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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

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11 MIRO ADVISORY SERVICES, LTD., a
12 corporation incorporated under the laws of
the British Virgin Islands,

13 Plaintiff,

14 v.

15 D.A. DAVIDSON & CO., an ENTITY OF
16 UNKNOWN FORM, RICHARD L.
17 WENDT TRUST, JWTR - OREGON,
LLC and JWTR, LLC,

18 Defendants.

Case No. 14-cv-01618 NC

**ORDER TO SHOW CAUSE AND
RESETTING HEARING ON
MOTION TO DISMISS**

Re: Dkt. No. 1

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20 Plaintiff MIRO Advisory Services, Ltd. brings this action for declaratory relief and
21 negligent misrepresentation against defendants D.A. Davidson & Co.; Richard L. Wendt
22 Trust; JWTR Oregon, LLC; and JWTR, LLC. Dkt. No. 1. The complaint asserts that this
23 Court has subject matter jurisdiction under 28 U.S.C. § 1332 in that this is “a civil action
24 between citizens of a State and citizens or subjects of a foreign state and the matter in
25 controversy exceeds, exclusive of interest and costs, the sum of \$75,000.” Dkt. No. 1 ¶ 1.
26 D.A. Davidson & Co. filed a motion to dismiss the complaint for lack of subject matter
27 jurisdiction on the basis that plaintiff has failed to properly allege that the amount in
28 controversy exceeds the \$75,000 threshold. Dkt. No. 27. The motion is pending and is set

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1 for hearing on August 6, 2014. The Court now issues this order because, aside from the
2 amount in controversy issue, the complaint does not contain sufficient allegations to
3 establish the citizenship of all defendants for diversity purposes.

4 Federal courts are courts of limited jurisdiction and are presumptively without
5 jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A
6 federal court may dismiss an action on its own motion if it finds that it lacks subject matter
7 jurisdiction over the action. *Fiedler v. Clark*, 714 F.2d 77, 78-79 (9th Cir. 1983); *see also*
8 Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter
9 jurisdiction, the court must dismiss the action.”). “Absent unusual circumstances, a party
10 seeking to invoke diversity jurisdiction should be able to allege affirmatively the actual
11 citizenship of the relevant parties.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th
12 Cir. 2001).

13 The diversity statute provides that “a corporation shall be deemed to be a citizen of
14 every State and foreign state by which it has been incorporated and of the State or foreign
15 state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Unlike a
16 corporation, a partnership and an LLC are treated for purposes of diversity as citizens of
17 every state of which their owners/members are citizens. *See Johnson v. Columbia*
18 *Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006); *Cosgrove v. Bartolotta*, 150
19 F.3d 729, 731 (7th Cir. 1998). Moreover, if any member of a partnership or an LLC is itself
20 a partnership or association (or another LLC), the Court needs to know the citizenship of
21 each “sub-member” as well. *V & M Star, LP v. Centimark Corp.*, 596 F.3d 354, 356 (6th
22 Cir. 2010).

23 The complaint here alleges that D.A. Davidson & Co. is “an entity of unknown form
24 with a principal place of business in Montana, and with offices throughout California, and
25 transacting business in this judicial district.” Dkt. No. 1 ¶ 5. The complaint alleges that
26 Richard L. Wendt Trust “is a trust existing under and administered under the laws of the
27 State of Oregon, with offices and operations in Klamath Falls, Oregon.” *Id.* ¶ 6. The
28 complaint further alleges that defendants JWTR Oregon, LLC and JWTR, LLC are limited

1 liability companies organized and existing under the laws of the State of Oregon, each with
2 a principal place of business in Klamath Falls, Oregon” and that “both are beneficially
3 owned by the Trust.” *Id.* ¶ 7.

4 The complaint fails to allege the citizenship of the members, and any sub-members,
5 of the defendants limited liability companies. Furthermore, the allegations in the complaint
6 do not appear sufficient to establish the citizenship of the defendant trust. *See Johnson,*
7 437 F.3d at 899 (“A trust has the citizenship of its trustee or trustees.” (citing *Navarro Sav.*
8 *Ass’n v. Lee*, 446 U.S. 458, 464 (1980))); *but see Emerald Investors Trust v. Gaunt*
9 *Parsippany Partners*, 492 F.3d 192, 205 (3d Cir. 2007) (holding that “the citizenship of
10 both the trustee and the beneficiary should control in determining the citizenship of a
11 trust”).

12 Because the complaint does not contain sufficient allegations to establish that there is
13 complete diversity of citizenship between plaintiff and all defendants, by July 8, 2014,
14 plaintiff must show cause in writing why this action should not be dismissed for lack of
15 federal subject matter jurisdiction. If plaintiff is unable to allege the citizenship of all
16 defendants without conducting discovery on this issue, plaintiff should so indicate in its
17 response to the order to show cause.

18 The hearing on the motion to dismiss filed by JWTR Oregon, LLC and JWTR, LLC,
19 Dkt. No. 8, is continued from July 2 to August 6, 2014, at 1:00 p.m. in Courtroom A, 15th
20 Floor, U.S. District Court, 450 Golden Gate Avenue, San Francisco, California.

21 IT IS SO ORDERED.

22 Date: June 24, 2014

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25 Nathanael M. Cousins
26 United States Magistrate Judge
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