

**Calaveras Superior Court**  
**Civil Law & Motion Hearing**  
**Hon. Susan C. Harlan, Assigned**  
**Courtroom #1**  
**Friday, July 17, 2020**

8:30 AM      19CV43940      Motion for Leave to File Cross-Complaint      03/14/2019

Disqualification 170.6 DMS filed 04-08-19 by Plaintiff

Ptff/Pet:    Pearson, Daniel

Atty:    Pro Se

Def/Res:    Antaya, Lawrence; McCullough, Andrew E

Atty:    Keene, Patrick M

Tentative Ruling: Plaintiff filed a complaint against defendants on March 14, 2019, involving a piece of real property located in Calaveras County. Defendant Antaya filed his answer on April 12, 2019. On October 21, 2019, defendant Antaya filed a motion requesting leave to file a cross-complaint for partition for sale and declaratory relief. On November 12, 2019, the proceedings were stayed due to plaintiff filing bankruptcy. On May 15, 2020, the bankruptcy stay was terminated. On May 20, 2020, defendant Antaya refiled the motion requesting leave of court to file a cross-complaint against plaintiff involving the same piece of property.

CCP section 428.50 requires that: (c) A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). Leave may be granted in the interest of justice at any time during the course of the action.

CCP section 428.10 requires 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 either or both of the following: (b) Any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him.

As defendant Antaya's proposed cross-complaint arises out of the same transaction involving the same piece of property as alleged in the complaint, and the cross-complaint will assert a claim for partition and declaratory relief in the property which is the subject of the cause brought against him, in the interests of justice, defendant Antaya's motion is GRANTED and defendant has thirty days to file a cross-complaint.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.