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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GAETAN PELLETIER, derivatively  
on behalf of Clover Valley Ranch  
LLC,

Plaintiff,

v.

WILLIAM V. RODRIGUEZ,  
individually and as trustee; JUDY  
A. RODRIGUEZ, individually and  
as trustee; WILLIAM V.  
RODRIGUEZ REVOCABLE  
LIVING TRUST, a Nevada Trust  
dated November 7, 1991; JAMES  
W. MIDDAGH; MORTENSEN  
PARTNERS, LIMITED  
PARTNERSHIP; ROBERT J.  
WINES; JOHN DOE(S), partners  
in Mortensen Partnership; JOHN  
DOES(S), beneficiaries of the  
Rodriguez Revocable Trust  
Beneficiaries in January 2015 and  
Now; CLOVER VALLEY RANCH  
LLC,

Defendants.

Case No.: 17-cv-1809-BTM-JMA

**ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS**

**[ECF NOS. 12, 19]**

1 Defendant Robert J. Wines has filed a motion to dismiss Plaintiff Gaetan  
2 Pelletier's Complaint. (ECF No. 12). Defendants William V. Rodriguez, Judy A.  
3 Rodriguez, and the William V. Rodriguez Revocable Living Trust have joined the  
4 motion to dismiss. (ECF No. 19). For the reasons discussed below, the Court  
5 GRANTS Defendant's motion.

6 **I. BACKGROUND**

7 Plaintiff alleges that he is the "managing member" of Clover Ranch LLC,  
8 which is comprised of two other members. (ECF No. 1 ("Complaint") ¶ 5). On  
9 August 29, 2014, Plaintiff, "representing Assignee" Clover Ranch LLC, entered into  
10 a contract with Defendants William V. Rodriguez and Judy A. Rodriguez, as  
11 Trustees of the William V. Rodriguez Family Revocable Living Trust dated  
12 November 7, 1991, to purchase property known as Clover Valley Ranch. Compl.  
13 ¶ 1, Exh. 1.

14 Plaintiff alleges that "the sale Contract terms . . . were breached, and made  
15 with fraudulent promises that Defendants had no intention to keep for the purpose  
16 of inducing Plaintiff to purchase the ranch to be assigned to Clover Valley Ranch  
17 LLC." Compl. ¶ 1. On September 17, 2017, Plaintiff filed a "Derivative Complaint,"  
18 "on behalf of Clover Valley Ranch LLC, for the following "derivative claims": breach  
19 of contract, negligence and gross negligence, fraud, slander, and false  
20 representation. *Id.*

21 On October 17, 2017, Defendant Wines filed a motion to dismiss Plaintiff's  
22 Complaint. (ECF No. 12). Defendants William V. Rodriguez, Judy A. Rodriguez,  
23 and the William V. Rodriguez Revocable Living Trust joined Wines' motion to  
24 dismiss. (ECF No. 19). The Court addresses Defendants' arguments that (1)  
25 Plaintiff is improperly acting pro se in representing Clover Valley Ranch LLC and  
26 (2) Plaintiff's action violates the first-to-file rule.

1 **II. DISCUSSION**

2 **A. Plaintiff Improperly Acting *Pro Se***

3 Plaintiff has brought this action *pro se* “derivatively on behalf of Clover Valley  
4 Ranch LLC.” Compl. ¶ 1. Plaintiff states that “this litigation belongs to the LLC [and]  
5 other members of the LLC have no personal financial benefit and are  
6 disinterested.” *Id.* ¶ 5. Plaintiff argues that he “has standing since he is the  
7 manager of the LLC and has provided an excess of \$600,000 for the LLC to  
8 purchase [Clover Valley Ranch].” *Id.* ¶ 4. Plaintiff states that he will “benefit  
9 indirectly upon the LLC prevailing in this lawsuit because the LLC would then be  
10 able to recover from damages and repay Plaintiff the money he advanced to the  
11 LLC to purchase [Clover Valley Ranch].” *Id.* ¶ 5.

12 Defendants request that Plaintiff’s Complaint be stricken because Plaintiff  
13 cannot represent Clover Ranch LLC *pro se*. (ECF No. 12 at 4). The Court agrees.  
14 According to the Local Civil Rules,

15 Only natural persons representing their individual interests in propria  
16 persona may appear in court without representation by an attorney  
17 permitted to practice pursuant to Civil Local Rule 83.3. All other parties,  
18 including corporations, partnerships and other legal entities, may  
appear in court only through an attorney permitted to practice pursuant  
to Civil Local Rule 83.3.

19 L. Civ. R. 83.3(j). Plaintiff has not established that he is an attorney permitted to  
20 represent Clover Ranch LLC pursuant to Civil Local Rule 83.3. Therefore, Plaintiff  
21 cannot properly file the Derivative Complaint on behalf of Clover Ranch LLC. See  
22 *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (“A  
23 corporation may appear in federal court only through licensed counsel.”); *Simon v.*  
24 *Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) (“courts have routinely  
25 adhered to the general rule prohibiting *pro se* plaintiffs from pursuing claims on  
26 behalf of others in a representative capacity”); *In re Am. W. Airlines*, 40 F.3d 1058,  
27 1059 (9th Cir. 1994) (“non-attorney members of a partnership [cannot] appear on  
28

1 behalf of the partnership”). Further, no attorney has entered an appearance on  
2 behalf of Clover Valley Ranch LLC. Therefore, the Court strikes Plaintiff’s  
3 Complaint (ECF No. 1).

#### 4 **B. First-to-File Rule**

5 Defendant also argues Plaintiff’s Complaint should be dismissed because it  
6 was filed after he first filed a nearly identical complaint in the United States District  
7 Court for the District of Nevada (“Nevada Complaint”), thus violating the first-to-file  
8 rule. (ECF No. 12 at 19).

9 “There is a generally recognized doctrine of federal comity which permits a  
10 district court to decline jurisdiction over an action when a complaint involving the  
11 same parties and issues has already been filed in another district.” *Pacesetter*  
12 *Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982). “Thus, a court  
13 analyzes three factors: chronology of the lawsuits, similarity of the parties, and  
14 similarity of the issues.” *Kohn Law Grp., Inc. v. Auto Parts Mfg. Mississippi, Inc.*,  
15 787 F.3d 1237, 1240 (9th Cir. 2015).

16 Plaintiff’s Nevada Complaint was filed on September 5, 2017. (ECF No. 12,  
17 Exh. 1). Plaintiff’s instant Complaint was filed on September 7, 2017. (ECF No. 1).  
18 Accordingly, the first factor is satisfied.

19 “[T]he first-to-file rule does not require strict identity of the parties, but rather  
20 substantial similarity.” *Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1147  
21 (E.D. Cal. 2010). The parties between Plaintiff’s Nevada Complaint and the instant  
22 Complaint are identical, with the exception of Plaintiff appearing “derivatively on  
23 behalf of Clover Valley Ranch LLC” and Clover Valley Ranch LLC included as a  
24 nominal defendant. (See ECF No. 12, Exh. 1; ECF No. 1). Accordingly, the second  
25 factor is satisfied.

26 Plaintiff’s claims in the instant Complaint are identical to the ones in the  
27 Nevada Complaint. Further, Plaintiff’s instant Complaint and the Nevada  
28 Complaint are identical in language, except for an additional section in the instant

1 Complaint regarding Plaintiff's standing to bring the suit on behalf of Clover Valley  
2 Ranch LLC. (See ECF No. 12, Exh. 1; ECF No. 1). Accordingly, the third factor is  
3 satisfied.

4 Because Plaintiff has initiated and pursued a substantially identical action in  
5 the District of Nevada, the Court declines jurisdiction over this action.

6 The Court further notes that the Complaint alleges that Clover Valley Ranch  
7 LLC is the real Plaintiff in interest. Compl. ¶ 1, 5. The Complaint also invokes  
8 diversity jurisdiction under 28 U.S.C. 1332. Compl. ¶ 2. In ascertaining whether  
9 Plaintiff has met diversity requirements, the Court must "disregard nominal or  
10 formal parties and rest jurisdiction only upon the citizenship of *real* parties to the  
11 controversy." *Kuntz v. Lamar Corp.*, 385 F.3d 1177, 1183 (9th Cir. 2004)  
12 (emphasis added) (quoting *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461 (1980)).  
13 See also *Dep't of Fair Emp't v. Lucent Techs.*, 642 F.3d 728 (9th Cir. 2011) (holding  
14 named plaintiff had standing yet did not constitute real party in interest for purposes  
15 of diversity jurisdiction); Fed. R. Civ. P. 17(a) ("An action must be prosecuted in  
16 the name of the real party in interest."); *Cunningham v. BHP Petroleum Great*  
17 *Britain PLC*, 427 F.3d 1238, 1244 (10th Cir. 2005) (holding court lacked diversity  
18 jurisdiction because partnership "was always the real [plaintiff] in interest" and  
19 plaintiff failed to plead citizenship of every partner). The citizenship of Clover Valley  
20 Ranch LLC, the real Plaintiff in interest, is therefore determinative of whether the  
21 Court has subject matter jurisdiction here.

22 The citizenship of an LLC is that of its individual members. *Johnson v.*  
23 *Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). See also  
24 *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195 (1990) ("[W]e reject the contention  
25 that to determine, for diversity purposes, the citizenship of an artificial entity, the  
26 court may consult the citizenship of less than all of the entity's members.") Since  
27 the real Plaintiff is an LLC composed of 3 members (Compl. ¶ 5), the Complaint  
28 must show that each member of the LLC is a citizen of a state other than the state

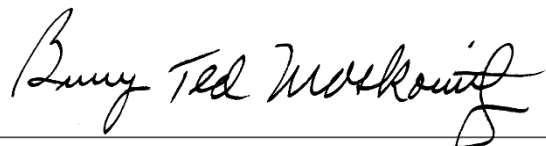
1 of citizenship for each and all defendants. *Johnson*, 437 F.3d at 899. In the  
2 Complaint, Plaintiff alleges that he is a citizen of California but fails to allege the  
3 citizenship of the other two members. Compl. ¶ 2. The Complaint therefore fails to  
4 set forth subject matter jurisdiction.

5 **III. CONCLUSION AND ORDER**

6 For the foregoing reasons, the Court GRANTS Defendant's motion to  
7 dismiss (ECF Nos. 12, 19). The Clerk shall enter final judgment dismissing this  
8 case.

9 **IT IS SO ORDERED.**

10 Dated: September 21, 2018



11  
12 Barry Ted Moskowitz, Chief Judge  
13 United States District Court  
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