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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**TOM HUSSEY PHOTOGRAPHY LLC AND TOM  
HUSSEY,**

Plaintiffs,

vs.

**FAMILY MATTERS IN-HOME CARE LLC,**

Defendant.

Case No. 4:20-CV-8197-YGR

**ORDER GRANTING MOTION TO DISMISS  
THIRD-PARTY COMPLAINT WITHOUT  
PREJUDICE**

Re: Dkt. No. 39

**FAMILY MATTERS IN-HOME CARE LLC,**

Third-Party Plaintiff,

vs.

**JAMES BOWEN AND RIPEN DIGITAL LLC,**

Third-Party Defendants.

17 On November 20, 2020, plaintiffs Tom Hussey Photograph LLC and Tom Hussey filed this  
18 action asserting claims of copyright infringement and infringement of the right to publicity against  
19 defendant Family Matters In-Home Care LLC. (Dkt. No. 1) On February 16, 2021, defendant filed  
20 an amended answer to the complaint as well a third-party complaint against third-party defendants  
21 James Bowen and Ripen Digital LLC. (Dkt. Nos. 27, 28.) Despite the causes of action therein being  
22 styled as cross-claims and/or a counterclaim, the Court understands the third-party complaint to be  
23 seeking contribution, indemnity, and declaratory relief from the third-party defendants.

24 Third-party defendants are now “mov[ing] to dismiss any and all third-party claims raised  
25 against them in the [t]hird-[p]arty [c]omplaint on the grounds [that] there exists no right to  
26 contribution or indemnity under federal copyright law or [p]laintiff’s Mr. Tom Hussey’s preempted  
27 right to publicity.” (Dkt. No. 39.) In response, defendant/third-party plaintiff “concedes that it cannot  
28 seek indemnity or contribution from the [t]hird-[p]arty [d]efendant and that dismissal of the [t]hird-

1 [p]arty [c]omplaint may be considered. In the alternative, however, [t]hird [p]arty [p]laintiff seeks  
2 leave of this [C]ourt to amend the complaint in the interests of justice and judicial economy to state  
3 the applicable causes of action for breach of contract.” (Dkt. No. 44.) Plaintiff also filed a response,  
4 opposing the motion to the extent the third-party defendants were seeking dismissal of the complaint’s  
5 second and third claims in light of the motion suggesting as much. (Dkt. No. 45.)

6 In light of the foregoing, the Court **GRANTS** the motion to dismiss the third-party complaint  
7 **WITH LEAVE TO AMEND**. To the extent that third-party defendants seek dismissal of claims in the  
8 complaint by plaintiff against defendant, the motion is **DENIED**. Defendant shall have **twenty-one**  
9 **(21) days** from the date of this order to file an amended third-party complaint. Third-party defendants  
10 shall have **twenty-one (21) days** to respond after filing.

11 **IT IS SO ORDERED.**

12 This Order terminates Docket Number 39.

13 Dated: **June 4, 2021**

  
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YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE

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