
TENTATIVE RULING

For all the reasons discussed below, the motion for leave to file the cross-complaint is granted. Defendants are ordered to file the cross-complaint with the court separate from the submission attached to this motion. Service must be accomplished pursuant to the code.

According to the complaint, plaintiffs Joseph and Maryann Gendron were traveling in their vehicle southbound on US Highway 101 when defendant Susan Webster failed to yield to southbound traffic entering the highway, causing an impact with the vehicles driven by defendants Krystin Beck and Edwin Crenshaw. Beck's vehicle then impacted the vehicle driven by the Gendrons.

The vehicle driven by Krystin Beck was registered to defendants Chad and Anna Mitchell. All three defendants now move the court for leave to file a cross-complaint against co-defendants Susan Webster and Edwin Crenshaw. The motion was timely served. No opposition has been filed.

Initially, it is important to distinguish between compulsory cross-complaints and permissive cross-complaints so the court can appropriately assess the request.

Code of Civil Procedure¹ section 428.10, subdivision (a) provides:

“[a] party against whom a cause of action has been asserted in a complaint or cross-complaint may file a cross-complaint setting forth . . . [¶] (a) [a]ny cause of action he has against any of the parties who filed the complaint or cross-complaint against him.”

Although this statute is permissive in its terms, in some circumstances a party *must* assert a cause of action in a cross-complaint or lose the right to assert that cause of action altogether. To that end, subdivision (a) of section 426.30 provides:

“Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) *he has against the plaintiff*, such party may not thereafter in any

¹ All future statutory references are to the Code of Civil Procedure unless stated otherwise.

other action assert against the plaintiff the related cause of action not pleaded.”

(Emphasis added.)

Because the failure to assert a related cause of action results in a waiver, this is commonly referred to as the compulsory cross-complaint statute.

Critically, *as between codefendants*, cross-complaints are not compulsory but permissive. (*American Bankers Ins. Co. v. Avco-Lycoming Division* (1979) 97 Cal.App.3d 732, 735 – “Except as between plaintiffs and defendants, there is no compulsory cross-complaint in California procedure.”) Rather, a cross-complaint is permissive as between co-parties and between parties and nonparties. (*Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 612.)²

Thus, the cross-complaint proposed here is properly classified as a permissive cross-complaint. Section 428.50, subdivision (b) provides that “[a]ny [] cross-complaint [other than a compulsory one] may be filed at any time before the court has set a date for trial.” Here, trial has not been set. Thus, it appears that leave of court is not required to file the requested cross-complaint.³

² This may not always be true. “Plaintiff” is defined as a person who files a complaint or cross-complaint. (Code Civ. Proc., § 426.10, subd. (b).) Here, no cross-complaints have been filed. Thus, as between the present co-parties, none qualify under this statutory definition of “plaintiff.”

³ In contrast, filing a compulsory cross-complaint after the answer has been filed requires leave of court. (§428.50, subd. (c).) *Silver Organization, Ltd. v. Frank* (1990) 217 Cal.App.3d 94 and *Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949 involve the appropriate standards for leave to file a compulsory cross-complaint per § 426.50. *Silver Organization Ltd.* concluded that a “motion to file a cross-complaint at any time during the course of the action must be granted unless bad faith of the moving party is demonstrated where forfeiture would otherwise result. Factors such as oversight, inadvertence, neglect, mistake or other cause, are insufficient grounds to deny the motion unless accompanied by bad faith.” (*Silver Organization, Inc., supra*, 217 Cal.App.3d at p. 99; see also *County of Los Angeles v. Quinn Emanuel Urquhart & Sullivan, LLP* (2025) 115 Cal.App.5th 489, 509 [even when the motion to file a compulsory cross complaint is made on the eve of trial per § 426.50, a trial court errs in denying the motion if there is no substantial evidence to support a finding that defendants were acting in bad faith].) “‘Bad faith’ is defined as “[t]he opposite of ‘good faith,’ generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by honest mistake ..., but by some interested or sinister motive[,] . . . not simply bad judgment or negligence, but rather. . . the conscious doing of a wrong because of dishonest purpose or moral obliquity; ... it contemplates a state of mind affirmatively operating with furtive design or ill will. [Citation.]” [Citations.]” (*Silver, supra*, 217 Cal.App.3d at 100; accord, *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, 559-560 [conduct showing that a proposed cross-complaint is “merely a tactical, strategic

Even if it were, permission to file a permissive complaint after the trial date has been set rests solely within the trial court's discretion. (*Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864.) Specifically, "[l]eave may be granted in the interest of justice at any time during the course of the action." (§428.50, subd. (c).) Factors the court considers in this inquiry focus on delay; timing; explanations; and knowledge. (*See, e.g., Crocker, supra*, 221 Cal.App.3d at p. 864.) Here, the causes of action alleged in the cross-complaint are patently related to the claims raised in the complaint, as they both involve the liability for the same car accident. Cross-complainants also raised a comparative fault affirmative defense in their answer, establishing a logical nexus between the complaint, the answer, and the proposed cross-complaint. To the extent the court's permission is needed, it exercises its discretion to allow the filing of the proposed cross-complaint.

The motion for leave to file the cross-complaint is granted. Defendants are ordered to file the cross-complaint with the court separate from the submission attached to its motion. Service must be accomplished pursuant to the code.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)

maneuver" may constitute evidence of bad faith].) What constitutes "good faith" or lack of it under CCP § 426.50 must be determined in light of and in conformity with the liberality conferred upon the trial courts by the section and prior law; this principle of liberality requires a strong showing of bad faith be made in order to support a denial of the right to file a compulsory cross-complaint. (*Foot's Transfer & Storage Co. v. Superior Court* (1980) 114 Cal.App.3d 897, 902.)