

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

TRC & ASSOCIATES,  
Plaintiff/Counterdefendant,  
v.  
NUSCIENCE CORPORATION; LUMINA  
HEALTH PRODUCTS, INC., and DOES  
1-20, inclusive  
Defendants/Counterclaimants.

Case No. 2:13-cv-6903-ODW(CWx)  
**OSC RE. SUBJECT-MATTER AND  
SUPPLEMENTAL JURISDICTION  
OVER COUNTERCLAIMS AND  
THIRD PARTY COMPLAINTS**

NUSCIENCE CORPORATION,  
Third-Party Plaintiff,  
v.  
JOHN CLARK; DAVID MCKINNEY; and  
STEPHEN E. ABRAHAM  
Third-Party Defendants .

LUMINA HEALTH PRODUCTS, INC.,  
Third-Party Plaintiff,  
v.  
JOHN CLARK  
Third-Party Defendants.

1 The Court is now in receipt of the following new pleadings in this action:  
2 (1) NuScience Corporation’s Amended Answer to Complaint and Counterclaims  
3 (ECF No. 70)<sup>1</sup>; (2) NuScience’s Third-Party Complaint (ECF No. 71); (3) Lumina  
4 Health Products, Inc.’s Amended Answer With Counterclaim (ECF No. 73.); and  
5 (4) Lumina’s Third-Party Complaint (ECF No. 74). These new pleadings have raised  
6 a red flag for the Court due to this case’s already lengthy history. The Court’s  
7 immediate concern is a jurisdictional one.

8 The Court has subject-matter jurisdiction over the original Complaint in this  
9 action based on federal-question jurisdiction under 28 U.S.C. § 1331. The  
10 Counterclaims and Third Party Complaints listed above allege that this Court has  
11 supplemental jurisdiction over the new claims under 28 U.S.C. § 1367(a). However,  
12 the Court is not so certain that these new claims “form part of the same case or  
13 controversy.” 28 U.S.C. § 1367(a).

14 Moreover, with respect to the Third-Party Complaints, the Court directs the  
15 parties’ attention to Federal Rule of Civil Procedure 14(a). “A defending party may,  
16 as third-party plaintiff, serve a summons and complaint on a nonparty who is or may  
17 be liable to it for all or part of the claim against it.” Fed. R. Civ. P. 14(a)(1). It is not  
18 sufficient that a third-party claim is related or arises out of the same set of facts.  
19 *United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 452 (9th Cir. 1983). “[A]  
20 third-party claim may be asserted only when the third party’s liability is in some way  
21 dependent on the outcome of the main claim and the third party’s liability is secondary  
22 or derivative.” *Id.*; see also *American Zurich Ins. Co. v. Cooper Tire & Rubber Co.*,  
23 512 F.3d 800, 805 (6th Cir. 2008). At first glance, the Third-Party Complaints filed  
24 in this action do not appear to comply with Rule 14(a). If the impleader is improper

25 ///

26 \_\_\_\_\_  
27 <sup>1</sup> While the Court has stricken this document for NuScience’s failure to comply with Local Rule 3-2,  
28 requiring initiating documents to be manually filed, the Court fully expects NuScience to correct this  
deficiency in short notice. (ECF No. 78.) Therefore, this Order to Show Cause shall apply to the  
Amended Answer and Counterclaims filed by NuScience at that time.

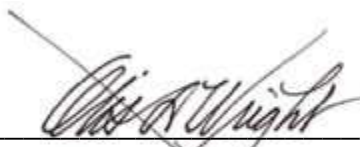
1 against the third-party defendants in this case, then the Court cannot exercise  
2 supplemental jurisdiction over the claims.

3 Based on the foregoing, the Court hereby **ORDERS** NuScience and Lumina to  
4 **SHOW CAUSE**, in writing, no later than **December 27, 2013**, why the  
5 Counterclaims and Third-Party Complaints should not be dismissed for lack of  
6 jurisdiction. No hearing shall be held. To discharge this Order to Show Cause,  
7 NuScience and Lumina should identify the law allowing this Court to exercise  
8 supplemental jurisdiction. NuScience and Lumina should also identify the specific  
9 paragraphs in the Counterclaims and lengthy Third-Party Complaints that demonstrate  
10 that the new claims arise from the same case or controversy as the original Complaint.  
11 In addition, with respect to the Third-Party Complaints, NuScience and Lumina  
12 should identify the specific paragraphs that allege that the third-party defendants are  
13 or may be liable to NuScience and Lumina as a result of TRC's claims.

14 Finally, the Court is also in receipt of a letter from Stephen Abraham, who is  
15 counsel for Plaintiff TRC & Associates and now a third-party defendant. (ECF  
16 No. 79.) This letter, pursuant to this Court's Minute Order on November 11, 2013  
17 (ECF No. 62), seeks leave to file Motions to Dismiss with respect to the  
18 Counterclaims and Third-Party Complaints. The Court grants leave to file Motions to  
19 Dismiss, if or when this Order to Show Cause is discharged.

20 **IT IS SO ORDERED.**

21  
22 December 19, 2013

23  
24   
25 \_\_\_\_\_  
26 **OTIS D. WRIGHT, II**  
27 **UNITED STATES DISTRICT JUDGE**  
28