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Please note:  
This sample document is redacted from an actual research and writing project we did for a customer some time ago. It reflects the law as of the date we completed it. Because the law may have changed since that time, please use it solely to evaluate the scope and quality of our work.  
If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

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UNITED STATES DISTRICT COURT  
SOUTHWESTERN DISTRICT OF CALIFORNIA

ELLIS SMITH, Case No. A 54321  
Plaintiff, NOTICE OF MOTION TO AMEND  
vs. COMPLAINT; MEMORANDUM OF  
ACER, INC., et al., Date:  
Defendants. Time:  
Dept.  
Complaint filed:  
Trial date:

PLEASE TAKE NOTICE that on \_\_\_\_\_, at \_\_\_\_\_ or as soon as  
the matter may be heard in Courtroom 25 of United States District Court of the  
Southwestern District of California, located at 123 State St., Aralia, CA 99000, plaintiff  
Ellis Smith will move for leave to amend his complaint to add Redd Corp. as a defendant  
in this matter.

This motion will be made on the ground that Redd Corp. is the parent corporation  
and a shareholder of defendant, Redd Dyes, Inc., and as such, under Corporations Code  
§ 2011, the action pending against Redd Dyes may now be brought against the  
shareholders. This motion is based on this notice of motion, the motion itself, the  
supporting memorandum of points and authorities, the declaration of Maude Jones, the  
proposed the amended complaint, the pleadings and papers on file, and any other

1 evidence as may be presented at the hearing on the motion.

2  
3 Dated:

4  
5 \_\_\_\_\_  
6 Attorney for Plaintiff  
7 ELLIS SMITH

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **1. The court may grant leave to amend to add a party at any time.**

10 Under Federal Rules of Civil Procedure (“FRCP”), Rule 20 and Rule 21, a  
11 defendant may be added at any time during the proceedings on a motion by the plaintiff.

12 All persons . . . may be joined in one action as defendants if there is asserted  
13 against them jointly, severally, or in the alternative, any right to relief in  
14 respect of or arising out of the same transaction, occurrence, or series of  
15 transactions or occurrences and if any question of law or fact common to all  
16 defendants will arise in the action.

17 FRCP Rule 20.

18 “Parties may be dropped or added by order of the court on motion of any party or of its  
19 own initiative at any stage of the action and on such terms as are just.” FRCP Rule 21.

20  
21 **2. Leave to amend should be granted to add Redd Corp. as a defendant.**

22 On October 10, 20\_\_, counsel for defendant Redd Dyes, Inc. told plaintiff’s  
23 counsel that Redd Corp. is a shareholder of Redd Dyes. On October 11, 20\_\_, counsel for  
24 Redd Dyes filed a “Notice of Probable Absence of Party Representative for Settlement  
25 Conference” in which he represented that Redd Dyes has no employees, that the “final  
26 officers and directors” will have resigned by October 24, 20\_\_ (the date of the Settlement  
27 Conference), and that no “interim directors will have been appointed/elected in time for  
28

1 the Conference.”

2 Based on communications with counsel for Redd Dyes, plaintiff understands that  
3 Redd Dyes is in the process of dissolution and winding up and that during the course of  
4 this litigation, perhaps as early as October 24, it will become a dissolved corporation  
5 under California law.

6 Under FRCP 17(b), “The capacity of a corporation to sue or be sued shall be  
7 determined by the law under which it was organized.” See also *Atchison, Tokeka and*  
8 *Santa Fe R.R. Co. v. Brown & Bryant, Inc.*, 132 F.3d 1295, 1300 (9<sup>th</sup> Cir. 1997) (applying  
9 state law instead of federal common law to a claim of successor liability). Both Redd  
10 Dyes and Redd Corp. are organized under the laws of the State of California.

11 California Corporations Code § 2011 provides that a dissolved corporation’s  
12 shareholders may be named as parties in an action brought against the corporation:

13 Causes of action against a dissolved corporation, whether arising before or  
14 after the dissolution of the corporation, may be enforced against any of the  
15 following:

- 16 (A) Against the dissolved corporation, to the extent of its  
17 undistributed assets, including, without limitation, any  
18 insurance assets held by the corporation that may be available  
19 to satisfy claims.
- 20 (B) If any of the assets of the dissolved corporation have been  
21 distributed to shareholders, against shareholders of the  
22 dissolved corporation to the extent of their pro rata share of  
23 the claim or to the extent of the corporate assets distributed to  
24 them upon dissolution of the corporation, whichever is less.

25 Corp. Code § 2011.(a)(1)

26 If Redd Dyes has no employees, officers, or directors to manage its affairs, then it  
27 is reasonable to conclude that the corporation’s assets were, or will be, distributed to the  
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1 shareholders, including Redd Corp., on or before October 24, 20\_\_, the date by which all  
2 of the officers and directors responsible for managing the corporation's assets will have  
3 resigned. It is also reasonable to conclude that Redd Dyes' dissolution will be effective,  
4 if not on that date, then in the very near future.

5  
6 **CONCLUSION**

7 Redd Dyes is clearly in the process of dissolving. It has no employees, and soon,  
8 no officers or directors. It no longer has an agent for service of process. This most likely  
9 means it no longer has, or at trial will no longer have, any assets to satisfy a judgment in  
10 plaintiff's favor. In the interest of justice, Redd Corp., as a shareholder of Redd Dyes,  
11 should be added as a defendant under Corporations Code § 2011.

12  
13 Dated: October \_\_\_\_, 20\_\_

Respectfully submitted,

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15 \_\_\_\_\_  
16 Attorney for Plaintiff  
17 ELLIS SMITH  
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