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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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STARBUCKS CORPORATION, a
corporation,

 Plaintiff,

 v.

AMCOR PACKAGING DISTRIBUTION,
et al.,

 Defendants.

CIV. NO. 2:13-1754 WBS CKD

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS CROSS-COMPLAINT

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Plaintiff Starbucks Corporation ("Starbucks") filed this case against defendants Amcor Packaging Distribution, Amcor Packaging (USA), Inc. (collectively "Amcor"), and Pallets Unlimited after discovering mold on its coffee bags, coffee, and several wooden shipping pallets provided to Starbucks by defendants. (Compl. ¶ 9 (Docket No. 1).) Starbucks alleges that defendants supplied it with defective pallets that caused the mold. (Id.) Pallets Unlimited and Amcor filed cross-claims against each other, (Amcor Cross-cl. (Docket No. 14); Pallets

1 Cross-cl. (Docket No. 15)), and Pallets Unlimited later filed a
2 "cross-claim"¹ against third-party defendant Ozburn-Hessey
3 Logistics ("OHL"). (Pallets Compl. (Docket No. 25).) OHL now
4 moves to dismiss the claims against it.

5 I. Factual and Procedural History

6 Amcor allegedly sold Starbucks 9,480 wooden pallets,
7 used to store and transport almost 70,000 bags of unroasted
8 Starbucks coffee beans. (Compl. ¶¶ 8-9.) Pallets Unlimited was
9 hired by Amcor to "manufacture[], assemble[] or provide" some or
10 all of the pallets. (Id. ¶ 8.) Under a separate contract,
11 Starbucks also hired OHL to provide warehouse services for
12 Starbucks products. (Pallets Compl. ¶ 11.)

13 Starbucks alleges the pallets used to transport and
14 store its beans were defective because they did not meet the
15 specifications in Starbucks's contract with Amcor, and "as a
16 result, excessive moisture was present in the pallets, which
17 caused mold to develop in pallets and the coffee bags and
18 [coffee], which were in direct contact with the faulty pallets."
19 (Compl. ¶ 9.) Starbucks asserts claims against Amcor and Pallets
20 Unlimited for strict product liability, breach of warranty, and
21 negligence, as well as a claim against Amcor for breach of

22 ¹ Because OHL was not previously a party to the case and
23 its liability is allegedly derivative of Pallets Unlimited's,
24 this pleading is more accurately called a "third-party
25 complaint." See Fed. R. Civ. P. 14(a)(1) ("A defending party
26 may, as a third-party plaintiff, serve a summons and complaint on
27 a nonparty who is or may be liable to it for all or part of the
28 claim against it."); see also United States v. One 1977 Mercedes
Benz, 708 F.2d 444, 452 (9th Cir. 1983) ("[A] third-party claim
may be asserted only when the third party's liability is in some
way dependent on the outcome of the main claim and the third
party's liability is secondary or derivative.").

1 contract. (Id. ¶¶ 13-38.)

2 On July 22, 2014, Pallets Unlimited filed a third-party
3 complaint against OHL alleging that it delivered wooden pallets
4 to OHL's warehouse starting in December 21, 2011, and at that
5 time, none of the pallets contained mold. (Pallets Compl. ¶¶ 8-
6 9.) OHL then stored the pallets at its facility until sending
7 them out to various locations determined by Starbucks. (Id. ¶
8 13) During this time, OHL was allegedly responsible for ensuring
9 they were "properly stored and protected from the elements such
10 that they would not develop any mold." (Id.) Pallets Unlimited
11 alleges that, because "the pallets and coffee beans at issue were
12 stored in the sole possession of OHL, . . . the mold likely
13 developed as a result of the storage conditions at the
14 [warehouse]." (Id. ¶ 14.)

15 Based on these allegations, Pallets Unlimited brings
16 four claims against OHL: (1) full indemnification, (2) partial
17 indemnification, (3) negligence, and (4) declaratory relief.
18 (Id. ¶¶ 15-27.) OHL moves to dismiss all four claims pursuant to
19 Federal Rule of Civil Procedure 12(b)(6) for failure to state a
20 claim upon which relief can be granted.

21 II. Legal Standard

22 On a motion to dismiss for failure to state a claim
23 under Rule 12(b)(6), the court must accept the allegations in the
24 pleadings as true and draw all reasonable inferences in favor of
25 the third-party plaintiff. See Scheuer v. Rhodes, 416 U.S. 232,
26 236 (1974), overruled on other grounds by Davis v. Scherer, 468
27 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). To
28 survive a motion to dismiss, a plaintiff must plead "only enough

1 facts to state a claim to relief that is plausible on its face.”
2 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). This
3 “plausibility standard,” however, “asks for more than a sheer
4 possibility that a defendant has acted unlawfully,” and where a
5 plaintiff pleads facts that are “merely consistent with a
6 defendant’s liability,” it “stops short of the line between
7 possibility and plausibility.” Ashcroft v. Iqbal, 556 U.S. 662,
8 678 (2009) (quoting Twombly, 550 U.S. at 557).

9 III. Pallets Unlimited’s Claims for Full or Partial Indemnity

10 A. Judicial Notice of the “OHL Agreement”

11 In general, a court may not consider items outside the
12 pleadings when deciding a motion to dismiss, but it may consider
13 items of which it can take judicial notice. Barron v. Reich, 13
14 F.3d 1370, 1377 (9th Cir. 1994). “A district court ruling on a
15 motion to dismiss may consider a document the authenticity of
16 which is not contested, and upon which the plaintiff’s complaint
17 necessarily relies.” Parrino v. FHP, Inc., 146 F.3d 699, 706
18 (9th Cir. 1998), superseded by statute on other grounds as stated
19 in Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 681-82 (9th
20 Cir. 2006). The policy underlying this rule seeks to
21 “[p]revent[] plaintiffs from surviving a Rule 12(b)(6) motion by
22 deliberately omitting references to documents upon which their
23 claims are based.” Parrino, 146 F.3d at 706.

24 Through the “incorporation by reference” doctrine, the
25 court may also “take into account documents . . . alleged in a
26 complaint and whose authenticity no party questions, but which
27 are not physically attached to the [plaintiff’s] pleading . . .
28 even though the plaintiff does not explicitly allege the contents

1 of that document in the complaint.” Knieval v. ESPN, 393 F.3d
2 1068, 1076 (9th Cir. 2005) (quotation marks and citations
3 omitted). “A court ‘may treat such a document as part of the
4 complaint, and thus may assume that its contents are true for
5 purposes of a motion to dismiss under Rule 12(b)(6).’” Davis v.
6 HSBC Bank Nevada, N.A., 691 F.3d 1152, 1160-61 (9th Cir. 2012)
7 (quoting United States v. Ritchie, 342 F.3d 903, 908 (9th Cir.
8 2003)).

9 In its third-party complaint, Pallets Unlimited alleges
10 that “OHL had a contract with [Starbucks] whereby OHL agreed to
11 store the wooden pallets at issue . . . at the [warehouse].”
12 (Pallets Compl. ¶ 11.) OHL has provided the court with a copy of
13 the contract (“OHL Agreement”) which it represents contains the
14 terms by which “OHL provided warehouse services to Starbucks”
15 regarding the pallets and coffee at issue. (OHL’s Mem. at 3
16 (Docket No. 29); OHL’s Req. for Judicial Notice Ex. 5 (Docket No.
17 30-5)). OHL represents this is the contract to which Pallets
18 Unlimited’s pleading refers. (OHL’s Mem. at 3.)

19 OHL and Starbucks both agree that the OHL Agreement is
20 authentic. In fact, they have provided the court with two
21 declarations affirming its authenticity: one from Frank Eichler,
22 chief administrative officer and general counsel of OHL, (OHL’s
23 Reply Ex. 1, Eichler Decl. (Docket No. 40-1)), and one from Jeff
24 Ferrell, sourcing category manager at Starbucks, (Starbucks’s
25 Response Ex. 1, Ferrell Decl. (Docket No. 42-1)). Moreover,
26 Starbucks has requested that the court file the OHL Agreement
27 under seal, citing “proprietary, commercially sensitive and
28 private information regarding Starbucks vendor relationship,

1 facilities' locations, operational specifications and procedures,
2 costs, metrics, pricing, business practices and other similar
3 proprietary information relating to Starbucks warehousing and
4 service requirements." This request further suggests that the
5 Agreement is what it purports to be.

6 Nevertheless, despite the fact that its pleading makes
7 reference to "a contract . . . whereby OHL agreed to store the
8 wooden pallets" in its pleading, Pallets Unlimited does not agree
9 that the document which has been provided is the relevant
10 contract. (See Pallets's Opp'n at 4-7 (Docket No. 38).) Pallets
11 Unlimited argues that its allegation was a "speculative
12 reference" based only upon "information and belief" that "a
13 contract" existed. (Id. at 4-6.) At the time of pleading, it
14 argues, "Pallets Unlimited was unaware of any actual contract
15 between OHL and Starbucks, much less the specific OHL Agreement
16 sought to be relied upon." (Id. at 5.) None of the terms of the
17 OHL Agreement were quoted or paraphrased specifically in the
18 pleading, however, and Pallets Unlimited asserts that its limited
19 reference to "a contract" did not sufficiently refer to this
20 contract to consider it incorporated by reference.² (Id. at 6.)

21 Accordingly, although Pallets Unlimited has offered no

22 ² Pallets Unlimited also offers several "procedural and
23 evidentiary objections" to considering the OHL Agreement. (Id.
24 at 4, 6 n.1 (citing Fed. Rs. Evid. 401, 402, 803, 901, 902).)
25 Presumably, these objections would become relevant if the court
26 were to convert OHL's motion to dismiss into one for summary
27 judgment. See Parrino, 146 F.3d at 706 n.4 ("[W]here a defendant
28 attaches extrinsic evidence to a Rule 12(b)(6) motion, the court
ordinarily must convert that motion into one for summary judgment
under Rule 56 to give the plaintiff an opportunity to respond.").
The court sees no reason to convert OHL's motion, and thus, does
not address these objections further.

1 concrete reason for doubting its authenticity, the parties'
2 disagreement regarding whether the OHL Agreement applies to the
3 facts alleged prevents the court from considering it for purposes
4 of this motion to dismiss. See Knievel, 393 F.3d at 1076
5 (allowing consideration of documents "whose authenticity no party
6 questions" on a motion to dismiss); Parrino, 146 F.3d at 706
7 (same). The court will thus not consider the OHL Agreement.

8 B. Equitable Indemnity

9 Under California law, indemnity may be either "express
10 indemnity," which refers to an express contract term providing
11 for indemnification, or "equitable indemnity," which embraces
12 traditional equitable indemnity and implied contractual
13 indemnity. Prince v. Pac. Gas & Elec. Co., 45 Cal. 4th 1151,
14 1157-60 (2009) (reviewing the historical forms of indemnity under
15 California law). Pallets Unlimited does not allege the existence
16 of a contract between it and OHL, leaving only the possibility of
17 equitable indemnity. See id.

18 Equitable indemnity allows a defendant to "seek
19 apportionment of loss between the wrongdoers in proportion to
20 their relative culpability." Gem Developers v. Hallcraft Homes
21 of San Diego, Inc., 213 Cal. App. 3d 419, 426 (4th Dist. 1989).
22 To state a claim for equitable indemnity, plaintiff must make:
23 "(1) a showing of fault on the part of the indemnitor and (2)
24 resulting damages to the indemnitee for which the indemnitor is
25 . . . equitably responsible." Bailey v. Safeway, Inc., 199 Cal.
26 App. 4th 206, 217 (1st Dist. 2011).

27 Crucially, California law requires that, "[w]ith
28 limited exception, there must be some basis for tort liability

1 against the proposed indemnitor . . . generally based on a duty
2 owed to the underlying plaintiff.”³ BFGC Architects Planners,
3 Inc. v. Forcum/Mackey Constr., Inc., 119 Cal. App. 4th 848, 852-
4 53 (4th Dist. 2004) (“Without any action sounding in tort, there
5 is no basis for a finding of potential joint and several
6 liability . . . thereby precluding a claim for equitable
7 indemnity.”); see Stop Loss Ins. Brokers, Inc. v. Brown & Toland
8 Med. Grp., 143 Cal. App. 4th 1036, 1040-41 (1st Dist. 2006) (“The
9 question is whether, with respect to the claims analysis, [the
10 indemnitor] owed [the plaintiff] a duty of care sounding in
11 tort.”). This rule appears to follow from two principles.
12 First, equitable indemnity requires two or more parties to share
13 a “joint legal obligation” or become “jointly or severally
14 liable” to the same plaintiff. See Prince, 5 Cal. 4th at 1158;
15 Stop Loss, 143 Cal. App. 4th at 1040. Second, “California law
16 does not permit equitable apportionment of damages for breach of
17 contract” Stop Loss, 143 Cal. App. 4th at 1041 n.2.

18 Ordinary breach of contract, without something more,
19 will thus not support equitable indemnity because, “[a]lthough in
20 some circumstances the same act may support both contract and
21 tort liability, [the California Supreme Court] held that ‘breach
22 of contract becomes tortious only when it also violates a duty
23 independent of the contract arising from principles of tort
24 law.’” Tesoro Ref. & Mktg. Co. LLC v. Pac. Gas & Elec. Co., Civ.
25 No. 14-00930 JCS, 2014 WL 4364393, at *4 (N.D. Cal. Aug. 29,

27 ³ The exceptions apply to vicarious liability, strict
28 liability, and implied contractual indemnity. See BFGC, 119 Cal
App. 4th at 852.

1 2014) (quoting Erlich v. Menezes, 21 Cal. 4th 543, 551-52
2 (1999)). For example, breach of contract may also give rise to
3 liability in tort where

4 (1) the breach is accompanied by a traditional common law
5 tort, such as fraud or conversion; (2) the means used to
6 breach the contract are tortious, involving deceit or undue
7 coercion or; (3) one party intentionally breaches the
8 contract intending or knowing that such a breach will cause
severe, unmitigable harm in the form of mental anguish,
personal hardship, or substantial consequential damages.

9 Erlich, 21 Cal. 4th at 551-52. However, "mere negligent breach
10 of contract" is not sufficient to impose tort liability under
11 California law. Id.; see also Tesoro, 2014 WL 4364393, at *4-5
12 (rejecting the argument that "equitable indemnity is appropriate
13 for negligent performance of contractual obligations" under
14 California law).

15 Pallets Unlimited's third-party complaint appears to
16 allege that OHL owed Starbucks a duty of care regarding the
17 storage conditions of the pallets, but it leaves the source of
18 this duty ambiguous. In particular, it makes two allegations in
19 an effort to support a duty of care as between OHL and Starbucks.
20 First, it alleges that "OHL had a contract with [Starbucks]
21 whereby OHL agreed to store the wooden pallets at issue . . . at
22 the [warehouse]." ⁴ (Pallets Compl. ¶ 11.) And second, it
23 alleges that "OHL was responsible for ensuring that the wooden
24 pallets and coffee beans were properly stored and protected from

25 ⁴ As explained above, the court does not consider the
26 specific terms of this alleged contract. It only assumes the
27 truth of this allegation on its face--that is, it assumes that
28 some contractual relationship existed between OHL and Starbucks
with regard to storage of the wooden pallets at issue--as it must
for purposes of this motion. See Scheuer, 416 U.S. at 236.

1 the elements such that they would not develop any mold," (id. ¶
2 13.), and through its "negligence or fault," allowed mold to
3 develop, (id. ¶¶ 20, 22).

4 With regard to the alleged "contract . . . to store the
5 wooden pallets at issue," (id. ¶ 11.), the third-party complaint
6 describes a contractual duty, not a duty "sounding in tort."
7 Because California law does not recognize claims of equitable
8 indemnity premised on a contractual duty, the third-party
9 complaint does not state a claim for indemnity upon which relief
10 can be granted on that ground. See BFGC Architects, 119 Cal.
11 App. 4th at 852-53; Stop Loss, 143 Cal. App. 4th at 1040-41.

12 Setting the allegation of a contract aside, nothing in
13 Pallets Unlimited's pleading supports any viable theory that OHL
14 owed and breached a duty to Starbucks in tort. The allegation
15 that "OHL was responsible for ensuring that the wooden pallets
16 and coffee beans were properly stored and protected from the
17 elements" is a conclusory allegation not entitled to deference
18 under Iqbal. See 556 U.S. at 678 (quoting Twombly, 550 U.S. at
19 555). The same is true of the allegation that OHL was
20 "negligent" or at "fault." Neither allegation contains facts
21 that might aid the court in uncovering a duty owed by OHL to
22 Starbucks. Pallets Unlimited thus fails to allege any facts
23 allowing this court to identify the source for any such duty in
24 tort.

25 The court finds this case comparable to the recent
26 situation faced by Magistrate Judge Spero in Tesoro. See Tesoro,
27 2014 WL 4364393. In Tesoro, underlying plaintiff Tesoro Refining
28 & Marketing Company LLC ("Tesoro") sued Pacific Gas and Electric

1 Company ("PG & E") after a loss of electrical power to its
2 refinery forced a temporarily shut down. Id. at *1. PG & E in
3 turn sued Foster Wheeler Martinez, Inc. and Martinez Cogen
4 Limited Partnership (collectively, "FWM"), which also provided
5 electricity to Tesoro's refinery, for equitable indemnity. Id.
6 FWM argued that equitable indemnity was not available because (1)
7 a contract between FWM and Tesoro absolved it of liability to
8 Tesoro and (2) PG & E had not adequately alleged that FWM was
9 liable to Tesoro in tort. After concluding PG & E could not base
10 its claim upon the contract, id. at *3-5, the court set aside the
11 existence of the contract and surveyed California law for any
12 "independent tort duty" upon which to base equitable indemnity,
13 id. at *5-6. It concluded that California law afforded no basis
14 in negligence for a duty in these circumstances. Id. (citing
15 Cal. Civ. Code § 1714(a); Langley v. Pac. Gas & Elec. Co., 41
16 Cal. 2d 655, 660 (1953)). Pallets Unlimited fails to point to
17 any source not considered in Tesoro. (See Pallets's Opp'n at 11-
18 12.)

19 While some set of facts may allow Pallets Unlimited to
20 show that OHL's actions at the facility give rise to an
21 independent tort or even "both contract and tort liability," id.
22 at *4, it has not done so on the facts alleged. That is, there
23 is no "joint legal obligation" or basis for "joint and several
24 liability" to Starbucks in these allegations. See Prince, 5 Cal.
25 4th at 1158; Stop Loss, 143 Cal. App. 4th at 1040. Accordingly,
26 the court will grant OHL's motion to dismiss these claims.

27 IV. Pallets Unlimited's Negligence Claim

28 To state a claim for negligence under California law, a

1 plaintiff must allege duty, breach, causation, and damages.
2 Conroy v. Regents of Univ. of Cal., 45 Cal. 4th 1244, 1250
3 (2009). “[T]he threshold element of a cause of action for
4 negligence is the existence of a duty to use due care toward an
5 interest of another Whether this essential prerequisite
6 has been satisfied in a particular case is a question of law.”
7 Glenn K. Jackson, Inc. v. Roe, 273 F.3d 1192, 1196-97 (9th Cir.
8 2001) (quoting Adelman v. Associated International Insurance Co.,
9 90 Cal. App. 4th 352, 360 (2001)).

10 Because the court need not simply accept “a conclusory
11 assertion that [OHL] ‘owed a duty of care,’” see Fimbres v.
12 Chapel Mortgage Corp., Civ. No. 09-0886 IEG POR, 2009 WL 4163332,
13 at *7 (S.D. Cal. Nov. 20, 2009) (citing Iqbal, 556 U.S. 662.), it
14 must determine whether Pallets Unlimited alleges facts sufficient
15 to establish that OHL actually owed it a duty. Pallets Unlimited
16 alleges two possible duties on which it predicates its negligence
17 claim: (1) a general duty of care owed by all owners of property-
18 -sometimes called “premises liability”--and (2) a duty to notify.

19 A. Pallets Unlimited Fails to Allege Facts Supporting
20 Premises Liability

21 Pallets Unlimited alleges that “OHL owed a duty . . .
22 to store the coffee beans and pallets at issue at its [warehouse]
23 at or above the standard of care in the industry, which includes
24 storing them in such a way that mold would not develop”
25 (Pallets Compl. ¶ 18.) This duty arises, it contends, from
26 “premises liability” faced by all property owners in California.
27 (See Pallets’s Opp’n at 10.) And as a result of OHL’s breach of
28 this duty, Pallets Unlimited alleges that it “suffered damages

1 including, but not limited to, potential liability to
2 [Starbucks].” (Pallets Compl. ¶ 18).

3 California Civil Code section 1714(a) provides, in
4 part:

5 Everyone is responsible, not only for the result of his or
6 her willful acts, but also for an injury occasioned to
7 another by his or her want of ordinary care or skill in the
8 management of his or her property or person, except so far
9 as the latter has, willfully or by want of ordinary care,
10 brought the injury upon himself or herself.

11 Cal. Civ. Code § 1714(a); see also Cabral v. Ralphs Grocery Co.,
12 51 Cal. 4th 764, 771 (2011) (“The general rule in California is
13 that ‘[e]veryone is responsible . . . for an injury occasioned to
14 another by his or her want of ordinary care or skill in the
15 management of his or her property or person.’” (quoting Cal. Civ.
16 Code § 1714(a))). Courts have understood this subsection to
17 impose a “duty to use ordinary care,” which makes an individual
18 “liable for injuries caused by his failure to exercise reasonable
19 care in the circumstances.” Cabral, 51 Cal. 4th at 771 (quoting
20 Parsons v. Crown Disposal Co., 15 Cal. 4th 456, 472 (1997)).

21 “Premises liability” is generally invoked for the idea
22 that landowners or possessors have a duty to avoid subjecting
23 others to a risk of bodily injury or property damage. See, e.g.,
24 Brooks v. Eugene Burger Mgmt. Corp., 215 Cal. App. 3d 1611, 1619-
25 24 (5th Dist. 1989) (involving bodily injury to a child allegedly
26 caused by inadequate fencing around a roadway); Wilson v. Rancho
27 Sespe, 207 Cal. App. 2d 10, 17 (2d Dist. 1962) (stating that
28 premises liability “is applicable also with respect to liability
for damage to property”); see also Cal. Civ. Prac. Torts § 16:1
 (“The term ‘premises liability’ refers to the liability of

1 certain persons for injuries and damages to others arising from
2 the ownership or possession of real property.”).

3 However, Pallets Unlimited does not allege injury to
4 its person or property. In fact, it does not allege ownership
5 over the wooden pallets at issue while they were stored at OHL’s
6 warehouse.⁵ It repeatedly alleges that the pallets were
7 “constructed by” Pallets Unlimited, (Pallets Compl. ¶¶ 8-9, 11,
8 13-14, 18), but makes no mention of whether it retained ownership
9 of the pallets or transferred them to Starbucks upon delivery.

10 Moreover, and perhaps more tellingly, Pallets Unlimited
11 does not allege that it suffered damages in the form of harm to
12 its pallets. It alleges damages solely in the form of “potential
13 liability” to Starbucks, (*id.* ¶ 18), which would presumably
14 consist of a money judgment against it, as well as “damages
15 relating to attorney’s fees and costs of suit herein,” (*id.*
16 ¶ 17). Any duty allegedly owed to Pallets Unlimited is thus
17 better understood as a duty to protect it from the prospect of
18 purely economic loss it now faces as a result of Starbucks’s
19 claims against it.

20 Pallets Unlimited has not provided, and the court
21 cannot find, any basis in California law for such a duty.⁶ If

22 ⁵ Pallets Unlimited states in its opposition brief that
23 OHL breached its duty as a premises owner “to ensure that Pallets
24 Unlimited’s wooden pallets and Starbuck’s [sic] coffee beans”
25 were properly stored. (Pallets’s Opp’n at 9.) While this could
26 be construed as a statement of ownership, the court may not
27 consider any material other than the challenged pleadings for
28 purposes of this motion, see Arpin v. Santa Clara Valley Transp.
Agency, 261 F.3d 912, 925 (9th Cir. 2001), and no similar
allegations appear in Pallets Unlimited’s complaint.

⁶ During oral argument, Pallets Unlimited points to

1 anything, California law appears to point in the opposite
2 direction. For instance, in Quelimane Co. v. Stewart Title
3 Guaranty Co., the California Supreme Court stated that

4 In the business arena it would be unprecedented to impose a
5 duty on one actor to operate its business in a manner that
6 would ensure the financial success of transactions between
7 third parties. With rare exceptions, a business entity has
8 no duty to prevent financial loss to others with whom it
deals directly. A fortiori, it has no greater duty to
prevent financial losses to third parties who may be
affected by its operations.

9 19 Cal. 4th 26, 59 (1998) (considering whether CPA auditors' duty
10 of care in the preparation of an independent audit of a client's
11 financial statements extends to persons other than the client);
12 see also Glenn K. Jackson Inc., 273 F.3d at 1196-99 (surveying
13 California law on the existence of a legal duty of one party to
14 another in the absence of privity of contract between them).

15 In fact, a California Court of Appeal recently rejected
16 a similar attempt to raise a negligence claim "through the
17 backdoor."⁷ Mega RV Corp. v. HWH Corp., 225 Cal. App. 4th 1318,
18 1338 (4th Dist. 2014). In Mega RV Corp., the owners of a
19 motorhome sued both the manufacturer of an allegedly defective

20 Campbell v. Ford Motor Co., 206 Cal. App. 4th 15 (2012), for
21 support. The court finds no support for its position in
22 Campbell. In fact, Campbell declined to find a duty in the
23 circumstances of that case, holding that "a property owner has no
24 duty to protect family members of workers on its premises from
secondary exposure to asbestos used during the course of the
property owner's business." Id. at 34.

25 ⁷ The court also noted that the claim of negligence it
26 analyzed arose "in an indemnity cause of action . . . in a case
27 in which there was nothing to indemnify" because the other
28 defendant had settled with the underlying plaintiff. Mega RV
Corp., 225 Cal. App. 4th at 1338 n.15. Pallets Unlimited's claim
can be construed as a similar tactic, attempting to salvage its
indemnity claim using allegations of negligence.

1 hydraulic part and a company that provided ineffective repair
2 services. Id. at 1322-24. The manufacturer filed a cross-
3 complaint against the repairer for negligence, equitable
4 indemnity, and declaratory relief--the same claims at issue here.
5 Id. at 1324. Also like here, the manufacturer predicated its
6 claim of negligence on an alleged duty that the repairer owed to
7 it and breached while servicing the owner's motorhome. Id. at
8 1338.

9 The court rejected this position "as a matter of law"
10 because "[the manufacturer] did not suffer personal injury or
11 injury to other property as a result of [the repairer's] alleged
12 tort." Id. at 1338. Like Pallets Unlimited, the manufacturer
13 only asserted that it "suffered consequential economic damages"
14 by being forced to defend against the owner's claim. Id.; (see
15 Pallets's Compl. ¶ 18). No previously recognized tort existed
16 under those circumstances, "where the wrong has resulted only in
17 economic loss rather than damage to person or property." Mega RV
18 Corp., 225 Cal. App. 4th at 1338 (citing Robinson Helicopter Co.,
19 Inc. v. Dana Corp., 34 Cal. 4th 979, 988-993 (2004) (discussing
20 tort claims for economic loss generally)). And the court
21 declined to create one. Id. at 1340-42 (applying the six factors
22 from J'Aire Corp. v. Gregory, 24 Cal. 3d 799 (1979)).

23 Similarly, this court concludes there is no basis in
24 California law or in the facts alleged by Pallets Unlimited for
25 such a duty.

26 B. Pallets Unlimited Fails to Allege Facts Supporting a
27 Duty to Notify

28 Pallets Unlimited further alleges that OHL owed a duty

1 to notify it "of any specifications required of the pallets that
2 are unique to the pallets ordered by Starbucks," such as a
3 limited moisture content. (Pallets Compl. ¶ 17.) Pallets
4 Unlimited makes no mention of this allegation in its opposition
5 brief, raising the possibility that it abandons this position.
6 The court thus gives only brief consideration to this theory.
7 See Conservation Force v. Salazar, 677 F. Supp. 2d 1203, 1211
8 (N.D. Cal. 2009) (offering only brief consideration to a claim
9 "[w]here plaintiffs fail to provide a defense for a claim in
10 opposition") (citing Locricchio v. Office of U.S. Trustee, 313
11 Fed. Appx. 51, 52 (9th Cir. 2009)).

12 "A duty to disclose facts arises only when the parties
13 are in a relationship that gives rise to the duty, such as
14 'seller and buyer, employer and prospective employee, doctor and
15 patient, or parties entering into any kind of contractual
16 agreement.'" Shin v. Kong, 80 Cal. App. 4th 498, 509 (1st Dist.
17 2000) (citing Wilkins v. Nat'l Broad. Co., 71 Cal. App. 4th 1066,
18 1082 (2d Dist. 1999)). For example, California law imposes on
19 real estate agents an affirmative duty to disclose certain
20 information to those who "enter into a discussion with a real
21 estate agent regarding a real estate transaction" even in the
22 absence of a contract between them. See Cal. Civ. Code
23 § 2079.16.

24 Pallets Unlimited's complaint fails to allege facts
25 supporting a special relationship between it and OHL. Its states
26 only that a duty to disclose "was owed to [it] by OHL
27 individually and as an agent of [Starbucks]." (Pallets Compl. ¶
28 17.) Even assuming that OHL was an agent of Starbucks, however,

1 this allegation asserts a relationship between OHL and Starbucks,
2 not between OHL and Pallets Unlimited. See Shin v. Kong, 80 Cal.
3 App. 4th 498 (2000) (“[A] plaintiff’s action must be founded on a
4 duty owed to the plaintiff; not a duty owed only to some other
5 person. . . . ‘Negligence in the air, so to speak, will not do.’”
6 (quoting Prosser & Keeton, Torts § 53 (5th ed. 1984))). Absent
7 alleged facts that support some kind of special relationship
8 between Pallets Unlimited and OHL, the court cannot conclude that
9 OHL owed a duty to disclose.

10 Accordingly, because Pallets Unlimited fails to allege
11 facts that support a duty of care owed to it by OHL, the court
12 must grant OHL’s motion to dismiss this claim.

13 V. Pallets Unlimited’s Claim for Declaratory Relief

14 A court may grant declaratory relief where there is “a
15 case of actual controversy within its jurisdiction,” subject to
16 certain exceptions. 28 U.S.C. § 2201(a). The court may “declare
17 the rights and other legal relations of any interested party
18 seeking such declaration, whether or not further relief is or
19 could be sought.” Id.

20 However, “[c]laims for declaratory relief are not
21 independent causes of action, but rather the ultimate prayer for
22 relief.” Bates v. Suntrust Mortgage, Inc., Civ. No. 2:13-01402
23 TLN DA, 2013 WL 6491528, at *4 (E.D. Cal. Dec. 10, 2013) (Nunley,
24 J.). “A plaintiff is not entitled to such relief without a
25 viable underlying claim, so when the underlying claim is
26 dismissed, the declaratory relief cause of action must be
27 dismissed as well.” Id.; Allied Prop. & Cas. Ins. Co. v. Dick
28 Harris, Inc., Civ. No. 2:13-00325 WBS, 2013 WL 2145961, at *7

1 (E.D. Cal. May 15, 2013) (dismissing a claim for declaratory
2 relief because plaintiff could not state any other claim).

3 Accordingly, because Pallets Unlimited has not stated a
4 claim for relief against OHL, its request for declaratory
5 judgment must also be dismissed.

6 IT IS THEREFORE ORDERED that third-party defendant
7 Ozburn-Hessey Logistics's motion to dismiss be, and the same
8 hereby is, GRANTED.

9 Pallets Unlimited has twenty days from the date this
10 Order is signed to file an amended third-party complaint, if it
11 can do so consistent with this Order.

12 Dated: November 4, 2014

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14 **WILLIAM B. SHUBB**
15 **UNITED STATES DISTRICT JUDGE**
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