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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 ALVARO JIMENEZ,
8 Plaintiff,

9 v.

10 SLM PRIVATE EDUCATION STUDENT
11 LOAN TRUST 2011-A, et al.,
12 Defendants.

Case No. 17-cv-01624-KAW

**ORDER REQUIRING SUPPLEMENTAL
BRIEFING**

Re: Dkt. Nos. 23, 28

United States District Court
Northern District of California

13 On March 24, 2017, Plaintiff Alvaro Jimenez filed the instant suit against Defendants SLM
14 Private Education Student Loan Trust 2011-A ("SLM"), Law Offices of Harris & Zide, and Flint
15 C. Zide, alleging violations of the Fair Debt Collection Practices Act and the Rosenthal Fair Debt
16 Collection Practices Act. (Compl., Dkt. No. 1.) Plaintiff's claims are based on the filing of SLM
17 Private Education Student Loan Trust 2011-A v. Mario A. Jimenez, Case No. CLJ 537908 in the
18 Superior Court for the County of San Mateo, in which Defendant SLM was represented by
19 Defendants Law Offices of Harris & Zide and Defendant Zide. (Compl. ¶ 19.) Plaintiff asserts
20 that the SLM v. Jimenez complaint misrepresents the character, amount, and legal status of the
21 debt, that Defendant SLM lacks standing to sue on the alleged debt, that the amount sued for is
22 higher than the amount owed, and that SLM is barred from bringing an action pursuant to
23 provisions regarding co-signor disclosures. (Compl. ¶ 22.)

24 On August 2, 2017, Defendant SLM filed a motion to dismiss the instant case. (Dkt. No.
25 23.) Defendant SLM argues that dismissal was warranted under Federal Rule of Civil Procedure
26 12(b)(4) and (5) because Defendant SLM was improperly named as a defendant, as "a trust is not a
27 legal entity and has no capacity to sue or be sued" under California law. (Id. at 5 (internal
28 quotation omitted).) Rather, Defendant SLM asserts that the action must name the trustee,

1 administrator, or executor of the trust as the defendant, not the trust itself. (Id.) In the alternative,
2 Defendant contends that dismissal is warranted under Federal Rule of Civil Procedure 12(b)(6)
3 because Plaintiff failed to plead adequate facts to provide notice of his claim. (Id. at 6.)

4 On August 4, 2017, Plaintiff filed a motion to extend the time to serve Defendant SLM,
5 specifically to serve Defendant SLM's registered agent. (Dkt. No. 28.) Plaintiff also filed an
6 opposition to Defendant SLM's motion to dismiss, arguing that Defendant SLM is a Delaware
7 Statutory Trust that can be sued in its own name. (Dkt. No. 29 at 2-3.) With respect to Defendant
8 SLM's Rule 12(b)(6) argument, Plaintiff repeatedly refers to documents that were produced to
9 Plaintiff in connection with the underlying state court litigation. (Id. at 4-6.)

10 On August 7, 2017, Defendant SLM opposed Plaintiff's motion to extend time, on the
11 ground that its motion to dismiss was based on Defendant SLM not being a proper defendant, not
12 on the manner of service. (Dkt. No. 30.) Thus, an extension of time to serve was not necessary
13 because either Defendant SLM should be dismissed as an improper defendant, or Defendant SLM
14 was a proper party and had already been served. (Id. at 3.) That same day, Plaintiff filed a reply
15 in support of his motion to extend time, contending that Defendant SLM should not be permitted
16 to claim that it could not be sued without naming a trustee as a party defendant. (Dkt. No. 32 at 1-
17 2.)

18 Having reviewed the parties' briefing, the Court requires supplemental briefing on whether
19 Defendant SLM may sue or be sued in California. In *Portico Management Group, LLC v.*
20 *Harrison*, the California Court of Appeal explained that in general, "[a] trust cannot sue or be
21 sued," as "the trustee is the real party in interest with standing to sue and defendant on the trust's
22 behalf." 202 Cal. App. 4th 464, 473 (2011). The Court of Appeal, however, acknowledged that
23 there are particular trusts that general trust law does not apply to, such as an unincorporated
24 business or Massachusetts trust. *Id.* at 475. These business trusts were different from ordinary
25 trusts, as their object was "not to hold and conserve particular property, with incidental powers . . .
26 but to provide a medium for the conduct of business and sharing of its gains." *Id.*; see also *Thales*
27 *Alenia Space France. v. Thermo Funding Co.*, 989 F. Supp. 2d 287, 295 (S.D.N.Y. 2013)
28 ("Business trusts are more akin to business entities -- such as limited partnerships, LLCs, or even

1 corporations -- than to the traditional trusts"). "Unlike traditional trusts, a business trust may be
2 treated as a separate entity," against whom judgment could be entered. Portico, 202 Cal. App. at
3 475.

4 The parties must explain whether Defendant SLM falls into the category of the business
5 trust, and provide specific legal authority and factual evidence in support. The Court observes that
6 the various SLM Private Education Loan Trusts have apparently filed over thirty cases in
7 California, including the underlying SLM v. Jimenez complaint. E.g., SLM Private Educ. Loan
8 Trust 2010-C v. Moran, Case No. KC069475 (filed July 21, 2017); SLM Private Educ. Loan Trust
9 2012-B v. Elliot, Case No. RIC1712088 (filed June 27, 2017); SLM Private Education Loan Trust
10 2011-C v. Mangyan, Case No. BC665931 (filed June 21, 2017); SLM Private Education Loan
11 Trust 2011-A v. Alozie, Case No. EC066498 (filed March 23, 2017). Moreover, in the underlying
12 SLM v. Jimenez complaint, Defendant SLM did not name a trustee and described itself as "a
13 corporation qualified to do business in California," which strongly suggests that Defendant SLM is
14 a business trust that can both sue and be sued.¹ (Michel Decl., Exh. A, Dkt. No. 28-1.) This also
15 suggests that Defendant SLM's argument that it may not sue or be sued in California is specious;
16 Defendant SLM cannot have it both ways.

17 Defendant SLM is also apparently listed in Delaware's Department of State Division of
18 Corporations as a statutory trust. (Michel Decl., Exh. C.) Several courts have found that statutory
19 trusts formed under Delaware law are business trusts. See also *Thales Alenia Space France*, 989
20 F. Supp. 2d at 298 ("Delaware statutory trusts meet this Court's definition of a business trust");
21 *Dargahi v. Hymas*, No. 05 Civ. 8500(BSJ), 2008 WL 8586675, at *1 (S.D.N.Y. Oct. 15, 2008)
22 ("Since 1988, Delaware law has provided by statute for the creation of the form of unincorporated
23 association formerly known as a business trust, and now known as a statutory trust") (internal
24 quotation omitted).

25 The Court also requires supplemental briefing on whether the Court should abstain from
26 deciding the instant case, given the pending state action between the parties. Plaintiff's claims
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28 ¹ Many of the above-listed cases also do not name a trustee.

1 appear to be dependent on the resolution of the pending state action, as Plaintiff's claims are
2 essentially defenses to the merits of Defendant SLM's claims in that pending action. For example,
3 Plaintiff argues that Defendant SLM lacks standing to sue on the alleged debt, has sued for the
4 wrong amount, and is barred from bringing the action due to co-signor disclosures violating the
5 law. (Compl. ¶ 22.) Plaintiff also challenges the validity of the state claims raised in the
6 underlying SLM v. Jimenez complaint. (Compl. ¶ 20.)² Many of Plaintiff's arguments in
7 opposition to the motion to dismiss are also premised on discovery responses produced in the state
8 court case. (Dkt. No. 29 at 4-5.) In light of the ongoing state action, the Court requires briefing
9 on whether abstention should apply, including Colorado River abstention, a doctrine created by
10 the Supreme Court to prevent duplicative litigation between state and federal courts. Colo. River
11 Water Conservation Dist. v. United States, 424 U.S. 800 (1976); see also Krieger v. Atheros
12 Commc'ns, Inc., 776 F. Supp. 2d 1053, 1057 (N.D. Cal. 2011) ("Under the Colorado River
13 doctrine, a federal court may abstain from exercising its jurisdiction in favor of parallel state
14 proceedings where doing so would serve the interests of wise judicial administration, giving
15 regard to the conservation of judicial resources and comprehensive disposition of litigation")
16 (internal quotation omitted).

17 Both parties shall file the requested supplemental briefing, which shall be no more than ten
18 pages, by **August 23, 2017**. The parties may then file a response to the other parties' supplemental
19 briefing, which shall be no more than seven pages, by **August 30, 2017**.

20 IT IS SO ORDERED.

21 Dated: August 9, 2017

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23 KANDIS A. WESTMORE
24 United States Magistrate Judge

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28 ² Many of these claims appear to have been raised as defenses in Plaintiff's answer to the SLM v. Jimenez complaint.