

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  
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICK CROSS, individually and on behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
INFINITY ENERGY, INC.; and INFY MARKETING, LLC,  
  
Defendants.

Case No.: 16cv2527-MMA (JLB)

**ORDER GRANTING DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT AGAINST VIRTUAL SALES SOLUTIONS**

[Doc. No. 21]

Plaintiff Patrick Cross (“Plaintiff”) filed a First Amended Class Action Complaint (“FAC”) against Defendants Infinity Energy, Inc. (“Infinity”) and INFY Marketing, LLC (“INFY,” collectively “Defendants”) on October 10, 2016, alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 277, *et seq.* (“TCPA”). *See* Doc. No. 1. On February 1, 2017, Infinity filed an answer to Plaintiff’s FAC. *See* Doc. No. 6. On February 7, 2017, INFY filed an answer to Plaintiff’s FAC. *See* Doc. No. 8. Defendants now move for leave to file a Third-Party Complaint against Virtual Sales Solutions. *See* Doc. No. 21. On April 24, 2017, Plaintiff Patrick Cross filed a statement of non-opposition regarding Defendants’ motion. *See* Doc. No. 22. For the reasons set forth below, the Court **GRANTS** Defendants’ motion.

///

1 DISCUSSION

2 Federal Rule of Civil Procedure 14(a) provides, “[a] defending party may, as third-  
3 party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to  
4 it for all or part of the claim against it.” Fed. R. Civ. P. 14(a). However, “the third-party  
5 plaintiff must, by motion, obtain the court’s leave if it files the third-party complaint  
6 more than 14 days after serving its original answer.” Fed. R. Civ. P. 14(a). “The purpose  
7 of this rule is to promote judicial efficiency by eliminating the necessity for the defendant  
8 to bring a separate action against a third individual who may be secondarily or  
9 derivatively liable to the defendant for all or part of the plaintiff’s original claim.”  
10 *Southwest Admin., Inc. v. Rozay’s Transfer*, 791 F.2d 769, 777 (9th Cir. 1986). The  
11 decision whether to permit a third party claim under Rule 14 is left to the “sound  
12 discretion of the trial court.” *Id.*

13 Here, the Court finds the interests of justice are served by permitting Defendants to  
14 file a Third-Party Complaint against Virtual Sales Solutions (“VSS”). INFY entered into  
15 a contract with VSS in order for VSS to provide marketing solicitation services to INFY.  
16 *See* Doc. No. 21-1 at 2. Pursuant to the parties’ contract, “VSS expressly agreed to  
17 indemnify INFY and Infinity. . . for all claims and damages arising out of VSS[’s]  
18 performance of its marketing duties contemplated by the Agreement.” *Id.* Defendants  
19 contend that pursuant to the indemnity provisions of the contract, VSS is responsible for  
20 any alleged violation of the TCPA, and any damages flowing therefrom. *See id.* Thus,  
21 permitting Defendants to file a Third-Party Complaint eliminates the need for Defendants  
22 to bring a separate action against VSS. *See Southwest*, 791 F.2d at 777. Additionally,  
23 Plaintiff does not oppose the filing of a Third-Party Complaint in this action. *See* Doc.  
24 No. 22. Finally, although Defendants technically filed the instant motion after the March  
25 29, 2017 deadline to join parties, amend pleadings, or to file additional pleadings as set  
26 forth in the Scheduling Order (Doc. No. 17), Defendants’ motion is well in advance of  
27 the April 3, 2018 trial date. As such, the Court **GRANTS** Defendants’ motion.

28 ///

1 CONCLUSION

2 For the reasons set forth above, the Court **VACATES** the previously scheduled  
3 hearing date and **GRANTS** Defendants’ motion for leave to file a Third-Party Complaint  
4 against Virtual Sales Solutions. Defendants must separately file the Third-Party  
5 Complaint, previously filed as “INFY Marketing, LLC’s Third-Party Complaint Against  
6 Virtual Sales Solutions” (Doc. No. 21-2 at 50), on the docket within three (3) days of this  
7 Order.

8  
9 **IT IS SO ORDERED.**

10  
11 Dated: April 25, 2017

12   
13 HON. MICHAEL M. ANELLO  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28