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CROSS COMPLAINT

CHRISTIAN CROSIER VS. SNO-DRIFT DANCE CLUB et al

001C00784076

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 COUNTY OF SAN FRANCISCO
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9 Attorneys for Defendant
 10 CARGO LLC dba SNO-DRIFT

11 SUPERIOR COURT OF CALIFORNIA
 12 CITY AND COUNTY OF SAN FRANCISCO

13 CHRISTIAN CROSIER,) No. CGC-03-419538
 14)
 15 Plaintiff,) **CROSS-COMPLAINT**
 16)
 17 vs.)
 18)
 19 SNO-DRIFT DANCE CLUB, DOES 1)
 20 TO 10,)
 21 Defendants.)
 22)
 23 CARGO LLC dba SNO-DRIFT,)
 24)
 25 Cross-complainant.)
 26)
 27 vs.)
 28)
 29 ROES 1 through 20, inclusive,)
 30)
 31 Cross-Defendants.)
 32)

33 Cross-complainant CARGO LLC dba SNO-DRIFT, for a cause of
 34 action against the above-named cross-defendants, and each of them,
 35 complains and alleges as follows:

36 FIRST CAUSE OF ACTION
 37 (Declaratory Relief)

38 1. Cross-complainant is ignorant of the true names and
 39 capacities of cross-defendants ROES 1 through 20, inclusive, and

1 sues cross-defendants by fictitious names herein. Cross-
2 complainant prays leave to amend this Cross-Complaint to allege
3 their true names and capacities when the same have been
4 ascertained.

5 2. That at all times herein mentioned, cross-defendants ROES
6 1 through 20, inclusive, were the agents, servants, employees, or
7 independent contractors of each of the remaining cross-defendants
8 and at all times herein relevant were acting within the course and
9 scope of said relationship.

10 3. On or about April 18, 2003, plaintiff CHRISTIAN CROSIER
11 filed the Complaint herein against defendants SNO-DRIFT DANCE CLUB
12 and DOES 1 through 10 inclusive, seeking damages for personal
13 injuries plaintiff alleges occurred on or about April 28, 2002 at
14 which time plaintiff generally alleges that the negligence and
15 fault of defendants caused or contributed to the injury and damages
16 claimed. Said Complaint is incorporated herein by reference for
17 the sole purpose of clarifying the allegations contained herein and
18 without admitting any of its allegations. Cross-complainant has
19 answered said Complaint.

20 4. If plaintiff did sustain damages as alleged in the
21 Complaint on file herein, or any damages whatsoever, such damages
22 were caused entirely, or in part, on a comparative fault basis, by
23 the negligence, carelessness, and tortious conduct of cross-
24 defendants ROES 1 through 20, inclusive, and each of them, in
25 negligently, carelessly, tortiously, and improperly contributing to
26 the acts referred to in plaintiff's Complaint, thereby proximately
27 causing plaintiff's injuries as alleged.

28 5. If cross-complainant is held liable for the damages

1 claimed in the Complaint herein, such liability, if any, will be
2 based solely, or in part, on a comparative fault basis, on cross-
3 defendants, tortious and negligent conduct and only secondarily, or
4 in part, on a comparative fault basis, on the conduct of cross-
5 complainant.

6 6. In defending this action, cross-complainant has incurred
7 and/or paid, and will continue to incur and pay, attorneys' fees
8 and legal costs. Cross-complainant will amend this Cross-Complaint
9 to state the amount of such attorneys' fees and costs when the
10 exact amount of the fees and costs are ascertained.

11 7. An actual controversy has arisen and now exists between
12 cross-complainant and cross-defendants, and each of them, in that
13 cross-complainant contends and cross-defendants, and each of them,
14 deny the following:

15 a. That as between cross-complainant and cross-
16 defendants, and each of them liability, if any, for the damages
17 claimed by the plaintiff rests solely, or in part, on a comparative
18 fault basis, on cross-defendants, and each of them, and only
19 secondarily, or in part, on a comparative fault basis, on cross-
20 complainant; and

21 b. That cross-defendants, and each of them, are
22 obligated to reimburse cross-complainant its attorneys, fees and
23 legal costs incurred and/or paid in defending this action and to
24 indemnify cross-complainant for the sum, or a proportion of the
25 sum, which cross-complainant may pay or be compelled to pay as a
26 result of any settlement, damages, judgments, or other awards
27 herein.

28 8. Cross-complainant desires a judicial determination of the

1 respective rights and duties of cross-complainant and cross-
2 defendants with respect to the damages claimed in the Complaint
3 herein and a declaration as between cross-complainant and cross-
4 defendants, and each of them, that liability for such damages, if
5 any, rests solely, or in part, on a comparative fault basis on
6 cross-defendants, and each of them, and only secondarily, or in
7 part, on a comparative fault basis, on cross-complainant, and that
8 cross-defendants and each of them, are obligated to reimburse
9 cross-complainant for its attorneys' fees and legal costs incurred
10 and/or paid in defending this action and to indemnify cross-
11 complainant for the sum, or a proportion of the sum cross-
12 complainant may pay or be compelled to pay as a result of any
13 settlement, damages judgments, or other awards herein.

14 9. Such a declaration is necessary and appropriate at this
15 time in order that cross-complainant may ascertain its rights and
16 duties with respect to the damages claimed in the Complaint herein.
17 Furthermore, the claim of plaintiff and the claim of cross-
18 complainant arises out of the same transaction and a determination
19 of both claims in one proceeding is necessary and appropriate in
20 order to avoid a multiplicity of actions.

21 SECOND CAUSE OF ACTION
22 (Equitable Indemnity)

23 10. Cross-complainant realleges paragraphs 1 through 6,
24 inclusive, of the First Cause of Action and incorporates the same
25 as if set forth herein.

26 11. As a direct result of cross-defendants' conduct as set
27 forth herein, liability, if any, for the damages claimed in the
28 Complaint herein, rests solely upon cross-defendants, and each of

1 them, and only secondarily on cross-complainant, and cross-
2 defendants, and each of them, are obligated to reimburse cross-
3 complainant for its attorneys' fees and legal costs and to
4 indemnify cross-complainants for the sum cross-complainant pay, are
5 compelled to pay, or may be compelled to pay, as a result of any
6 settlement, damages, judgments, or other awards herein.

7 THIRD CAUSE OF ACTION
8 (Comparative Indemnity)

9 12. Cross-complainant realleges paragraphs 1 through 6,
10 inclusive, of the First Cause of Action and incorporates the same
11 as if set forth herein.

12 13. As a direct result of cross-defendants' conduct as set
13 forth herein, liability, if any, for the damages claimed in the
14 Complaint herein rests, in part, on a comparative fault basis, on
15 cross-defendants, and each of them, and only in part, on a
16 comparative fault basis, on cross-complainant, and cross-
17 defendants, and each of them, are obligated to indemnify cross-
18 complainant, on a comparative fault basis, for the sum cross-
19 complainant pays, are compelled to pay, or may be compelled to pay,
20 as a result of any settlement, damages, judgments, or other awards
21 herein.

22 WHEREFORE, cross-complainant prays for judgment against cross-
23 defendants, and each of them, as follows:

24 1. Indemnification from and against any and all claims,
25 losses, damages, attorneys' fees, judgments, and/or settlement
26 expenses incurred or which will be incurred by cross-complainant by
27 reason of plaintiff's Complaint;

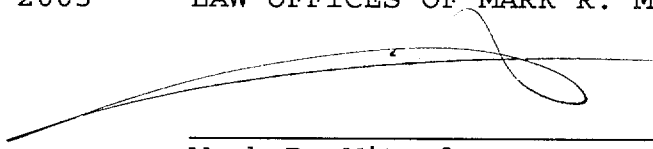
28 2. For a separate declaration of the respective degrees and

1 percentages of fault or liability, if any, of cross-complainant, on
2 one hand, and of cross-defendants, and each of them, on the other
3 hand;

4 3. For attorneys' fees and costs incurred herein pursuant to
5 C.C.P. §1021.6; and

6 4. For such other and further relief as the Court may deem
7 just and proper.

8 Dated: September 3, 2003 LAW OFFICES OF MARK R. MITTELMAN



10
11 Mark R. Mittelman
12 Attorneys for Defendant
13 CARGO LLC dba SNO-DRIFT

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