

1 **II. Screening Requirement**

2 When a plaintiff proceeds *in forma pauperis*, the Court is required to review the complaint, and
3 shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or the
4 action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . .
5 seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2). A
6 claim is frivolous “when the facts alleged arise to the level of the irrational or the wholly incredible,
7 whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*,
8 504 U.S. 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
11 pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a short
12 and plain statement of the claim showing the pleader is entitled to relief; and . . . a demand for the
13 relief sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P.
14 8(a). The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held to “less
15 stringent standards” than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

16 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and
17 succinct manner. *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Further, a
18 plaintiff must identify the grounds upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534
19 U.S. 506, 512 (2002). The Supreme Court noted,

20 Rule 8 does not require detailed factual allegations, but it demands more than an
21 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
22 labels and conclusions or a formulaic recitation of the elements of a cause of action will
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
factual enhancement.

23 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks and citations omitted).

24 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d
25 266, 268 (9th Cir. 1982). The Court clarified further,

26 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
27 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
the plaintiff pleads factual content that allows the court to draw the reasonable
28 inference that the defendant is liable for the misconduct alleged. [Citation]. The
plausibility standard is not akin to a “probability requirement,” but it asks for more than

1 a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint
2 pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of
the line between possibility and plausibility of ‘entitlement to relief.’

3 *Iqbal*, 566 U.S. at 678 (citations omitted). When factual allegations are well-pled, a court should
4 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
5 conclusions in the pleading are not entitled to the same assumption of truth. *Id.*

6 The Court has a duty to dismiss a case at any time it determines an action fails to state a claim,
7 “notwithstanding any filing fee that may have been paid.” 28 U.S.C. § 1915e(2). Accordingly, a court
8 “may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a
9 claim.” *See Wong v. Bell*, 642 F.2d 359, 361 (9th Cir. 1981) (citing 5 C. Wright & A. Miller, *Federal*
10 *Practice and Procedure*, § 1357 at 593 (1963)). However, leave to amend a complaint may be granted
11 to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*, 203 F.3d
12 1122, 1127-28 (9th Cir. 2000) (en banc).

13 **IV. Jurisdiction**

14 The district court is a court of limited jurisdiction, and is empowered only to hear disputes
15 “authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,
16 377 (1994); *Exxon Mobil Corp v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). The federal courts
17 are “presumed to lack jurisdiction in a particular case, unless the contrary affirmatively appears.” *A-Z*
18 *Intll. v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003).

19 A federal court “ha[s] an independent obligation to address sua sponte whether [it] has subject-
20 matter jurisdiction.” *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the obligation of
21 the district court “to be alert to jurisdictional requirements.” *Grupo Dataflux v. Atlas Global Group*,
22 *L.P.*, 541 U.S. 567, 593 (2004). Without jurisdiction, the district court cannot decide the merits of a
23 case or order any relief. *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d
24 1376, 1380 (9th Cir. 1988). The burden of establishing jurisdiction rests upon plaintiff as the party
25 asserting jurisdiction. *Kokkonen*, 511 U.S. at 377; *see also Hagans v. Lavine*, 415 U.S. 528, 543 (1974)
26 (acknowledging a claim may be dismissed for lack of jurisdiction if it is “so insubstantial, implausible,
27 ... or otherwise completely devoid of merit as not to involve a federal controversy within the
28 jurisdiction of the District Court”).

1 **V. Factual Allegations and Background**

2 Plaintiff asserts that Victor Vevea “is a paralegal who works out of the office of Anthony
3 Bryant Law Offices.” (Doc. 1 at 5) Plaintiff reports he “hired Mr. Vevea for the purpose of
4 investigation services,” for which Mr. Vevea “asked for \$4,500.00 up front.” (*Id.*) Plaintiff alleges that
5 he “sent [Mr. Vevea] a check for the amount he requested for the service that was agreed upon.” (*Id.*)
6 According to Plaintiff, “Mr. Vevea cashed the check and never provided any services at all.” (*Id.*)

7 Based upon these facts, Plaintiff “request[s] that the Court rule in favor of the plaintiff for the
8 amount of \$4,500.00 as well as interest on the said amount of \$4,500.00.” (Doc. 1 at 6) In addition,
9 Plaintiff seeks “possible punitive damages...which will be at the discretion of the Court.” (*Id.* at 5)

10 **VI. Discussion and Analysis**

11 Plaintiff contends the Court has both subject matter jurisdiction and diversity jurisdiction over
12 this matter. (Doc. 1 at 3, 4) However, as explained below, the facts alleged are insufficient to support
13 these assertions.

14 **A. Subject matter jurisdiction**

15 The determination of subject matter jurisdiction “is governed by the ‘well-pleaded complaint
16 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the
17 face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392
18 (1987). Therefore, the complaint must establish “either that [1] federal law creates the cause of action
19 or that [2] the plaintiff’s right to relief necessarily depends on resolution of a substantial question of
20 federal law.” *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold &*
21 *Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr. Laborers*
22 *Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

23 Significantly, it appears the only claim upon which Plaintiff seeks to proceed in this action is
24 for a breach of contract. (*See* Doc. 1 at 5-6) A claim for breach of contract will not provide the basis
25 for federal court jurisdiction. *See Kokkonen*, 511 U.S. at 378. Rather, a breach of contract claim arises
26 under state law. *See Hall v. North American Van Lines, Inc.*, 476 F.3d 683, 686 (9th Cir. 2007). Thus,
27 Plaintiff has not raised a claim that invokes federal subject matter jurisdiction.

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1 **B. Diversity jurisdiction**

2 Pursuant to 28 U.S.C. § 1332, the Court has jurisdiction over a matter where the parties have
3 diverse citizenship and the amount in controversy exceeds \$75,000. *Id.*; *see also* *Bautista v. Pan*
4 *American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987).

5 1. Citizenship of the parties

6 The parties to the litigation must have diverse citizenships, not diverse residences. A person’s
7 citizenship is determined first by whether he is a citizen of the United States, and second by the state
8 where he is domiciled. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). To be
9 domiciled in a state, the person must have a physical presence—such as having a residence or having a
10 location where his belongings are kept—in the state, coupled with the intent to permanently reside
11 there. *Id.* A person’s domicile for purposes of diversity is determined as of the time the action is filed.
12 *Hill v. Roller*, 615 F.2d 886, 889 (9th Cir. 1980).

13 Plaintiff alleges that he is a citizen of Arizona and Defendant is a citizen of California. (Doc. 1
14 at 4) However, Plaintiff is currently in custody and housed in Arizona. The Ninth Circuit has “not
15 decide[d] whether a prisoner can establish domicile in his place of incarceration for purposes of
16 federal diversity jurisdiction.” *U.S. v. Arango*, 670 F.3d 988, 997 n.7 (9th Cir. 2012). Thus, “courts
17 typically presume a prisoner to be a resident of the state he or she formerly resided in prior to the
18 incarceration.” *Hardaway v. Nooth*, 2011 WL 7276958, n.2 (D. Or. Oct. 6, 2011), *adopted by* 2012
19 U.S. Dist. LEXIS 16875 (D. Or. Feb. 10, 2012). Indeed, the Ninth Circuit indicated that “[o]ne does
20 not change his residence to the prison by virtue of being incarcerated there.” *Cohen v. United States*,
21 297 F.2d 760, 774 (9th Cir. 1962). Because Plaintiff has not alleged where he resided prior to his
22 incarceration, it is unclear whether the state of Arizona is, in fact, his domicile for purposes of 28
23 U.S.C. § 1332.

24 2. Amount in controversy

25 Plaintiff asserts the amount in controversy is \$4,500.00, plus interest. (Doc. 1 at 5, 6) He also
26 seeks an unidentified amount of punitive damages, which Plaintiff appears to indicate is sufficient to
27 meet the minimum amount of \$75,000.00 required by 28 U.S.C. § 1332.

28 Significantly, “[i]t is well established that punitive damages are part of the amount in

1 controversy in a civil action.” *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (citing *Bell*
2 *v. Preferred Life Assur. Society*, 320 U.S. 238, 240 (1943)). However, the Court must be able to
3 determine that a preponderance of evidence demonstrates that the punitive damages award could
4 adequately increase the amount in controversy to meet the jurisdictional minimum. *See Gaus v. Miles,*
5 *Inc.*, 980 F.2d 564, 566-67 (9th Cir. 2002)

6 When a federal court has diversity jurisdiction, it applies state substantive law and federal
7 procedural law. *In re Larry’s Apartment, LLC*, 249 F.3d 832, 837 (9th Cir. 2001). Although it is
8 unclear whether California or Arizona law applies to this claim for breach of contract—given the lack
9 of facts regarding where and when the parties entered into the agreement—the states’ laws regarding
10 punitive damages for contract actions are the same. Neither California nor Arizona permits punitive
11 damages to be recovered for breach of contract, unless the breach also involves a tort. *Lerner v.*
12 *Brettschneider*, 123 Ariz. 152, 156 (1979) (explaining that in Arizona, punitive damages cannot be
13 recovered for breach of contract unless the breach constitutes a tort); *See In re Marriage of Benge*, 151
14 Ariz. 219, 224 (1986) (explaining that “punitive damages may not ordinarily be assessed in contract
15 actions” but that they “may be recoverable where the breach of contract constitutes a tort”); *Walker v.*
16 *Signal Companies, Inc.*, 84 Cal.App.3d 982, 996 (Ct. App. 1978) (“[p]unitive damages are not
17 recoverable in an action for breach of contract no matter how willful, malicious or fraudulent the
18 breach”); *see also* Cal. Civ. Code § 3294.

19 In this case, Plaintiff has not specifically identified the causes of action on which he seeks to
20 proceed. However, it appears, based upon the allegations, that he is asserting a breach of contract.
21 Thus, Plaintiff’s allegations are insufficient to demonstrate that the monetary requirement of 28 U.S.C.
22 § 1332 is satisfied.

23 **VII. Conclusion and Order**

24 Plaintiff has failed to provide sufficient facts sufficient to support a determination that the
25 Court has jurisdiction over the matter. However, it is not clear whether the factual deficiencies may be
26 cured by amendment. *See Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987); *see also Lopez,*
27 *203 F.3d at 1128* (dismissal of a *pro se* complaint without leave to amend for failure to state a claim is
28 proper only where it is obvious that an opportunity to amend would be futile). If Plaintiff fails to

1 provide information supporting a conclusion that the District Court has jurisdiction over the matter,
2 the Court will find he is unable to do so.

3 Plaintiff is advised that an amended complaint supersedes the original complaint. *Forsyth v.*
4 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).
5 In addition, the amended complaint must be “complete in itself without reference to the prior or
6 superseded pleading.” Local Rule 220. Once Plaintiff files an amended complaint, the original
7 pleading no longer serves any function in the case. The amended complaint must bear the docket
8 number assigned this case and must be labeled “First Amended Complaint.” Finally, Plaintiff is
9 warned that “[a]ll causes of action alleged in an original complaint which are not alleged in an amended
10 complaint are waived.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986) (citing *London v. Coopers &*
11 *Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).

12 Based upon the foregoing, the Court **ORDERS**:

- 13 1. Plaintiff’s motion to proceed *in forma pauperis* is **GRANTED**;
- 14 2. Plaintiff’s Complaint is **DISMISSED WITH LEAVE TO AMEND**; and
- 15 3. Within thirty days from the date of service of this order, Plaintiff **SHALL** file a First
16 Amended Complaint.

17 **If Plaintiff fails to comply with this order to file an amended complaint, the action may be**
18 **dismissed for failure to prosecute and failure to obey the Court’s order.**

19
20 IT IS SO ORDERED.

21 Dated: October 4, 2016

/s/ Jennifer L. Thurston
22 UNITED STATES MAGISTRATE JUDGE