19 the Court will provide Plaintiff with the opportunity to file a first amended complaint. *Lopez v.*  
20 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Plaintiff may not change the nature of this suit by  
21 adding new, unrelated claims in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th  
22 Cir. 2007) (no “buckshot” complaints).

23 Plaintiffs’ amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
24 the named defendant did that led to the deprivation of Plaintiffs’ constitutional rights, *Iqbal*, 556  
25 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must  
26 be [sufficient] to raise a right to relief above the speculative level. . . .” *Twombly*, 550 U.S. at 555  
27 (citations omitted).

1 Finally, Plaintiffs are advised that an amended complaint supersedes the original  
2 complaint. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012) (en banc). Therefore,  
3 Plaintiffs' first amended complaint must be "complete in itself without reference to the prior or  
4 superseded pleading." Local Rule 220.

5 Based on the foregoing, it is HEREBY ORDERED that:

- 6 1. For the foregoing reasons, the Court dismisses Plaintiffs' Complaint for lack of  
7 federal subject matter jurisdiction;
- 8 2. The Court dismisses Plaintiffs' Complaint as to Kenneth Haring for lack of standing;
- 9 3. Within **thirty (30) days** from the date of service of this order, Plaintiffs shall file a  
10 first amended complaint;
- 11 4. Kenneth Haring shall submit an application to proceed in forma pauperis, completed  
12 and signed, or in the alternative, pay the \$400.00 filing fee for this action; and
- 13 5. If Plaintiffs fail to file a first amended complaint in compliance with this order, this  
14 action will be dismissed with prejudice for failure to state a claim.

15  
16 IT IS SO ORDERED.

17 Dated: April 15, 2014

18 /s/ Barbara A. McAuliffe  
19 UNITED STATES MAGISTRATE JUDGE  
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