

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

SEAN MICHAEL SWENDSEN,  
Individually as a Remainder Beneficiary  
of and Derivatively on behalf of the  
Richard I. Swendsen Trust,  
Plaintiff,

v.

RICHARD I. COREY, Trustee of the  
Richard I. Swendsen Trust; and  
CLAYNE I. COREY, an Individual in  
possession of assets of the Richard I.  
Swendsen Trust and accountant and  
attorney to the Trust and Trustee,  
Defendant.

Case No. 4:09-cv-229-BLW

**MEMORANDUM DECISION AND  
ORDER**

**INTRODUCTION**

The Court has before it Defendant Richard Corey's Motion to Dismiss For Lack of Standing (Dkt. 137) pursuant to Federal Rule of Civil Procedure 12(b). The motion is fully briefed and at issue. For the reasons expressed below, the Court will GRANT the Motion to Dismiss all claims not personal to Plaintiff Sean Swendsen for lack of standing.

**ANALYSIS**

The question before the Court is whether Plaintiff Sean Swendsen has standing to pursue derivative claims on behalf of the Swendsen Trust. *Def.'s Br.* at 1, Dkt. 137-1.

Generally, trust law does not allow beneficiaries to bring a suit on behalf of the trust. *See Glanton ex. rel. ALCOA Prescription Drug Plan v. AdvancePCS Inc.*, 465 F.3d 1123, 1125 n. 2 (9th Cir. 2006) (citing *Restatement (Second) of Trusts* § 214 cmt. b (2011)). Specifically, a beneficiary may not sue in the name of the trust because he is not the real party in interest. *See Orr v. U.S.*, 358 F.3d 1137, 1148 (9th Cir. 2004) (internal citation omitted). There is an exception to the general rule, however. In situations where a trustee “cannot or will not enforce a valid cause of action that the trustee ought to bring against a third person a trust beneficiary may seek judicial compulsion against the trustee.” *Id.* (Citing Rest.2d Trusts, § 282.)<sup>1</sup>

In this case, as Plaintiff stated himself, the issue of trust management now rests in the hands of the current trustee, Norm Reece. *Pl.’s Resp.* at 10 (Dkt. 138). Thus, Mr. Reece can bring an action on behalf of the trust. But “[i]n order to prevent loss of or prejudice to a claim, the beneficiary may bring an action in equity joining the third person and the trustee.” *Orr*, 358 F.3d at 1148. Plaintiff cannot simply assert the claim on behalf of the trustee himself. There is no indication in the record, however, that Plaintiff sought judicial compulsion against the current trustee to sue on behalf of the Swendsen Trust. Accordingly, he may not sue on behalf of the Trust “in the shoes” of the current trustee. *See id.* at 1149.

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<sup>1</sup> Although the Idaho Supreme Court has not had an opportunity to specifically adopt the Rest. 2d Trusts, § 282, its references to the Rest. 2d Trusts in many other areas suggests that it would adopt it if the opportunity arose.

For all the reasons stated above, the Court finds that Plaintiff does not have standing to bring a derivative suit on behalf of the Swendsen Trust against Richard Corey. Plaintiff may only maintain a suit on his own behalf.

**ORDER**

**IT IS ORDERED:**

1. Defendant Richard Corey's Motion to Dismiss All Claims Not Personal to Sean Swendsen for Lack of Standing (Dkt. 137) is **GRANTED**.

DATED: **February 22, 2012**



A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. LYNN WINMILL  
Chief U.S. District Court Judge