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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *WLC* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES A. ZACHMAN,

Plaintiff,

v.

WELLS FARGO N.A.,

Defendant.

Case No.: 3:15-cv-02909-BEN-JMA

**ORDER:**

**(1) GRANTING DEFENDANTS' MOTION TO DISMISS;**

**(2) DENYING PLAINTIFF'S MOTION TO AMEND;**

**(3) DENYING PLAINTIFF'S MOTION FOR APPROVAL OF SUPPLEMENTAL PLEADINGS**

**[DOCKET NOS. 23, 26, 38]**

Pending before the Court are: 1) Defendant's Motion to Dismiss Plaintiff's First Amended Complaint (Docket No. 23), 2) Plaintiff's Motion to Amend Complaint (Docket No. 26); and 3) Plaintiff's Motion for Approval of Supplemental Pleading (Docket No. 38). Each motion has been fully briefed. The Court finds the Motions suitable for determination on the papers without oral argument, pursuant to Civil Local Rule 7.1.d.1. For the reasons set for below, Defendant's motion is **GRANTED with leave to amend**, and Plaintiffs' motions are **DENIED as moot**.

## BACKGROUND<sup>1</sup>

1  
2 Plaintiff James A. Zachman, proceeding *pro se*, filed his initial Complaint against  
3 Defendant Wells Fargo Bank N.A. ("Wells Fargo") on December 28, 2015. (Docket No.  
4 1.) The Complaint alleged California state law claims for negligence, breach of contract,  
5 and "aiding and abetting a breach of fiduciary duty." (*Id.*)

6 Plaintiff filed his First Amended Complaint ("FAC") on May 16, 2016. (Docket  
7 No. 20.) The operative facts of the FAC are similar to the initial Complaint. Plaintiff re-  
8 alleges his previous California state law claims for negligence and "aiding and abetting a  
9 breach of fiduciary duty." (*Id.*) The FAC alleges three new state law claims for violation  
10 of California's Unfair Competition Act, aiding and abetting fraud, and aiding and  
11 abetting conversion, and one federal claim for violation of the Racketeer Influenced  
12 Corrupt Organizations Act. (*Id.*) Plaintiff's claims arise out of an alleged unlawful  
13 creation of a Wells Fargo limited liability company bank account and subsequent  
14 unlawful transfers of funds to a third-party account by a third-party individual. (*Id.*)

15 Real Time Data Services LLC ("Data Services") is organized under the laws of  
16 Delaware. (Compl. ¶ 15.) Since March 27, 2008, Data Services is comprised, in relevant  
17 part, of two members, two Co-Presidents, and one manager. (Compl. Ex. A.) Plaintiff is  
18 Co-President, member and sole manager of Data Services. (*Id.*) CBS Accounting  
19 Services, in New Delhi, India, is the remaining member, and is represented by Ms.  
20 Sangeeta Chhabra. (*Id.*) Ms. Chhabra is also Co-President. (*Id.*) Plaintiff and CBS  
21 Accounting each own a fifty percent interest in Data Services. (*Id.*)

22 As the sole manager, Plaintiff was in charge of all of Data Services' U.S. banking  
23 and financial activities. (Compl. ¶ 17.) In January 2009, Plaintiff created a bank account  
24 for Data Services at Wells Fargo (the "9809 account"). (Compl. ¶ 18.) In May 2012, a  
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26  
27 <sup>1</sup> Unless otherwise noted, the Court is not making any factual findings, but rather summarizing the  
28 relevant allegations of Plaintiff's First Amended Complaint for purposes of evaluating Defendant's  
Motion to Dismiss.

1 dispute arose between Plaintiff and Ms. Chhabra, resulting in Ms. Chhabra "lock[ing] the  
2 Plaintiff out of the operations of Data Services by commandeering the computer servers."  
3 (Compl. ¶ 19.) Plaintiff then shut Ms. Chhabra out of the 9809 account until the dispute  
4 could be resolved. (Compl. ¶ 14.) On June 18, 2012, Ms. Chhabra created a Wells Fargo  
5 account (the "9039 account") for a company called "My Real Data Services LLC" at the  
6 Fairfax branch in Lewes, Delaware. (Compl. ¶ 22.) Ms. Chhabra created the account  
7 using Indian passports, a Delaware registering agent's address, and Data Services'  
8 Employer Identification Number, Delaware business file number, and Entity Member  
9 document. (Compl. ¶¶ 22-23.)

10 According to Plaintiff, Wells Fargo contacted the State of Delaware to verify the  
11 file number and found no record of the company My Real Data Services, yet created the  
12 account anyway. (Compl. ¶¶ 25-26.) Then, sometime between June 18 and July 1, 2012,  
13 the company name on the 9039 account changed from "My Real Data Services LLC" to  
14 "Real Time Data Services LLC". (Compl. ¶ 27.) Over the next few months, Ms.  
15 Chhabra used the Wells Fargo 9039 account to transfer over \$350,000 to an account in  
16 India. (Compl. ¶¶ 32-34.) The 9039 account allowed Ms. Chhabra to "carry out her  
17 scheme to unlawfully cut [Plaintiff] out the LLC's management and ownership [sic]."  
18 (Compl. 34.) Ms. Chhabra's plans included taking control of Data Services' finances by  
19 "moving the LLC's bank account to her own Data Services Wells Fargo account." (*Id.*)

20 Wells Fargo has an obligation to comply with the obligations set forth in the  
21 Banking Secrecy Act ("BSA") and the Patriot Act. (Compl. ¶ 37.) Plaintiff alleges Wells  
22 Fargo knew Ms. Chhabra provided a false business name, "chose to ignore the false  
23 information," and provided Ms. Chhabra with banking services. (Compl. ¶¶ 43, 48.)

#### 24 PROCEDURAL HISTORY

25 Plaintiff filed his initial Complaint on December 28, 2015. (Docket No. 1.) On  
26 February 9, 2016, Defendant filed a Motion to Dismiss the Complaint for lack of  
27 jurisdiction and for failure to state a claim pursuant to Federal Rule of Civil Procedure  
28 12(b)(1) and (b)(6). (Docket No. 8.) On April 20, 2016, after taking the matter on

1 submission, the Court granted Defendant's Motion to Dismiss on the grounds that the  
2 allegations in Plaintiff's Complaint failed to establish subject matter jurisdiction or  
3 standing to bring the claims for relief. Plaintiff was granted leave to file an amended  
4 complaint by May 23, 2016. (Docket No. 19.) Plaintiff filed his First Amended  
5 Complaint ("FAC") on May 16, 2016. (Docket No. 20.)

6 On June 6, 2016, Defendant filed a Motion to Dismiss the FAC. (Docket No. 23.)  
7 On July 12, 2016, Plaintiff filed a Motion to Amend Complaint. (Docket No. 26.) On  
8 July 21, 2016, the Court took Defendant's Motion to Dismiss the FAC under submission.  
9 (Docket No. 31.) On September 2, 2016, the Court took Plaintiff's Motion to Amend  
10 under submission. (Docket No. 33.) On October 6, 2016, Plaintiff filed a Motion for  
11 Approval of Supplemental Pleading, which the Court also took under submission.  
12 (Docket Nos. 38, 41.)

### 13 LEGAL STANDARD

14 A challenge to the existence of subject-matter jurisdiction under Federal Rule of  
15 Civil Procedure 12(b)(1) may be either facial or factual in nature. *Wolfe v. Strankman*,  
16 392 F.3d 358, 362 (9th Cir. 2004). A facial 12(b)(1) motion involves a limited inquiry  
17 into the allegations of the complaint. *Id.* In doing so, courts must assume all material  
18 allegations in the complaint to be true and determine whether a lack of federal  
19 jurisdiction appears from the complaint itself. *Thornhill Publ'g Co. v. Gen. Tel. Elec.*,  
20 2 594 F.2d 730, 733 (9th Cir. 1979).

### 21 DISCUSSION

22 Wells Fargo moves to dismiss the FAC for failure to cure the deficiencies in the  
23 Complaint regarding the lack of subject-matter jurisdiction and standing under Rule  
24 12(b)(1). Wells Fargo further argues that Plaintiff's federal claim and five state law  
25 claims should be dismissed for failure to state a claim pursuant to Rule 12(b)(6). The  
26 Court need not perform the Rule 12(b)(1) analysis of Defendant's subject-matter  
27 jurisdiction challenge or Rule 12(b)(6) analysis of Plaintiff's claims because Plaintiff  
28 failed to establish standing in the FAC.

1 As discussed in the Court's April 20, 2016 Order (Docket No. 19), a plaintiff  
2 bringing an action in the federal court has the burden to show that Article III standing  
3 exists. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Snake River Farmers'*  
4 *Ass'n, Inc. v. Dep't of Lab.*, 9 F.3d 792, 795 (9th Cir. 1993). Specifically, the plaintiff  
5 must show (1) an injury in fact; (2) traceable to the challenged action of the defendant;  
6 and (3) likely to be redressed by a favorable decision. *Lujan*, 504 U.S. at 560.

7 In California, a limited liability company is governed by the "law of the state or  
8 other jurisdiction under which [it] is formed." Cal. Corp. Code § 17708.01. Data  
9 Services was organized under Delaware law. Accordingly, the Court looks to Delaware  
10 law to determine whether Plaintiff has any individual right to Data Services' assets.

11 Delaware courts have held that case law governing corporate derivative suits is  
12 applicable to derivative suits brought on behalf of an LLC. *See Kelly v. Blum*, No. 4516-  
13 VCP, 2010 WL 629850, at \*9 (Del. Ch. Feb. 24, 2010); *VGS, Inc. v. Castiel*, No. 17995,  
14 2003 WL 723285, at \*11 (Del. Ch. Feb. 28, 2003); *Gotham Partners, L.P. v. Hallwood*  
15 *Realty Partners, L.P.*, No. 15754, 1998 WL 832631, at \*5 (Del. Ch. Nov. 10, 1998). In  
16 determining whether a claim is derivative or direct, "[a] court should look to the nature of  
17 the wrong and to whom the relief should go." *Tooley v. Donaldson, Lufkin & Jenrette*,  
18 845 A.2d 1031, 1039 (Del. 2004). A direct lawsuit is proper where the plaintiff is  
19 directly injured by the defendant's conduct. *See VGS, Inc.*, 2003 WL 723285, at \*11. In  
20 other words, a suit to recover damages to an LLC must be brought in that LLC's name.

21 28 U.S.C. § 1654 sets forth the general rule "establishing the right of an individual  
22 to represent *oneself* in all federal courts of the United States." *Simon v. Hartford Life*,  
23 *Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) (emphasis added). "Section 1654 is intended to  
24 provide *individuals* with equal access to the courts by permitting individuals to represent  
25 *themselves*." *Id.* (emphasis added). Additionally, "it is well established that the privilege  
26 to represent oneself *pro se* provided by § 1654 is personal to the litigant and does not  
27 extend to other parties or *entities*." *Id.*, citing *McShane v. United States*, 366 F.2d 286,  
28 288 (9th Cir. 1966) (citation omitted) (emphasis added).

1 Here, Plaintiff's FAC suffers from the same pleading deficiencies regarding  
2 standing as in his initial Complaint. Plaintiff brought this action in his *individual*  
3 capacity, claiming that money, of which he had a fifty percent interest *as a member of*  
4 Data Services, was unlawfully or fraudulently transferred out of a *Data Services'* bank  
5 account (which was serviced by Wells Fargo), to another bank account in India, which he  
6 cannot access. (Compl. ¶¶32-34, 45.) Taking the relevant allegations of Plaintiff's FAC  
7 as true, Plaintiff has not established that he has suffered harm in his *individual* capacity.  
8 As alleged, Plaintiff's FAC suggests that Data Services, *a non-individual entity*, was  
9 directly harmed. As such, Plaintiff has not shown he has suffered an injury in fact in his  
10 *individual* capacity and therefore lacks standing.

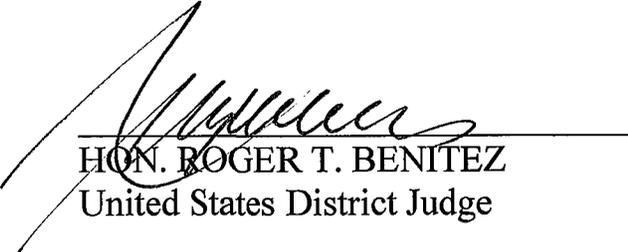
11 The Court therefore **GRANTS** Defendant's motion for lack of standing.

12 **CONCLUSION**

13 The Court **GRANTS** Defendant's Motion to Dismiss. The Complaint is  
14 **DISMISSED with leave to amend**. As a result, Plaintiff's Motion to Amend and  
15 Motion for Approval or Supplemental Pleadings are **DENIED as moot**. Plaintiff may  
16 file a Second Amended Complaint on or before **December 28, 2016**. If Plaintiff does not  
17 file an amended complaint, the Clerk shall close this case without further order of the  
18 Court.

19 **IT IS SO ORDERED.**

20  
21 DATED: December 25, 2016

22   
23 \_\_\_\_\_  
24 HON. ROGER T. BENITEZ  
25 United States District Judge  
26  
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