



3. In 2005, E&J learned that Jason Sun, one of ABC's brokers, was using E&J's name to market viaticals to his clients in Taiwan. E&J demanded that the unauthorized use of E&J's name cease immediately. Upon information and belief, Sun complied with E&J's demand and E&J believed that Sun was no longer using E&J's name in connection with his marketing efforts.

4. Recently, Plaintiff produced documents that he allegedly obtained from ABC's headquarters. These documents include purchase agreements between ABC and Taiwanese purchasers. Some of these purchase agreements indicated that E&J was a party to the purchase agreement. These purchase agreements were executed by a purported authorized representative of E&J. E&J never saw any purchase agreements in which it was designated as a party and it did not know that these purchase agreements existed. E&J never agreed to be a party to any purchase agreement and it never authorized anyone to execute a purchase agreement on its behalf. Upon information and belief, the purchase agreements were for viatical shares marketed and sold by Sun or his agents and/or employees.

5. Plaintiff is alleging that E&J allowed its name to be used in marketing viaticals in order to induce purchasers to buy viatical shares. Upon information and belief, Sun used E&J's name, without authorization, to induce his clients to purchase viatical shares. E&J and Erwin now seek leave to implead Sun under Rule 14(a) of the Federal Rules of Civil Procedure.

#### **ARGUMENT AND AUTHORITY**

6. Rule 14(a) permits a defending party to bring a new party into the litigation if the absent party is or may be liable to the defending party for all or part of the claim against it. See Fed. R. Civ. P. 14(a)(5). The purpose of Rule 14(a) is to promote judicial efficiency by eliminating circuitry of action. See *e.g. Powell Inc. v. Abney*, 83 F.R.D. 482, 485 (S.D. Tex.

1979). It simplifies and expedites litigation by avoiding a situation where a defendant is found liable and then must bring a new action against a third party for indemnity or contribution. *See American Zurich Ins. Co. v. Cooper Tire & Rubber Co.*, 512 F.3d 800, 805 (6th Cir. 2008).

7. The court considers the following factors when deciding whether to grant leave to bring in a third party: 1) prejudice to the other parties; 2) undue delay by the third-party plaintiff; 3) the substance to the third-party claim; and 4) advancing the purposes of Rule 14, such as avoiding duplicative lawsuits on closely-related issues. *See 6 Charles Alan Wright & Arthur R. Miller*, FED. PRAC. & PROC. §1443, at 300-11 (2d ed. 1990). These are the same factors a court uses any time it considers granting leave to file an amended pleading. *See Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9L. Ed. 2d 222 (1962). An analysis of these factors shows that the Court should give Defendants the requested relief.

8. First, there will be no prejudice to the other Parties if this motion is granted. Discovery is still in its early stages. No depositions have been taken. Trial is more than 7 months away.

9. There has been no undue delay on the part of the Defendants in bringing this Motion. The court's deadline for Rule 14(a) motions is August 28, 2009.

10. Moreover, a Rule 14(a) motion is properly granted when the applicable state's law provides for contribution between joint tortfeasors. *See e.g. Travelers Ins. Co. v. Busy Elec. Co.*, 294 F.2d. 135 (5th Cir. 1961). In this case, the law of the potentially applicable states provide for contribution between and among multiple tortfeasors. *See Cal. Civ. Proc. Code § 875 et seq.* (2008); *American Motorcycle Ass'n v. Superior Court*, 578 P.2d 899, 912-13 (Cal. 1978) (superseded by statute on other grounds); TEX. CIV. PRAC. & REM. CODE § 33.015.

11. Granting E&J and Erwin's motion will promote the goal of Rule 14(a). As the alleged acts and omissions of Sun form part of the basis of the Plaintiff's claims against E&J and Erwin, it will be more efficient to have all of the litigation combined in one action. Moreover, it will eliminate the possibility of inconsistent results which can occur if these issues are litigated in two separate actions.

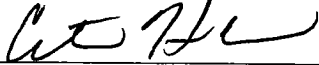
### CONCLUSION

12. A court should freely grant leave to amend or supplement pleadings when justice requires it. *See Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct 227, 9L. Ed. 2d 222 (1962); *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002). The purpose of Rule 14(a) is to allow a defendant with a claim for contribution and/or indemnity to bring in the third party in order to avoid inconsistent results and the unnecessary expense of litigating the same issues. E&J and Erwin have a valid claim for contribution against Sun. No Party will be prejudiced by E&J's filing of a Third-Party Complaint against Sun. Granting leave to file the Third-Party Complaint will not cause undue delay as this Motion is being brought months before this Court's own deadline to add new parties.

**THEREFORE**, Defendants respectfully ask this Court to grant its Motion, Order the Clerk to file Defendants' Third-Party Complaint against Sun and to issue summons to him.


Respectfully submitted,


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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on this  day of August, 2009, to all known counsel of record as required by the Federal Rules of Civil Procedure.

  
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Cathlynn H. Cannon