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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 MARIA T. GONZALEZ, on Behalf of  
13 Herself and All Others Similarly Situated,  
14 Plaintiff,

15 v.

16 EXAMINATION MANAGEMENT  
17 SERVICES, INC., a Nevada Corporation;  
18 LABORATORY CORPORATION OF  
19 AMERICA HOLDINGS, a Delaware  
20 Corporation; and DOES 1–10, inclusive,  
21 Defendants.

Case No.: 17cv1077-JLS (JLB)

**ORDER: (1) GRANTING MOTION  
TO FILE THIRD PARTY  
COMPLAINT; AND (2) VACATING  
HEARING**

(ECF No. 22)

22 Presently before the Court is Defendant Examination Management Services, Inc.  
23 (“EMSI”)’s Motion for Leave to File Third Party Complaint, (ECF No. 22). EMSI seeks  
24 leave to add Soko United Corporation (“Soko”) as a defendant, stating Plaintiff incorrectly  
25 named EMSI as her employer when Soko is Plaintiff’s actual employer. (*Id.* at 3–4). EMSI  
26 seeks to implead Soko “for the purposes of assigning liability” to Soko if any liability is  
27 found with respect to Plaintiff’s allegations. (*Id.* at 3.)

28 Also before the Court is Plaintiff Maria Gonzalez’s Response to Motion, (ECF No.

1 23). In her Response, Plaintiff states she “does not oppose EMSI’s filing of the proposed  
2 Third-Party Complaint” but reserves her right to strike, sever, or try separately the third-  
3 party claim and assert claims against the third party, and clarifies her belief that EMSI is  
4 correctly named as a defendant because EMSI is her employer. (*Id.* at 5, 8–9.)

### 5 ANALYSIS

6 Federal Rule of Civil Procedure 14(a) governs when a defendant may bring a third  
7 party into a case. It provides, in pertinent part:

8 A defending party may, as third-party plaintiff, serve a summons and  
9 complaint on a nonparty who is or may be liable to it for all or part of the  
10 claim against it. But the third-party plaintiff must, by motion, obtain the  
11 court’s leave if it files the third-party complaint more than 14 days after  
serving its original answer.

12 Fed. R. Civ. P. 14(a). Here, because Defendant’s original answer was filed on August 28,  
13 2017, leave of the Court is required.

14 As to the purpose of Rule 14(a), Professors Wright and Miller explain:

15 The claim against the third-party defendant must be based upon plaintiff’s  
16 claim against defendant. The crucial characteristic of a Rule 14 claim is that  
17 defendant is attempting to transfer to the third-party defendant the liability  
18 asserted against him by the original plaintiff. The mere fact that the alleged  
19 third-party claim arises from the same transaction or set of facts as the original  
claim is not enough.

20 6 Charles Alan Wright, et al., Federal Practice and Procedure § 1446 (3d ed. 2017). “The  
21 decision whether to implead a third party defendant is within the sound discretion of the  
22 district court.” *Southwest Adm., Inc. v. Rozay’s Transfer*, 791 F.2d 769, 777 (9th Cir.  
23 1986). “In deciding whether to permit a defendant to file a third party complaint, the court  
24 considers (1) prejudice to the original plaintiff; (2) complication of issues at trial; (3) the  
25 likelihood of trial delay; and (4) the timeliness of the motion.” *Irwin v. Mascott*, 94 F.  
26 Supp. 2d 1052, 1056 (N.D. Cal. 2000) (citing *Somportex Ltd. v. Philadelphia Chewing*  
27 *Gum Corp.*, 453 F.2d 435, 439 n.6 (3d Cir. 1971)); *see also Green Valley Corp. v. Caldo*

1 *Oil Co.*, No. 09-cv-04028-LHK, 2011 WL 1465883, at \*8 (N.D. Cal. Apr. 18, 2011)  
2 (same).

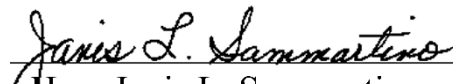
3 First, EMSI's claim against Soko is based on Plaintiff's claim against EMSI. EMSI  
4 alleges if anyone is liable to Plaintiff, it is Soko, and is therefore attempting to transfer  
5 liability to Soko. Further, as to the three factors from *Irwin*, Plaintiff does not oppose the  
6 Motion and does not argue she would be prejudiced by the addition of Soko to the case.  
7 The Court agrees and finds no prejudice. Complication of issues and delay of the trial are  
8 not significant concerns because this case is still in its infancy and trial has not yet been  
9 set. Further, discovery has not yet begun in this case, and Magistrate Judge Burkhardt has  
10 already ordered that if Soko is added to the case, the Federal Rule of Civil Procedure 26(f)  
11 conference shall be completed within 14 days of Soko's filing of its answer to the complaint  
12 or the district court's ruling on any Rule 12 motion by Soko, whichever is sooner. (ECF  
13 No. 20, at 2.) Finally, the Court finds the present Motion timely, as it was filed with no  
14 undue delay, approximately one month after Defendant filed its answer.

15 **CONCLUSION**

16 For the foregoing reasons, the Court **GRANTS** Defendant's Motion. Accordingly,  
17 the Court **VACATES** the hearing set for November 16, 2017.

18 **IT IS SO ORDERED.**

19 Dated: November 8, 2017

20   
21 Hon. Janis L. Sammartino  
22 United States District Judge  
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