IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DANIEL B. STORM, HOLLY P. WHITE, and DORIS MCMICHAEL, individually and on behalf of all others similarly situated,	:	**Civil Action No.:**14-cv-01138
Plaintiffs,	:	**THE HONORABLE JOHN E. JONES, III**
v.	:	
PAYTIME, INC.,	:	
Defendant.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT PAYTIME, INC.'S MOTION FOR LEAVE TO FILE A THIRD PARTY COMPLAINT

A. Procedural History

Plaintiffs have filed a Complaint and an Amended Complaint alleging negligence and breach of contract by Paytime based on an alleged failure to safeguard Plaintiffs' personal information and prevent vulnerabilities in Paytime's computer systems. Paytime has responded by filing a Motion pursuant to Federal Rule of Civil Procedure 12 for dismissal. Paytime has not yet answered the Complaint. This Honorable Court issued Order #1 on August 29, 2014 setting certain deadlines for the management of this matter. Pursuant to Paragraph 6 of Order #1, Paytime has until September 30, 2014 to file a motion for leave to join a third party. Paytime has moved for leave to file a Third Party Complaint against Netcomm Solutions, Inc. d/b/a SotirIS Information Strategies (hereafter "SotirIS"), and submits this memorandum of law in support of its motion. A copy of the Third Party Complaint is attached as Exhibit A to Paytime's motion.

B. Statement of Facts

In or around April, 2014, Paytime, Inc. was the victim of a criminal computer hacking, a data security event which remains under investigation. Paytime notified its customers for whom it provided payroll services and assisted them in notifying their employees of the event. To date, no identify theft or fraud has been found to have arisen from the event.

In the fall of 2013, approximately six months before the event, SotirIS performed a project for Paytime entitled a "Comprehensive Breach Assessment". At the time of that assessment, SotirIS failed to identify vulnerabilities in Paytime's computer systems and, therefore, contributed to the occurrence of the data security event. Accordingly, SotirIS is or may be liable to Paytime for contribution and indemnity in the event that Paytime is found liable to Plaintiffs or may be liable in whole or in part for Plaintiffs claims and should be joined in this matter as a Third Party Defendant.

C. Statement of Questions Involved

Question: Are the interests of justice served by permitting Paytime to join SotirIS, as an additional party, at this time where Paytime has a claim for relief against SotirIS, a motion to dismiss is pending, no responsive pleading or discovery has

> taken place and the joinder of SotirIS will permit all disputes to be resolved in a single action?

Suggested Answer: Yes.

D. Argument

Federal Rule of Civil Procedure 14 governs when a defendant may bring in a third party to an action:

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

Fed. R. Civ. P. 14(a)(1). No answer has been filed in this case because Rule 12 motions are pending; however, in its Order #1, the Court set September 30, 2014 as the last day for Paytime to file a motion for leave to join an additional party.

Rule 14 "is designed to reduce multiplicity of litigation," and "should be construed liberally." *Hanhauser v. United States*, 85 F.R.D. 89, 90 (M.D. Pa. 1979) *quoted in Longview Fund, L.P. v. Costello*, 2010 U.S. Dist. LEXIS 115450, 2010 WL 4384255 (M.D. Pa. Oct. 29, 2010). The goal is to prevent the need for a defendant, after being held liable to a plaintiff, to "bring a separate action against a third individual who may be liable to defendant for all or part of plaintiff's original claim." *Longview, supra* at * 4-5, *quoting* Charles Alan Wright et al., Federal

Practice and Procedure § 1442 (3d ed. & supp. 2010). In *Longview*, this Court held that where a third party's liability depends the same facts and events as does the defendant's, it is appropriate to join the third-party defendant to "save the time and cost of a reduplication of evidence, to obtain consistent results from identical or similar evidence, and to do away with the serious handicap to a defendant of a time difference between a judgment against him, and a judgment in his favor against the third-party defendant." *Id.*, *citing Jones v. Waterman S. S. Corp.*, 155 F.2d 992, 997 (3d Cir. 1946) (quoting 1 Moore's Federal Practice 740 (1938)).

So long as the Third Party Defendant is or could be liable to the Third Party Plaintiff joinder is appropriate. Here, Paytime alleges that SotirIS failed to inform it of vulnerability in its system despite having been engaged to conduct a "Comprehensive Breach Assessment." Paytime further alleges that if it is found liable to Plaintiffs in whole or in part because of such a vulnerability, then SotirIS is liable to it for contribution or indemnification.

Accordingly, Paytime respectfully requests that the Court enter the proposed Order, permitting it to file the Third Party Complaint and join SotirIS.

Respectfully submitted,

BY: /s/Claudia D. McCarron

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Dated: September 30, 2014

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum of Law in Support of Defendant's Motion for Leave to File a Third Party Complaint was served upon the following counsel of record on the date below via the Court's electronic filing system.

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Dated: September 30, 2014