

---

**PARTIES/ATTORNEYS**

Plaintiff	The Residences at Depot Street L.P.	Christopher E. Haskell Ryan D. Zick  Price, Postel & Parma LLP
Defendant/Cross- Complainant	Wallace Smith Contractors	Julie D. Testa, Esq., Tiffany C. Fowler, Esq.  Lorber, Greenfield & Olsen, LLP  _____  Randall D. Gustafson, Esq. Katie C. Brach, Esq. Lilly Walker, Esq.  Lincoln, Gustafson & Cercos, LLP
Cross-Defendant	J&D Steel Fabrication & Repair L.P.	Arthur J. Chapman, Esq. Sabryne Coleman, Esq.  Chapman Glucksman

---

**TENTATIVE RULING**

The motion for leave to file a cross-complaint is denied.

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.)

---

On July 18, 2018, Wallace Smith Contractors (Wallace) entered into a contract with The Residences at Depot Street, L.P. (The Residences or plaintiff) to construct an 80-unit apartment complex located at 201 and 205 North Depot Street in Santa Maria, California (Project). Wallace acted as the general contractor for the Project.

Plaintiff now alleges that the finished floor at the Project—in the public and private areas of both buildings—developed gaps at the end joints and was visually out-of-flat with noticeable high and low spots. Plaintiff also alleges that in certain areas of both buildings the gypsum underlayment was fractured and defective, causing "soft spots" and other defects in the flooring. Additional defects are alleged, such as the drywall chases located behind the medicine cabinets in many, if not all, the units at the Project were not properly sealed; the fire doors were deficient; and the balcony railings were not properly coated to prevent corrosion or attached.

Plaintiff's complaint was filed on June 22, 2022. An amended complaint was filed on April 12, 2023. On October 24, 2022, Wallace filed a cross-complaint against Cell-Crete Corporation, Inc. and Famco Development, Inc. alleging that cross-defendants were subcontractors on the Project and are responsible for the alleged defects. On February 3, 2023, the cross-complaint was amended to substitute other subcontractors as Roes 1-3, including J&D Steel Fabrication & Repair, LP. J&D answered on July 10, 2023.

J&D now moves the court for an order to file its own cross-complaint against Powder Coating USA, Inc. (PCU). It asserts that On April 24, 2019, W&S and J&D entered into a Subcontractor Agreement wherein J&D agreed to provide materials, labor, and equipment to install structural steel and provide miscellaneous steel at the Project, including the balcony guardrails in each unit and stairwell railings between the floors. J&D subcontracted Powder Coating USA, Inc. to powder coat 98 balcony rails and 400 angle supports, the total cost of which was \$14,634.90.

According to J&D's counsel, the parties attempted to mediate this case on February 1, 2025 without a formal site inspection. After mediation concluded unsuccessfully, a two-day site inspection was completed on April 2-3, 2025, which was attended by parties, counsel and experts for Plaintiff, W&S, J&D and the various other subcontractor cross-defendants. This was the first time that J&D, its counsel and its expert were able to examine the balcony guardrails throughout the units, which revealed the extent of the alleged surface corrosion on the railings throughout the units. Following the site inspection and further investigation by J&D, it became clear J&D's primary exposure with respect to the guardrails was largely a result of third party PCU's powder coating work and J&D had valid grounds to seek indemnification. (Coleman Decl., ¶¶ 6-10.) It now moves the court for leave to file a cross-complaint against PCU. The Residences opposes the motion.

"If a party does not file a cross-complaint against its opponent 'before or at the same time as the answer' (Code Civ. Proc., § 428.50, subd. (a)), that party 'shall obtain leave of court' to file one (*id.*, subd. (c))." (*Department of Finance v. City of Merced* (2019) 33 Cal.App.5th 286, 295.) Different standards apply to the court's decision whether to grant the motion based on whether the cross-complaint is permissive or compulsory. If the proposed cross-complaint is permissive, leave of

court may be granted “in the interest of justice” at any time during the action. (Code Civ. Proc.<sup>1</sup> § 428.50, subd. (c).). On the other hand, if the proposed cross-complaint is compulsory, leave must be granted so long as defendant is acting in good faith. (§ 426.50.)

Here, J&D asserts the cross-complaint is permissive. Thus, the court must distinguish between compulsory cross-complaints and permissive cross-complaints. Subdivision (a) of section 428.10 provides that “[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 other action assert against the plaintiff the related cause of action not pleaded.” In other words, there are no compulsory cross-complaints against parties other than plaintiff or cross-complainant. (Weil & Brown, Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2025) ¶ 6:524.) Here, the proposed cross-complaint is against a third-party subcontractor. It is thus permissive and may be granted in the interests of justice.

A defendant can cross-complain against a codefendant or third person not yet a party to the action only if the cause of action asserted “(1) arises out of the same transaction, occurrence, or series of transactions or occurrences [set forth in the complaint] ... or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause [of action] brought against him.” (§ 428.10, subd. (b).) Here, the proposed cross-complaint is transactionally related and neither side contends differently. (*Time for Living, Inc. v. Guy Hatfield Homes/All American Development Co.* (1991) 230 Cal.App.3d 30, 38—“Cross-complaints for comparative equitable indemnity would appear virtually always transactionally related to the main action.”)

A greater showing of “interest of justice” is required to obtain leave to file a cross-complaint against a codefendant or some third person not yet a party to the action. Here, the court will be concerned that the cross-complaint is not an unreasonable burden and will complicate plaintiff's lawsuit with cross-actions and third parties. (Weil & Brown, Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2025) ¶ 6:565.) Permission to file a permissive cross-complaint is solely within the trial court's discretion. (*Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864—leave to file cross-complaint denied where filed five months

---

<sup>1</sup> All references are to this code unless otherwise indicated.

before trial and lacked an explanation concerning the failure to seek leave of court earlier.)

Here, J&D asserts that granting the motion would be in the interests of justice because it involves the same transaction or occurrence as plaintiff's action, and W&S' cross-action, and does not unreasonably burden and complicate plaintiff's lawsuit with cross-actions and third parties. It argues that J&D did not unreasonably delay the filing of this motion. According to counsel, plaintiff alleges defects with both the attachment of the railings and the surface corrosion, which was caused by defective powder coating. The corrosion claim is attributable to PUD, while the attachment defects are attributable to J&D. It was unclear to J&D until the second mediation session on June 16, 2025, how much plaintiff allocated to each. "Once the June 16th mediation was completed, it was clear that the majority of the damages sought against J&D arose from the defective powder coating, and not the non-compliant attachments, and, thus, could not be resolved in the absence of PCU's participation in this case." (Coleman Decl., ¶¶9 - 16.) J&D thus asserts that this motion is based on newly discovered facts.

The Residences opposes the motion, arguing that the delay was unreasonable. Plaintiff filed a first amended complaint on April 10, 2023, in which it was alleged that "Many, if not all, of the balcony railings have not been properly coated and protected from corrosion. Furthermore, many of the railings are not properly attached to the adjacent wall, creating a safety hazard." (FAC, ¶ 15(c).) On July 18, 2023, in response to J&D's request for all prior pleadings, plaintiff provided J&D with a copy of its First Amended Complaint and a Proposed Complex Case Management Order ("CCMO"). (Haskell Decl. ¶ 6.) The defects, including the corrosion issue attributable to the powder coating, were identified in discovery responses as early as August 23, 2023. (Haskell Decl., ¶ 7.)

It is clear from this record that J&D has had notice that the powder coating defect was an issue since at least July 18, 2023. Thus, J&D knew of the facts upon which it bases its cross-complaint for at least two years prior to bringing this motion. Adding another cross-complaint just two months prior to the trial will undoubtedly complicate this lawsuit. Although it is true, as J&D points out in its reply, that J&D is *not* requesting a continuance of the trial. However, PCU will undoubtedly do so, if added as a party, and J&D had provided the court with no guidance for navigating that very real concern. As such, J&D has not carried its burden of showing that granting its motion is in the interests of justice.

The motion is denied.