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SOUTHERN DISTRICT OF CALIFORNIA

BY: *AJS* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11	JAMES A. ZACHMAN,	
12		Plaintiff,
13	v.	
14	WELLS FARGO N.A.,	
15		Defendant.

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

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

Before the Court is the Motion to Dismiss Plaintiff's Second Amended Complaint filed by Defendant Wells Fargo N.A. ("Wells Fargo"). (Docket No. 46.) The Court finds the Motion suitable for determination on the papers without oral argument, pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, Defendant's Motion is

GRANTED.

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BACKGROUND¹

1. Real Time Data Services LLC (“Data Services”) is organized under the laws of
2 Delaware. (FAC ¶ 15.) In March 27, 2008, Data Services was comprised, in relevant
3 part, of two members, two Co-Presidents, and one manager. (FAC, Ex. A.) At that time,
4 Plaintiff James A. Zachman was the Co-President, member and sole manager of Data
5 Services. (*Id.*) CBS Accounting Services, in New Delhi, India, was the remaining
6 member, and was represented by Ms. Sangeeta Chhabra. (*Id.*) Ms. Chhabra was also Co-
7 President. (*Id.*) Plaintiff and CBS Accounting each owned a fifty percent interest in Data
8 Services. (*Id.*)

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10 As the sole manager, Plaintiff was in charge of all of Data Services’ U.S. banking
11 and financial activities. (SAC ¶ 15.) In January 2009, Plaintiff created a bank account
12 for Data Services at Wells Fargo (the “9809 account”). (*Id.* ¶ 18.) In May 2012, a
13 dispute arose between Plaintiff and Ms. Chhabra, resulting in Ms. Chhabra “lock[ing] the
14 Plaintiff out of the operations of Data Services by commandeering the computer
15 servers[.]” (*Id.* ¶ 19.) Plaintiff then shut Ms. Chhabra out of the 9809 account until the
16 dispute could be resolved. (*Id.* ¶ 20.) On June 18, 2012, Ms. Chhabra and Sahil Chhabra
17 (collectively “the Chhabras”) created a Wells Fargo account (the “9039 account”) for a
18 company called “My Real Data Services LLC” at the Fairfax branch in Lewes, Delaware.
19 (*Id.* ¶ 22.) The Chhabras created the account using Indian passports, a Delaware
20 registering agent’s address, and Data Services’ Employer Identification Number,
21 Delaware business file number, and Entity Member document. (*Id.* ¶¶ 22-23.)

22 According to Plaintiff, a Wells Fargo banker contacted the State of Delaware to
23 verify the file number and found no record of the company My Real Data Services, yet
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26 ¹ In his Second Amended Complaint (Docket No. 45, “SAC”), Plaintiff incorporated by
27 reference “[a]ll facts exhibits, arguments and counts” from his First Amended Complaint
28 (Docket No. 20, “FAC”). (*See* SAC at p. 2.) Therefore, the Court’s summary of the
allegations is similar to its prior Order, and new allegations will be discussed where
relevant to the Court’s analysis. The Court is not making findings of fact.

1 created the account anyway. (SAC ¶¶ 25-26.) Then, sometime between June 18 and July
2 1, 2012, the company name on the 9039 account changed from "My Real Data Services
3 LLC" to "Real Time Data Services LLC." (*Id.* ¶ 27.) Over the next few months, the
4 Chhabras used the Wells Fargo 9039 account to transfer over \$350,000 to an account in
5 India. (*Id.* ¶ 32.) The 9039 account allowed Ms. Chhabra to "carry out her scheme to
6 unlawfully cut [Plaintiff] out the LLC's management and ownership [sic]." (*Id.* ¶ 34.)
7 Ms. Chhabra's plans included taking control of Data Services' finances by "moving the
8 LLC's bank account to her own Data Services Wells Fargo account." (*Id.*)

9 Wells Fargo has an obligation to comply with the obligations set forth in the
10 Banking Secrecy Act ("BSA") and the Patriot Act. (SAC ¶ 37.) Plaintiff alleges Wells
11 Fargo knew the Chhabras provided a false business name, "chose to ignore the false
12 information," and provided Ms. Chhabras with banking services. (*Id.* ¶¶ 43, 48.)

13 PROCEDURAL HISTORY

14 Plaintiff, proceeding *pro se*, filed his initial Complaint against Defendant on
15 December 28, 2015. (Docket No. 1.) The Complaint alleged California state law claims
16 for negligence, breach of contract, and "aiding and abetting a breach of fiduciary duty."
17 (*Id.*) Rather than file an answer, Defendant moved to dismiss. (Docket No. 8.) On April
18 20, 2016, the Court granted Defendant's motion to dismiss without prejudice for lack of
19 subject-matter jurisdiction and because Plaintiff lacked standing to bring his claims.
20 (Docket No. 19.)

21 Plaintiff filed his FAC on May 16, 2016. (Docket No. 20.) The operative facts of
22 the FAC were similar to the initial Complaint; Plaintiff re-alleged his previous California
23 state law claims for negligence and "aiding and abetting a breach of fiduciary duty," and
24 added three new state law claims for violation of California's Unfair Competition Act,
25 aiding and abetting fraud, and aiding and abetting conversion, and one federal claim for
26 violation of the Racketeer Influenced Corrupt Organizations Act. (*Id.*) Defendant again
27 moved to dismiss. (Docket No. 23.) On December 7, 2016, the Court granted
28 Defendant's motion to dismiss without prejudice on the same grounds as its earlier Order,

1 i.e. because Plaintiff still had not established his standing to bring his claims. (Docket
2 No. 43.)

3 On December 21, 2016, Plaintiff filed the operative SAC, which reasserted the
4 same claims for relief previously alleged in the FAC. (Docket No. 45.) In the instant
5 motion, Defendant moves again to dismiss Plaintiff's action (Docket No. 46), and the
6 Court concludes that dismissal without leave to amend is now warranted.

7 LEGAL STANDARD

8 Under Federal Rule of Civil Procedure 12(b)(1), a party may seek dismissal of an
9 action for lack of subject matter jurisdiction. The party opposing a motion to dismiss
10 brought under Rule 12(b)(1) bears the burden of proving that the case is properly in
11 federal court. *See In re Ford Motor Co./Citibank (S. Dakota), N.A.*, 264 F.3d 952, 957
12 (9th Cir. 2001) ("The party asserting federal jurisdiction bears the burden of proving the
13 case is properly in federal court.") (citing *McNutt v. General Motors Acceptance Corp.*,
14 298 U.S. 178, 189 (1936)). Dismissal is appropriate if the complaint, considered in its
15 entirety, on its face fails to allege facts that are sufficient to establish subject matter
16 jurisdiction. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d
17 981, 985 (9th Cir. 2008) (citing *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir.
18 1990)).

19 "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for*
20 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d
21 1214, 1242 (9th Cir. 2000) (citation omitted in original)). In a facial attack, the moving
22 party contends that the complaint's allegations are insufficient on their face to invoke
23 federal jurisdiction. *Id.* "The district court resolves a facial attack as it would a motion
24 to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing
25 all reasonable inferences in the plaintiff's favor, the court determines whether the
26 allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite v.*
27 *Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citing *Pride v. Correa*, 719 F.3d 1130,
28 1133 (9th Cir. 2013)).

1. **DISCUSSION**

2 As it did in its two prior motions to dismiss, Wells Fargo moves to dismiss the
3 SAC for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure
4 12(b)(1),² and for failure to state a claim pursuant to Rule 12(b)(6). Once again, the
5 Court finds Rule 12(b)(6) analysis of Plaintiff's claims is unnecessary because Plaintiff
6 failed to establish his standing to bring the claims asserted in the SAC.

7 Plaintiff, as the party seeking federal jurisdiction, has the burden of showing that
8 Article III standing exists. *Brooke v. Kalthia Grp. Hotels*, No. 15CV1873-GPC(KSC),
9 2015 WL 7302736, at *3 (S.D. Cal. Nov. 18, 2015) (citing *Lujan v. Defenders of*
10 *Wildlife*, 504 U.S. 555, 561 (1992)). To demonstrate standing, Plaintiff must show (1) an
11 injury in fact; (2) traceable to the challenged action of the defendant; and (3) likely to be
12 redressed by a favorable decision. *Lujan*, 504 U.S. at 560.

13 As the Court discussed in its April 20, 2016 and December 7, 2016 Orders, in
14 California, a limited liability company is governed by the "law of the state or other
15 jurisdiction under which [it] is formed." Cal. Corp. Code § 17708.01. Data Services was
16 organized under Delaware law. Accordingly, the Court looks to Delaware law to
17 determine whether Plaintiff has any individual right to Data Services' assets.

18 Delaware courts have held that case law governing corporate derivative suits is
19 applicable to derivative suits brought on behalf of an LLC. *See Kelly v. Blum*, No. 4516-
20 VCP, 2010 WL 629850, at *9 (Del. Ch. Feb. 24, 2010); *VGS, Inc. v. Castiel*, No. 17995,
21 2003 WL 723285, at *11 (Del. Ch. Feb. 28, 2003); *Gotham Partners, L.P. v. Hallwood*
22 *Realty Partners, L.P.*, No. 15754, 1998 WL 832631, at *5 (Del. Ch. Nov. 10, 1998). In
23 determining whether a claim is derivative or direct, "[a] court should look to the nature of
24 the wrong and to whom the relief should go." *Tooley v. Donaldson, Lufkin & Jenrette*,
25 845 A.2d 1031, 1039 (Del. 2004). A direct lawsuit is proper where the plaintiff is

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28 ² All references to Rules in this Order are to the Federal Rules of Civil Procedure, unless
stated otherwise.

1. directly injured by the defendant's conduct. *See VGS, Inc.*, 2003 WL 723285, at *11.
2 Put another way, a suit to recover damages to an LLC must be brought in that LLC's
3 name.

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

12 Plaintiff's SAC does not cure the standing-related pleading deficiencies the Court
13 previously identified in both his initial Complaint and the FAC. (*See* Docket Nos. 19,
14 43.) All of the allegations in the SAC (and incorporated by reference in the FAC)
15 suggest, at most, that *Data Services*' suffered harm for which Well Fargo may be liable.³
16 Plaintiff, proceeding *pro se* and in his individual capacity, can neither represent nor
17 recover damages for harms allegedly suffered by *Data Services*, a non-individual entity.
18 In short, Plaintiff has failed his third attempt to meet his burden to state facts establishing
19 his standing, and ultimately, this Court's jurisdiction to hear his claims. As a result,
20 Defendant's motion to dismiss to dismiss the SAC is **GRANTED**, and Plaintiff's SAC is
21 **DISMISSED without leave to amend**.

22 **IT IS SO ORDERED.**

23 DATED: July 31, 2017


HON. ROGER T. BENTÉZ
United States District Judge

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27 ³ The Court is not commenting on the merits of the claims against Wells Fargo asserted in
28 the SAC, but attempting to distinguish why Plaintiff cannot bring what appear to be Data
Services' claims.