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Please note:

This sample document is redacted from an actual research and writing project we did for a customer some time ago. It reflects the law as of the date we completed it. Because the law may have changed since that time, please use it solely to evaluate the scope and quality of our work.

If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ARALIA

RONALD GREEN, et al.,

Case No. AB 1234

Plaintiffs,

NOTICE OF MOTION FOR LEAVE
TO FILE CROSS-COMPLAINT;
MEMORANDUM OF POINTS &
AUTHORITIES

vs.

GEORGE SMITH, et al.,

Date: February 10, 20__
Time: 8:45 a.m.
Dept. X
Complaint filed: January 26, 20__

Defendants.

_____ /

TO ALL PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 10, 20__, at 8:45 a.m. or as soon as the matter may be heard in Department X of Aralia County Superior Court, located at 600 State St., Cork Creek, California, defendants George Smith, Marvelous Mechanics, Inc., and Robust Tires, Inc. will move for an order granting them leave to file a Cross-Complaint against plaintiffs Ronald Green and Petersen’s Paint, Inc.

This motion is based on this Notice of Motion, the motion itself, the supporting Memorandum of Points and Authorities, the proposed Cross-Complaint and Declaration of Jean Miller filed with the motion, the papers and pleadings on file and any other such evidence as may be presented at the time of the hearing. This motion is made under Code of Civil Procedure § 426.50 and § 428.50 on the grounds that there is good cause for

1 defendants to bring various causes of action against plaintiffs, that the motion is brought
2 in good faith, and that it is in the interest of justice that the court grant it.

3 Dated: January ____, 20__

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Attorneys for Defendants George Smith, Marvelous
Mechanics, Inc., and Robust Tires, Inc.

7
8 **MEMORANDUM OF POINTS & AUTHORITIES**

9 Under Code of Civil Procedure § 426.50, a party may move for leave to file a
10 compulsory cross-complaint at any time before trial:

11 The court, after notice to the adverse party, shall grant, upon such terms as
12 may be just to the parties, leave to amend the pleading, or to file the cross-
13 complaint, to assert such cause if the party who failed to plead the cause
14 acted in good faith.

15 Leave to file a cross-complaint may also be granted under Code of Civil Procedure
16 § 428.50: “Leave may be granted in the interest of justice at any time during the course of
17 the action.” In *Silver Organizations Limited v. Frank* (1990) 217 Cal.App.3d 94, the
18 defendants hired a new attorney just before trial. After obtaining a short continuance and
19 doing some discovery, the attorney determined that he had grounds to cross-complain
20 against the plaintiffs. He moved for leave to file a cross-complaint under § 426.50 right
21 before the new trial date. The trial court denied his motion.

22 In reversing the trial court’s decision, the appellate court held that, because the
23 attorney had acted in good faith and without a substantial showing of bad faith, the court
24 had improperly denied the motion:

25 While it may be argued that appellants, acting as their own counsel, may
26 have been guilty of neglect, inadvertence or oversight, thereby causing delay,

1 section 426.50 expressly disallows denial of a motion based on these
2 grounds. There must be bad faith and this record fails to demonstrate that
3 element. We conclude the late filing of the motion to file a compulsory
4 cross-complaint absent some evidence of bad faith is insufficient evidence to
5 support denial of the motion.

6 *Id.* at 101.

7 Defendants' motion has been brought in good faith. The timing of this motion is
8 nowhere near as critical as that in *Silver Organizations*. Here, defendants replaced prior
9 counsel with their present counsel, Jean Miller, in February 20___. Miller took over the
10 case approximately one year after it was filed, long after defendants had answered.

11 Declaration of Jean Miller, ¶ 1. After reviewing the files, including the cross-complaint
12 filed by another defendant, Ace Bike Shop, which is represented by another attorney,
13 Miller has determined that her clients have claims against defendants similar to those
14 brought against them by Ace Bike Shop. Miller Dec. ¶ 2.

15 As this case is still in its discovery stage, there will be no prejudice to plaintiffs by
16 the granting of this motion, especially considering that Ace Bike Shop has already cross-
17 complained against them. Miller Dec. ¶ 3.

18 Attached to this motion as Exhibit 1 is the proposed cross-complaint, which states
19 defendants' claims against plaintiffs. These claims are not frivolous or brought in bad
20 faith and are similar to the cross-claims of Ace Bike Shop.

21
22 **CONCLUSION**

23 Defendants' motion for leave to file a cross-complaint should be granted.

24 Dated:

Respectfully submitted,

25 _____
26 Attorneys for Defendants
27