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2 FOR PUBLICATION
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5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **KEITH A. WAIBEL**, as Trustee for the Junior)
9 Larry Hillbroom Trust, **MARCIANO IMEONG**,)
10 and **NAOKO IMEONG**,)

11 Plaintiffs,)

12 v.)

13 **MYRON A. FARBER, JOHN FRANCIS**)
14 **PERKIN, BRUCE L. JORGENSEN, and**)
15 **THE ST. PAUL FIRE & MARINE**)
16 **INSURANCE COMPANY,**)

17 Defendants.)

18 **JOHN FRANCIS PERKIN,**)

19 Third-Party Plaintiff/)
20 Counterclaim Defendant,)

21 v.)

22 **DAVID J. LUJAN,**)

23 Third-Party Defendant/)
24 Counterclaim Plaintiff.)

25 **DAVID J. LUJAN,**)

26 Third-Party Plaintiff,)

27 v.)

28 **THE ST. PAUL FIRE & MARINE**)
INSURANCE COMPANY,)

Third-Party Defendant.)

CIVIL ACTION NO. 01-0236D

**ORDER GRANTING THIRD
PARTY DEFENDANT LUJAN'S
MOTION FOR
RECONSIDERATION TO
AMEND PLEADINGS TO
ASSERT COUNTERCLAIM
AGAINST THIRD-PARTY
PLAINTIFF JOHN FRANCIS
PERKIN**

1 **I. INTRODUCTION**

2 This matter came before the Court on August 26, 2003, at 9:00 a.m. in Courtroom 220A on
3 Third-Party Defendant David J. Lujan’s Motion For Reconsideration To Amend Pleadings To Assert
4 Counterclaim Against Third-Party Plaintiff John Francis Perkin, filed on July 9, 2003. Third-Party Plaintiff
5 John Francis Perkin was present through counsel, Vicente T. Salas, Esq., and Third- Party Defendant
6 David J. Lujan was present through counsel, Edward C. Arriola, Esq. The Court, having reviewed the
7 pleadings on file, including the original motion filed on September 25, 2002, the opposition to said motion,
8 and the reply brief, and having heard the arguments of counsel, enters its order as follows.

9 **II. PROCEDURAL FACTS**

10 On July 9, 2003, Third-Party Defendant David J. Lujan (“Lujan”) filed his Motion for Reconsideration
11 to Amend Pleadings to Assert Counterclaim Against Third-Party Plaintiff John Francis Perkin (“Lujan's
12 Motion”). Lujan’s Motion is consistent with the Commonwealth Supreme Court’s June 6, 2003, Opinion
13 and Order on Lujan’s petition for a writ of mandamus for an order directing the Superior Court to vacate
14 a portion of an order entered on November 13, 2002, which denied Lujan leave to amend his answer to
15 assert an omitted counterclaim. *See Lujan v. Superior Court (Perkin)*, 2003 MP 10 ([Unpublished]
16 Opinion and Order). Although the Supreme Court declined to issue the writ, it nevertheless opined that
17 “the court below should be given an opportunity to present an acceptable Order.” *Id.* at ¶17. In footnote
18 9 of the Opinion and Order, the Supreme Court provided that, “the judge to whom the case is now
19 assigned *shall reconsider* Lujan's motion to amend his pleadings to add an omitted counterclaim.” *Id.*,
20 (emphasis added). The same Opinion and Order made it clear that this Court may either grant or deny
21 such motion. Footnote 9 states that “[s]aid judge shall *either grant or deny such motion* in an Order
22 which states the factual and legal grounds for the decision.” *Id.*, (emphasis added).

23 **III. FACTS**

24 On April 18, 2001, the original plaintiffs in this action filed a complaint against several defendants,
25 including Third-Party Plaintiff John Francis Perkin (“Perkin”), for malicious prosecution. The original
26 plaintiffs allege that defendants sued plaintiffs maliciously and without probable cause in a prior federal civil
27 action, Civil No. 00-0014 in the United States District Court for the Northern Mariana Islands (“Federal
28 Case”).

1 On February 27, 2002, almost a year after the original complaint was filed, Perkin filed his motion
2 for leave to file a third party complaint against Lujan for contribution and indemnity based on an April 3,
3 2000, letter Lujan wrote to Perkin (“Letter”).¹ Perkin alleges in his Third-Party Complaint that he relied
4 on the Letter to file the federal case against the original plaintiffs in this case. *See* Third-Part Complaint, filed
5 April 22, 2002, at ¶16. On April 18, 2002, exactly one year after the original complaint was filed, the
6 court issued its order granting Perkin’s motion to file his third-party complaint against Lujan. On April 22,
7 2002, Perkin filed his Third-Party Complaint against Lujan, and Lujan filed his first answer on June 19,
8 2002. Lujan filed this motion three months later.

9 **IV. ISSUE**

10 Whether this Court should grant Lujan’s Motion, when Lujan’s counterclaim seeks damages based
11 on the federal case that was brought against him.

12 **V. ANALYSIS**

13 Rule 13 of the Commonwealth Rules of Civil Procedure provides the basis to assert a counterclaim
14 or cross-claim. Rule 13(a) provides for compulsory counterclaims, “if it arises out of the transaction or
15 occurrence that is the subject matter of the opposing party’s claim . . .” Com. R. Civ. P. 13(a); *see also*
16 *Sablan v. Qurashi*, 3 CR 321 (Trial Ct. 1988). In *Sablan*, the trial court applied the following four tests
17 to determine when a claim and counterclaim arise from the same transaction:

- 18 1. Are the issues of fact and law raised by the claim and counterclaim largely the
19 same?
- 20 2. Would res judicata bar a subsequent suit on defendant's claim absent the
21 compulsory counterclaim rule?
- 22 3. Will substantially the same evidence support or refute plaintiff’s claim as well as
23 defendant's counterclaim?
- 24 4. Is there any logical relation between the claim and the counterclaim?

25 *Id.* at 324.

26 In reviewing the original plaintiffs’ claim, Perkin’s claim, and Lujan’s counterclaim, this Court
27 concludes that Lujan’s counterclaim is compulsory. In this case, the original plaintiffs’ claims arose from

28 ¹ The Court acknowledges the fact that this civil action was temporarily removed to the U.S. District Court
for the Northern Mariana Islands. *See* Written Notice of Removal of CNMI Superior Court Civil Action No. 01-0236D
to the U.S. District Court for the Northern Mariana Islands, filed May 30, 2001. However, the removal does not affect
the outcome of this decision.

1 the Federal Case filed against them by Defendant Myron A. Farber through his attorneys, Defendants
2 Perkin and Bruce L. Jorgensen. Perkin then filed his Third-Party Complaint against Lujan for contribution
3 and indemnity as a defense to any liability he may have to the original plaintiffs in this case for his filing the
4 federal suit. Perkin allegedly relied on the Letter to file suit against the original plaintiffs in federal court.
5 Lujan’s proposed counterclaim seeks damages against Perkin for Perkin’s involvement in bringing the
6 Federal Case against Lujan.

7 Applying the four part test, the Court first finds that these facts show that the issues of fact and law
8 raised by the complaint, third party complaint, and counterclaim are largely the same, involving the same
9 individuals and transaction. Second, this Court concludes that *res judicata* would bar Lujan from any
10 subsequent suit for malicious prosecution based on the Federal Case. Third, the same evidence for the
11 complaint and third party complaint support Lujan’s counterclaim. Finally, there is a clear logical
12 relationship between the original plaintiffs’ claim, third party plaintiff’s claim, and Lujan’s counterclaim, as
13 they all relate to the Federal Case. Accordingly, this Court concludes that Lujan’s counterclaim is
14 compulsory in that it arises from the same transaction or occurrence as the subject matter of the original
15 plaintiffs’ claim in this case, as well as Perkin’s claim for contribution and indemnity.

16 The Court notes that Commonwealth Rule of Civil Procedure 13(c) provides that, “[a] counterclaim
17 may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief *exceeding*
18 *in amount or different in kind* from that sought in the pleading of the opposing party.” Com. R. Civ. P.
19 13(c) (emphasis added). Rule 13(c) therefore allows Lujan’s counterclaim to exceed in amount or be
20 different in kind from that sought by Perkin. Accordingly, based on the foregoing and pursuant to
21 Commonwealth Rule of Civil Procedure 15, this Court grants Lujan’s motion to amend his pleading.

22 At the hearing on Lujan’s Motion, counsel for Perkin argued that Lujan’s Motion is governed by
23 Commonwealth Rule of Civil Procedure 14, which addresses Third-Party Practice, not Rule 13. The Court
24 agrees that Rule 14 also governs Lujan’s Motion, and that it supports Lujan’s Motion. Rule 14(a) expressly
25 provides, *inter alia*, that, “[t]he person served with the summons and third-party complaint, hereinafter
26 called the third-party defendant, shall make any defenses to the third-party plaintiff’s claim as provided in
27 Rule 12 *and any counterclaims against the third-party plaintiff . . .*” Com. R. Civ. P. 14(a) (emphasis
28 added). In this case, it was Perkin who brought Lujan into this civil action. Lujan was not one of the

1 original plaintiffs in this action, although he was one of the defendants in the Federal Case. But for Perkin's
2 Third-Party Complaint against Lujan, Lujan would not be a part of this civil action. Now that Lujan is a
3 proper party in this case, he is entitled to assert his rights under the Commonwealth Rules of Civil
4 Procedure. Rule 14(a) allows him to assert such a right, and this Court grants his request to assert his
5 counterclaim.

6 **VI. CONCLUSION**

7 For the foregoing reasons, Third-Party Defendant Lujan's Motion for Reconsideration to Amend
8 Pleadings to Assert Counterclaim Against Third-Party Plaintiff John Francis Perkin is hereby GRANTED.

9 Third-Party Defendant Lujan shall, within ten (10) days of this Order, file and serve his Second
10 Amended Answer and Counterclaim against John Francis Perkin consistent with the proposed Second
11 Amended Answer filed as Exhibit 2 to his Motion.²

12 SO ORDERED this 26th day of August 2003.

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14 /s/
15 RAMONA V. MANGLONA, Associate Judge
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28 ² For clarity, the parties shall use the caption used in this order in all future pleadings as it details the
parties' names and status.