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3 UNITED STATES DISTRICT COURT

## 4 DISTRICT OF NEVADA

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6 DOUGLAS CODER & LINDA CODER  
7 FAMILY LLLP,

Case No. 3:19-cv-00520-MMD-CLB

8 Plaintiff,

ORDER

9 v.

10 RNO EXHIBITIONS, LLC, *et al.*,

11 Defendants.

12 **I. SUMMARY**

13 Plaintiff Douglas Coder and Linda Coder Family LLLP sued Defendants RNO  
14 Exhibitions, LLC (“RNO”) and Vincent L. Webb (RNO’s alleged alter ego) after Plaintiff  
15 lent some money to RNO, but RNO never repaid Plaintiff. (ECF No. 37 (“FAC”).) More  
16 recently, RNO filed a third party complaint against Scott Coder and Coder Consulting  
17 Team, LLC (collectively, “Coder Consulting”). (ECF No. 61 (“Third Party Complaint”).)  
18 Before the Court is Coder Consulting’s motion to strike RNO’s Third Party Complaint  
19 under Fed. R. Civ. P. 14(a), or alternatively dismiss the Third Party Complaint under Fed.  
20 R. Civ. P. 12(b)(6).<sup>1</sup> (ECF No. 70 (“Motion”).) Primarily because only RNO’s implied  
21 indemnity claim against Coder Consulting is even arguably derivative of the claims  
22 Plaintiff asserts against RNO, but RNO cannot seek indemnity for its alleged intentional  
23 misrepresentations, and as further explained below, the Court will grant the Motion.

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28 <sup>1</sup>RNO filed a response (ECF No. 74), and Coder Consulting filed a reply (ECF No. 75). As further explained below, because the Court finds it must strike the Third Party Complaint under Fed. R. Civ. P. 14(a), the Court does not address Coder Consulting’s alternative Fed. R. Civ. P. 12(b)(6) arguments.

1     **II.     BACKGROUND**

2             The Court incorporates by reference its description of Plaintiff's allegations and  
3     claims against RNO and Webb in the FAC provided in its prior order addressing RNO and  
4     Webb's motions to dismiss it. (ECF No. 56 ("Prior Order") at 2.) Following the Prior Order,  
5     Plaintiff is proceeding under the FAC on three claims against RNO, and Webb through  
6     Plaintiff's alter ego theory: (1) breach of contract; (2) intentional misrepresentation; and  
7     (3) for an accounting.<sup>2</sup> (*See generally id.*) The gist of Webb's alleged intentional  
8     misrepresentations were that RNO was in good financial shape, though Plaintiff alleges  
9     it was not at the time Webb allegedly induced Plaintiff to invest in RNO. (*Id.* at 2.)

10            The following facts are adapted from the Third Party Complaint. (ECF No. 61.)  
11     RNO engaged Coder Consulting<sup>3</sup> to raise money in early 2015. (*Id.* at 2.) Coder  
12     Consulting touted Scott Coder's father Douglas Coder's ability to raise money and falsely  
13     led Webb to believe Douglas Coder was part of Coder Consulting. (*Id.* at 2-3.) Coder  
14     Consulting knew RNO's financial condition, and it was Coder Consulting's responsibility  
15     to convey information about RNO's financial condition to potential investors it solicited.  
16     (*Id.* at 3.) Coder Consulting brought Plaintiff in as an investor in RNO, and closed the deal  
17     through which Plaintiff invested in RNO. (*Id.*)

18            RNO paid Coder Consulting approximately \$123,000 in commissions under an oral  
19     deal where Coder Consulting earned 10% of all of the money it brought in to RNO as a  
20     commission. (*Id.*) RNO sent Coder Consulting a written agreement memorializing this and  
21     other arrangements between RNO and Coder Consulting, but Scott Coder refused to  
22     sign, explaining he did not want to sign a written contract because he was not licensed to  
23     sell securities. (*Id.*)

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26            <sup>2</sup>As explained in the Prior Order, an accounting is more of a remedy than a claim,  
27     but the Court nonetheless declined to dismiss it for the reasons provided in the Prior  
28     Order. (ECF No. 56 at 9-10.)

29            <sup>3</sup>RNO alleges Scott Coder is Coder Consulting Team LLC's alter ego. (ECF No.  
30     61 at 3-4, 6-7.)

1 Based on these allegations, RNO seeks to assert claims against Coder Consulting  
2 for: (1) implied indemnity; (2) intentional misrepresentation; (3) breach of oral contract;  
3 and (4) alter ego. (*Id.* at 5-7.) RNO's implied indemnity claim is based on the theory that,  
4 to the extent anyone made intentional misrepresentations about RNO's financial condition  
5 to Plaintiff, it was Coder Consulting, so Coder Consulting is liable to RNO to the extent  
6 the Court finds RNO liable for any misrepresentations it made to Plaintiff. (*Id.* at 5.) As to  
7 its intentional misrepresentation claim against Coder Consulting, RNO focuses on Scott  
8 Coder's alleged, intentional omissions that he was not registered to sell securities, and  
9 that his father was not involved in Coder Consulting. (*Id.* at 5-6.)

### 10 III. LEGAL STANDARD

11 "A defending party may, as third-party plaintiff, serve a summons and complaint  
12 on a nonparty who is or may be liable to it for all or part of the claim against it." Fed. R.  
13 Civ. P. 14(a)(1). A third-party complaint must assert that "the third party's liability is in  
14 some way dependent on the outcome of the main claim" and is "secondary or derivative"  
15 to the third-party plaintiff's liability in the primary action. *United States v. One 1977*  
16 *Mercedes Benz*, 708 F.2d 444, 452 (9th Cir. 1983). "The mere fact that the alleged third-  
17 party claim arises from the same transaction or set of facts as the original claim is not  
18 enough." *Stewart v. Am. Int'l Oil & Gas Co.*, 845 F.2d 196, 200 (9th Cir. 1988) (first quoting  
19 Wright and Miller, 6 Fed. Prac. & Proc. § 1446 at 257 (1971 ed.), then citing 3 J. Moore,  
20 *Federal Practice*, paragraphs 14.04-14.15).

21 When deciding whether to allow a third-party complaint to proceed, the court must  
22 also "consider whether the proposed third-party complaint alleges a cause of action for  
23 which relief may be granted." *Helferich Pat. Licensing, LLC v. Legacy Partners, LLC*, 917  
24 F. Supp. 2d 985, 988 (D. Ariz. 2013) (citation omitted); *see also Irwin v. Mascott*, 94 F.  
25 Supp. 2d 1052, 1057-58 (N.D. Cal. 2000) ("It makes no sense to permit such a potentially  
26 prejudicial expansion of the case at the expense of [the plaintiffs], if the third-party  
27 plaintiffs do not have a valid theory of relief against the third-party defendants.").  
28 Regardless, however, "[t]he decision to allow a third-party defendant to be impleaded

1 under rule 14 is entrusted to the sound discretion of the trial court.” *One 1977 Mercedes*  
2 *Benz*, 708 F.2d at 452 (citation omitted). “Any party may move to strike the third-party  
3 claim, to sever it, or to try it separately.” Fed. R. Civ. P. 14(a)(4).

#### 4 **IV. DISCUSSION**

5 To start, RNO abandoned its breach of contract claim against Coder Consulting in  
6 response to the Motion. (ECF No. 74 at 8.) And as explained in the Prior Order, alter ego  
7 is not so much a standalone claim as a theory under which a party may assert claims  
8 against someone else. (ECF No. 56 at 4-5.) *See also, e.g., Gardner on Behalf of L.G. v.*  
9 *Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 405 P.3d 651, 656 (Nev. 2017) (describing alter  
10 ego as both a theory and a doctrine since codified in Nevada Law in the process of holding  
11 it applies to LLCs). That leaves RNO’s proposed claims for intentional misrepresentation  
12 and implied indemnity. (ECF No. 61 at 5-6.)

13 The Court must strike RNO’s intentional misrepresentation claim under Fed. R.  
14 Civ. P. 14(a)(1) and (a)(3) because Coder Consulting’s liability for this claim is in no way  
15 dependent on the outcome of Plaintiff’s operative claims asserted against RNO and Webb  
16 in the FAC. *See One 1977 Mercedes Benz*, 708 F.2d at 452 (affirming dismissal of claims  
17 “related to but not derivative of the original forfeiture claim” under Rule 14); *Stewart*, 845  
18 F.2d at 200 (affirming dismissal of third party complaint where the “basic facts underlying  
19 the original complaint and the basic facts underlying the third-party complaint were  
20 disparate, and that each pleading described transactions connected solely by the fact that  
21 the same oil and gas wells were involved.”). As noted, RNO’s intentional  
22 misrepresentation claim against Coder Consulting focuses on Scott Coder’s alleged,  
23 intentional omissions that he was not registered to sell securities, and that his father was  
24 not involved in Coder Consulting. (ECF No. 61 at 5-6.) Like the oil and gas wells in  
25 *Stewart*, the only tangential connection between these factual allegations and Plaintiff’s  
26 claims for breach of contract and intentional misrepresentation is Scott Coder, based on  
27 RNO’s allegation that he was instrumental in the deal between Plaintiff and RNO. *See*  
28 *Stewart*, 845 F.2d at 200. These factual allegations are not derivative of RNO’s potential

1 liability in this case. In other words, whether Scott Coder made representations about the  
2 degree to which he worked with his father and whether he was licensed to sell securities  
3 to RNO does not depend on whether RNO breached its contract with Plaintiff, or whether  
4 RNO and Webb made false representations about RNO's financial condition to Plaintiff.  
5 (ECF Nos. 37, 56, 61.)

6 And while RNO's equitable indemnity claim asserted against Coder Consulting is  
7 arguably derivative of Plaintiff's intentional misrepresentation claim against RNO, "for the  
8 assertion of a claim for contribution or indemnity, there must also exist a substantive basis  
9 for the third-party defendant's liability[.]" *Kim v. Fujikawa*, 871 F.2d 1427, 1434 (9th Cir.  
10 1989) (affirming dismissal of third party complaint under Rule 14 where "ERISA, the  
11 governing substantive law, does not recognize a right of contribution"). Substantively,  
12 here, RNO cannot shift its liability for its alleged intentional misrepresentations to Plaintiff  
13 on to Coder Consulting. *See Stewart*, 845 F.2d at 200. In addition, RNO's attempt to  
14 distinguish *Stewart* is unpersuasive. (ECF No. 74 at 5-6.) RNO includes a quotation from  
15 *Stewart* in its response (*id.* at 6 n.28), but omits any discussion of the following paragraphs  
16 from *Stewart*, where the Ninth Circuit clearly states that "anyone who has committed an  
17 active fraud cannot escape loss by shifting his responsibility to another party." *Stewart*,  
18 845 F.2d at 200. And even RNO describes one of Plaintiff's claims against it as one for  
19 fraud. (ECF No. 74 at 5.) Thus, RNO cannot escape the pertinent holding of *Stewart*  
20 here.<sup>4</sup> RNO cannot properly pursue its equitable indemnity claim in its Third Party  
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22 <sup>4</sup>The parties also dispute whether RNO's claim against Coder Consulting is  
23 premature or unripe because RNO has not yet been found liable to Plaintiff. (ECF Nos.  
24 70 at 15, 74 at 7-8, 75 at 8-9.) The Court assumes without deciding that RNO's claims  
25 are ripe and not premature because—as explained *supra*—Plaintiff's attempted third  
26 party claims are barred under Fed. R. Civ. P. 14(a) in any event. *See also Hecht v.*  
27 *Summerlin Life & Health Ins. Co.*, 536 F. Supp. 2d 1236, 1241-42 (D. Nev. 2008) (allowing  
28 a third party complaint to proceed, stating that "[s]everal United States Circuit Courts of  
Appeal, including the Ninth Circuit, have indicated Rule 14(a) permits a defendant to  
pursue contribution and indemnity claims 'even though the defendant's claim is purely  
inchoate—*i.e.*, has not yet accrued under the governing substantive law—so long as the  
third-party defendant may become liable for all or part of the plaintiff's judgment.'"). RNO  
also argues it is not attempting to shift liability for an intentional tort, but that argument is  
simply not credible. (ECF No. 74 at 7.) *See also, e.g., Halcrow, Inc. v. Eighth Jud. Dist.*

1 Complaint under Fed. R. Civ. P. 14(a). *See Stewart*, 845 F.2d at 200 (9th Cir. 1988); *see*  
2 *also Riverhead Sav. Bank v. Nat'l Mortg. Equity Corp.*, 893 F.2d 1109, 1116 (9th Cir.  
3 1990) ("Nor is there a right of indemnification for intentional torts.").

4 In sum, the Court will grant the Motion.

5 **V. CONCLUSION**

6 The Court notes that the parties made several arguments and cited to several  
7 cases not discussed above. The Court has reviewed these arguments and cases and  
8 determines that they do not warrant discussion as they do not affect the outcome of the  
9 Motion before the Court.

10 It is therefore ordered that Third Party Defendants Scott Coder and Coder  
11 Consulting Team, LLC's motion to strike (ECF No. 70) is granted.

12 The Clerk of Court is directed to strike RNO Exhibitions, LLC's Third Party  
13 Complaint (ECF No. 61).

14 DATED THIS 1<sup>st</sup> Day of April 2021.

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18 MIRANDA M. DU  
19 CHIEF UNITED STATES DISTRICT JUDGE

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28 *Ct.*, 302 P.3d 1148, 1154 n.2 (Nev. 2013), *as corrected* (Aug. 14, 2013) (describing intentional misrepresentation as an intentional tort).