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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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6 **TRAVELERS INDEMNITY COMPANY OF**
7 **CONNECTICUT AND TRAVELERS**
8 **PROPERTY CASUALTY COMPANY OF**
9 **AMERICA,**

10 **Plaintiffs,**

11 **v.**

12 **CENTEX HOMES, et al.,**

13 **Defendants.**

14 **1:14-CV-451-LJO-GSA**

15 **MEMORANDUM DECISION AND**
16 **ORDER RE DEFENDANT’S MOTION**
17 **TO DISMISS (DOC. 20)**

18 This case concerns a dispute between the parties concerning their rights and duties in an
19 underlying action currently pending in Kings County Superior Court (“the Numi action”). Defendants
20 Centex Homes and Centex Real Estate Corporation (“Centex”) construct residential homes throughout
21 California. Plaintiffs are insurance providers and provided insurance to one of Centex’s subcontractors,
22 with Centex named as an additional insured under the policy (“the insurance policy”).

23 Currently before the Court is Centex’s motion to dismiss Plaintiffs’ third cause of action in their
24 first amended complaint (Doc. 18 (“FAC”)). Doc. 20. The Court has reviewed the papers and has
25 determined that the matter is suitable for decision without oral argument pursuant to Local Rule 230(g).

26 This case is one of many between the parties currently pending in this Court and elsewhere. The
Court has already issued multiple orders in these cases. See, e.g., Travelers Indem. Co. of Connecticut v.
Centex Homes, No. 1:14-cv-217-LJO-GSA, 2014 WL 3778269 (E.D. Cal. July 30, 2014) (“the Travelers
case”). The Court has reviewed the record and the parties’ submissions in their entirety and finds that the
material facts of the Travelers case and the arguments Centex made in support of its motion to dismiss
in that case are essentially identical to those involved in this case. That is, the Court finds that the Order

1 granting Centex's motion to dismiss Plaintiffs' third cause of action for equitable reimbursement in the
2 Travelers case is directly applicable to Centex's motion to dismiss here.

3 As explained in the Travelers case, to state a claim for equitable reimbursement, Plaintiffs must
4 allege that they agreed to defend Centex immediately upon its tender of the Numi action to Plaintiffs.
5 Although Plaintiffs allege that they agreed to defend Centex in the Numi action, see FAC at 14, the FAC
6 provides no facts as to when Centex tendered the Numi action or when Plaintiffs agreed to defend
7 Centex in that case. In the absence of any clear allegation that Plaintiffs immediately agreed to defend
8 Centex in the Numi action, Plaintiffs' equitable reimbursement claim fails.

9 Accordingly, the Court GRANTS WITH LEAVE TO AMEND Centex's motion to dismiss
10 Plaintiffs' third cause of action for equitable reimbursement (Doc. 20). Any amended complaint shall be
11 file on or before August 29, 2014.

12 IT IS SO ORDERED.

13 Dated: August 19, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE