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8 Corporation, Inc.

9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 CITIZENS DEVELOPMENT  
12 CORPORATION, INC., a California  
corporation,

13 Plaintiff,

14 v.

15 COUNTY OF SAN DIEGO, a California  
municipal corporation, CITY OF SAN  
16 MARCOS, a California municipal  
corporation, CITY OF ESCONDIDO, a  
17 California municipal corporation,  
18 VALLECITOS WATER DISTRICT, a  
California municipal corporation,  
19 HOLLANDIA DAIRY, INC., a  
California corporation, and DOES 1  
20 through 100, inclusive,

21 Defendants.

Case No.: 12CV00334 GPC KSC

**JOINT MOTION TO STRIKE  
HOLLANDIA'S THIRD-PARTY  
COMPLAINT BY CDC AND  
PUBLIC AGENCY DEFENDANTS  
FRCP Rule 14**

Action Filed: February 8, 2012  
Trial Date: Not Set

22  
23 **AND RELATED COUNTER-ACTIONS**  
24 **AND CROSS-ACTIONS.**  
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1 **I. INTRODUCTION**

2 Plaintiff/Counter-Defendant Citizens Development Corporation (“CDC”)   
3 and Defendants/Cross-Claimants City of San Marcos, City of Escondido, County of   
4 San Diego and Vallecitos Water District (collectively the “PADs”) file this Joint   
5 Motion To Strike Hollandia’s Third-Party Complaint under FRCP Rule 14.   
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8 On April 17, 2012 Hollandia filed the original “Answer of Hollandia   
9 Dairy, Inc And Cross-Claim And Counter-Claims.” (Docket #10.) In the   
10 intervening 7 years Hollandia has not sought leave of Court to file a Third-Party   
11 Complaint adding new parties.   
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13 On April 12, 2019, without first seeking leave of this Court, Hollandia   
14 filed a Third-Party Complaint against 274 homeowners, 22 HOAs, 4 detention   
15 basin owners, 23 orchard/farm owners, the State of California and various other   
16 corporations and shareholders allegedly that had ownership interest near the lake   
17 for a total of approximately 332 new Third-Party Defendants. Prior to the filing,   
18 Hollandia made no attempt to meet and confer with CDC or the PADs such that the   
19 filing by Hollandia came as a surprise to CDC and the PADs.   
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22 The addition of roughly 332 parties to a case that is roughly 7 years old,   
23 has discovery deadlines fast approaching and for which the parties other than   
24 Hollandia have a framework for a settlement agreement resolving the claims   
25 between the parties facially appears to create undue complexity, delay of the case   
26 and the claims against individual homeowners as being liable parties simply   
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1 because they own property near Lake San Marcos seem frivolous and  
2 unmeritorious.

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4 **II. ARGUMENT**

5 **A. HOLLANDIA FAILED TO SEEK LEAVE OF COURT PRIOR TO**  
6 **FILING THE THIRD-PARTY COMPLAINT UNDER RULE 14.**  
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8 Hollandia filed its original answer on April 17, 2012 and did not seek to add any  
9 3<sup>rd</sup> parties within the required 14 days under FRCP Rule 14. FRCP Rule 14(a)(1)  
10 provides: “A defending party may, as third-party plaintiff, serve a summons and  
11 complaint on a nonparty who is or may be liable to it for all or part of the claim  
12 against it. But the third-party plaintiff **must**, by motion, obtain the court's leave if it  
13 files the third-party complaint more than 14 days after serving its original answer.”  
14 (Emphasis added.) The term “must” in FRCP Rule 14(a)(1) is a mandatory term  
15 that cannot simply be ignored by Hollandia. FRCP 14(a)(4) provides that any party  
16 may move to strike a third-party claim. A third-party claim is appropriately stricken  
17 if it is filed after this 14-day period has expired, unless the party has sought leave of  
18 court. See *United States v. Brow*, No. 01-CV-4797 NGG, 2011 WL 2845300, at \* 4  
19 (E.D.N.Y. July 13, 2011) (granting motion to strike third-party complaint for failure  
20 to adhere to Rule 14(a)’s 14-day requirement). Any party “may move to strike the  
21 third-party claim, to sever it, or to try it separately.” Fed. R. Civ. P. 14(a)(4).  
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27 **B. HOLLANDIA’S THIRD-PARTY COMPLAINT VIOLATES THE**  
28 **COURT’S SCHEDULING ORDER AND MUST BE STRICKEN**

1 Magistrate Judge Crawford issued a Scheduling Order on March 14, 2019  
2 (Docket 276.) That Scheduling Order directed that: “Any motion to join other  
3 parties, to amend the pleadings, or to file additional pleadings shall be filed by  
4 **April 12, 2019.**” (Emphasis added.) Despite being particularly instructed by  
5 Magistrate Judge Crawford that Hollandia must seek leave of Court by way of a  
6 “motion to join other parties” Hollandia entirely ignored Judge Crawford’s Order  
7 and instead filed Hollandia’s Third-Party Complaint without seeking permission of  
8 the Court and without any meet and confer with the other parties. As a result, the  
9 Court should strike Hollandia’s Third-Party Complaint.  
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13 C. CDC AND THE PADS WOULD REQUEST THE COURT PROVIDE  
14 GUIDANCE TO HOLLANDIA SHOULD HOLLANDIA FILE A  
15 MOTION FOR LEAVE TO AMEND  
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17 If the Court strikes Hollandia’s Third-Party complaint and Hollandia attempts to  
18 comply with Rule 14 and seek Court permission for leave to file a third-party  
19 complaint, whether to allow a third-party to be brought in is a matter of discretion  
20 for the Court. *Balt. & O. R. Co. v. Saunders*, 159 F.2d 481, 483-84 (4th Cir. 1947).  
21 Impleader should be liberally granted if it will prevent duplicate suits on the same  
22 matter, but is improper when it will prejudice the plaintiff or the other parties.  
23 *Dishong v. Peabody Corp.*, 219 F.R.D. 382, 385 (E.D. Va. 2003). Factors  
24 considered by courts in deciding whether to allow impleader include prejudice to  
25 the plaintiffs and the other parties, likelihood of delay, timeliness of the defendant’s  
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1 attempt to implead, whether the issues raised by the impleader are unrelated to the  
2 original suit and involve different issues and evidence, and whether the third-party  
3 claims are unduly complicated or meritorious. See, e.g., *id.*; *Crowley v. BWW Law*  
4 *Grp., LLC*, No. RDB-15-00607, 2016 U.S. Dist. LEXIS 119712, at \*13-14 (D. Md.  
5 Sep. 6, 2016); *Lester v. SMC Transp., LLC*, No. 7:15CV00665, 2016 U.S. Dist.  
6 LEXIS 118946, at \*30 (W.D. Va. Sep. 2, 2016); *United States v. Savoy Senior*  
7 *Hous. Corp.*, No. 6:06cv031, 2008 U.S. Dist. LEXIS 17850, at \*4-7 (W.D. Va.  
8 Mar. 6, 2008); see also *Duke v. Reconstruction Fin. Corp.*, 209 F.2d 204, 209 (4th  
9 Cir. 1954) (affirming dismissal of third-party complaint because it raised issues not  
10 present in the main litigation and defendants were not prejudiced since they could  
11 bring a separate lawsuit); Fed. R. Civ. P. 14, advisory committee note, 1963 (“[T]he  
12 court has discretion to strike the third-party claim if it is obviously unmeritorious  
13 and can only delay or prejudice the disposition of the plaintiff’s claim, or to sever  
14 the third-party claim or accord it separate trial if confusion or prejudice would  
15 otherwise result.”) No one factor is determinative. *Lester*, 2016 U.S. Dist. LEXIS  
16 118946, at \*30.

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23 Many of the third-parties have an extremely remote and/or tangential  
24 connection to Lake San Marcos. Even for some of Hollandia’s homeowner claims,  
25 which appear to be based on alleged runoff from the landscaping into the lake,  
26 some of the homes in question don’t have any “landscaping” for which any  
27 chemicals of concern could even run off into the lake nor has Hollandia made any  
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1 showing that any homeowner on the lake has ever used any of the subject chemicals  
2 on their landscaping. Asserting that the presence of “green” grass in a residential  
3 yard certainly does not create liability under CERCLA. In sum, the Third-Party  
4 Complaint appears to be nothing more than a means to harass 332 new people  
5 and/or companies with zero thought and/or investigation as to any potential  
6 liability. To the extent that Hollandia’s third-party claims may be ones of  
7 indemnity, it is unclear of how Hollandia would be prejudiced at this juncture rather  
8 than waiting until after judgement in this action to evaluate whether it is necessary  
9 to pursue an indemnity claim. An explanation of that prejudice by Hollandia in a  
10 motion for leave may be appropriate. Moreover, in light of the current status of  
11 case, including settlement, Hollandia should explain why the addition of 332 new  
12 parties is necessary at this juncture.

### 17 **III. CONCLUSION**

18 CDC and the PADs would request that the Court strike the Third-Party  
19 complaint and require that Hollandia comply with FRCP Rule 14 by seeking leave  
20 of the Court. Based on Hollandia’s pleadings history of pleading “problems” in this  
21 Court and with Magistrate Judge Crawford CDC and the PADs would suggest  
22 potential guidance be given to Hollandia on what the Court would expect would be  
23 included in any motion for leave to amend to file 3<sup>rd</sup> party claims. In the event that  
24 the Court may in the future grant permission for Hollandia to file 3<sup>rd</sup> party claims,  
25 the parties reserve their rights to seek to sever and/or otherwise manage those  
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1 claims under FRCP Rule 14.

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DATED: April 26, 2019

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