

1
2
3
4
5
6
7

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 NICHOLAS KORMYLO, M.D.;
11 KIMBERLY KORMYLO; BRYCE
12 KORMYLO, by and through his
guardian ad litem KIMBERLY
KORMYLO.

CASE NO. 13-cv-0511 JM (WVG)
ORDER GRANTING MOTION FOR
LEAVE TO FILE A THIRD-PARTY
COMPLAINT

13 Plaintiff,
14 vs.
15 FOREVER RESORTS, LLC doing
16 business as CALVILLE BAY
17 RESORT & MARINA; KENNETH
WILLIAMS, AND DOES 1-50,
Defendants.

19 On June 30, 2014, Defendants Forever Resorts, LLC and Kenneth Williams
20 (collectively, “Defendants”) filed a motion for leave to file a third-party complaint.
21 (Dkt. No. 44). The third-party complaint seeks equitable indemnity, comparative
22 indemnity, and declaratory relief apportioning liability against the Boy Scouts of
23 America, Boy Scouts of America, San Diego-Imperial Council (collectively “BSA”),
24 and the adult leaders of Boy Scouts of America Team 719, including but not limited
25 to Robin Maxfield Jackman, William Dale, Robert Jafek, James Michael Ledakis, Eric
26 Jonathan Sanford, Robert Shumway, and David Taylor (“Adult Leaders of BSA Team
27 719”) (collectively, “Proposed Third-Party Defendants”). On July 21, 2014, Plaintiffs
28 filed an opposition to Defendants’ motion, (Dkt. No. 45), and Defendants filed their

1 reply on July 28, 2014, (Dkt. No. 46). Having reviewed the parties' briefing, the court
2 finds this matter suitable for resolution on the papers without oral argument pursuant
3 to Civil Local Rule 7.1.d.1. For the reasons set forth below, Defendants' motion for
4 leave to file a third-party complaint is GRANTED.

5 **LEGAL STANDARD**

6 Federal Rule Civil Procedure ("Rule") 14 provides that "[a] defending party
7 may, as third-party plaintiff, serve a summons and complaint on a nonparty who is
8 or may be liable to it for all or part of the claim against it." Fed. R. Civ. P. 14(a)(1).
9 "The decision whether to implead a third party defendant is within the sound discretion
10 of the district court." Southwest Administrators, Inc. V. Rozay's Transfer, 791 F.2d
11 769, 777 (9th Cir. 1986). Courts consider the following factors when ruling on a
12 motion for leave to file a third-party complaint: (a) prejudice to the original plaintiff;
13 (b) complication of issues at trial; (c) likelihood of trial delay; and (d) timeliness of the
14 motion to implead. See Irwin v. Mascott, 94 F. Supp. 2d 1052, 1056 (N.D. Cal. 2000).

15 **DISCUSSION**

16 Plaintiffs' original complaint alleges Kenneth Williams, an employee of Forever
17 Resorts, LLC, injured Nicholas Kormylo by hitting him with a boat while the Kormylos
18 were enjoying a father-son outing on Lake Mead. The complaint further alleges that
19 the father-son outing was sponsored by the San Diego chapters of the Boy Scouts and
20 the Mormon Church. Defendants seek leave to file a third-party complaint in order to
21 implead the Proposed Third-Party Defendants for the purpose of assigning liability
22 with respect to the incident on Lake Mead. In opposition to Defendants' request,
23 Plaintiffs argue Defendants have unreasonably delayed bringing the Proposed Third-
24 Party Defendants into this action. Plaintiffs contend Defendants should have been
25 aware of the Boy Scouts' potential liability regarding the incident from the initial filing
26 of Plaintiffs' complaint and have unreasonably delayed bringing them into this action.
27 Because of this delay, Plaintiffs argue Defendants' motion must be denied because it
28 does not satisfy Rule 14(a).

1 First, Plaintiffs contend prejudice to the original plaintiff is established because
2 timely resolution of Nicholas Kormylo’s claim is essential to his and his family’s
3 well-being following his loss of income and ongoing health issues. Plaintiffs suggest
4 that Defendants’ attempt to file a third party complaint at this juncture “appears
5 intended to intentionally delay and complicate the matter as it currently exists.” As an
6 initial matter, the court notes Plaintiffs have not proffered any evidence suggesting
7 Defendants have an improper motive for filing their motion. Additionally, while
8 Plaintiffs understandably desire the most expedient resolution of their claims possible,
9 it is also important for Defendants to have a reasonable opportunity to present the best
10 defense available. At this stage in the litigation, any prejudice to Plaintiffs is not so
11 great as to weigh heavily against granting Defendants the opportunity to implead the
12 Proposed Third-Party Defendants.

13 Second, Plaintiffs argue Defendants’ third party complaint will complicate the
14 issues at trial. Plaintiffs’ initial complaint alleges Defendants violated Inland
15 Navigational Rules to establish negligence per se. For this reason, Plaintiffs argue it
16 is irrelevant whether Boy Scout guidelines were followed in setting up the outing on
17 Lake Mead. However, Defendants point out that Plaintiffs’ complaint also alleges the
18 scout trip was approved and authorized by the BSA; a “safe swim zone” was created,
19 and Defendants were negligent in entering and not recognizing the “safe swim zone.”
20 The proposed third-party complaint is based on the same set of operative facts, alleging
21 that the Proposed Third-Party Defendants were negligent in setting up the “safe swim
22 zone,” failed to follow BSA safety procedures, including Safe Swim Defense and
23 Safety Afloat, failed to conduct a safety meeting, and that BSA was negligent in
24 approving and authorizing the Tour and Activities Plan for Team 719’s trip to Lake
25 Mead. Defendants contend these are the same issues that Defendants would raise in
26 response to Plaintiffs’ complaint with or without the third-party complaint. Under the
27 circumstances and given the parties’ respective allegations, the court concludes
28 Defendants’ third-party complaint will not unreasonably complicate the issues at trial.

1 Most of the facts and legal issues contained in the proposed third-party complaint relate
2 directly to Plaintiffs' original claims. It does not appear likely that any additional
3 issues raised by the third-party complaint would be so tangential as to unnecessarily
4 complicate issues at trial.

5 Third, Plaintiffs contend the proposed third-party complaint will complicate all
6 aspects of the discovery process and increase the time needed to conduct discovery; the
7 newly introduced parties will need time to answer, file motions, and conduct discovery,
8 further delaying and complicating the current proceedings; and the third-party
9 complaint will require the court to consider numerous legal and factual complications
10 in addition to calculating the percentages of liability. In response, Defendants again
11 point out that the issues of fact and law remain essentially the same. The only
12 additional issues pertain to contribution and indemnity. The court finds Defendants'
13 argument persuasive. Here again, there may be a slight delay of trial as the Proposed
14 Third-Parties will likely require some additional time while entering into this litigation.
15 However, the court does not anticipate a significant delay given the early stage of the
16 litigation and the substantial overlap in the factual and legal issues underlying both
17 Plaintiffs' complaint and the proposed third party complaint. From the perspective of
18 judicial economy and litigation expense for the parties, a reasonable delay of trial in
19 this case is ultimately more efficient than relegating such similar factual and legal
20 issues to a separate lawsuit.

21 Lastly, Plaintiffs argue that Defendants' motion is not timely as it has been 16
22 months since the initial complaint was filed and limited discovery has now been
23 conducted. Significantly, the case management conference order regulating discovery
24 and other pretrial proceedings provides that "any motion to join other parties, to amend
25 the pleadings, or to file additional pleadings shall be filed on or before June 30, 2014."
26 (Dkt. No. 42 at 2 (emphasis in original)). Furthermore, Plaintiffs actually agreed to this
27 date as reflected in the parties' proposed joint scheduling plan submitted to the court.
28 (Dkt. No. 40 at 2). Therefore, the court rejects Plaintiffs' characterization of

1 Defendants' motion as untimely. Defendants filed their motion for leave to file a third
2 party complaint on June 30, 2014, in accordance with the case management order
3 adopting the parties' proposed joint scheduling plan. More than any other, this factor
4 weighs in favor of granting Defendants' request to file a third-party complaint.

5 **CONCLUSION**

6 The court grants Defendants' motion for leave to file a third party complaint
7 without prejudice to further challenge of the complaint should circumstances warrant.
8 Defendants shall file the third party complaint within 10 days of this order.

9 IT IS SO ORDERED.

10 DATED: August 5, 2014


11 Hon. Jeffrey T. Miller
12 United States District Judge

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28