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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CERTAIN UNDERWRITERS AT
LLOYD'S OF LONDON SUBSCRIBING
TO POLICY NO. E&O 14 10873 A,

 Plaintiff,

 v.

GENERAL STAR INDEMNITY
COMPANY,

 Defendant.

No. 2:18-cv-00508-JAM-KJN

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

This case involves two insurers disagreeing over which one was responsible for providing more than \$865,000 (\$1 million) in fire insurance coverage to third-party Dr. Janak Mehtani ("Mehtani") after his residential care facility burned down in 2013. After Mehtani was denied \$1 million in fire insurance coverage under his insurance policy with Defendant General Star Indemnity Company ("General Star" or "Defendant"), he sued Defendant and his insurance brokers Ophelia Riego and Riego Insurance and Financial Services ("Riego"). Compl., ECF No. 1, ¶¶ 5-11. Defendant settled with Mehtani for \$135,000. Id., ¶ 15. Plaintiff Certain Underwriters at Lloyd's of London

1 Subscribing to Policy No. E&O 14 10873 A (“Underwriters” or
2 “Plaintiff”) defended Riego in that lawsuit under an errors and
3 omissions insurance contract Riego had with Plaintiff (the
4 “Underwriters E&O Policy”) and subsequently paid Mehtani
5 \$1 million under the Underwriters E&O Policy to cover the fire
6 damage. See id., ¶¶ 12-16.

7 Plaintiff claims Defendant should have paid Mehtani the full
8 \$1 million he sought under his fire insurance policy. See id.,
9 ¶¶ 20-21. As a result, Plaintiff has brought this lawsuit
10 against Defendant alleging a claim for equitable indemnity. See
11 Compl. Defendant has moved to dismiss with prejudice and
12 Plaintiff opposes. Mem., ECF No. 8-1; Opp., ECF No. 10. For the
13 reasons explained below, the Court grants Defendant’s motion with
14 prejudice.¹

15 16 I. FACTUAL AND PROCEDURAL BACKGROUND

17 On or around July 10, 2013, a fire damaged a residential
18 care facility owned by Mehtani. Compl. ¶¶ 5, 9. After Defendant
19 denied Mehtani coverage under his \$1 million fire insurance
20 policy, Mehtani brought a bad faith insurance lawsuit in October
21 2015 against Defendant, Riego, and others in Mehtani v. The AHBE
22 Group, et al., Case No. 34-2015-00185527 in Sacramento County
23 Superior Court (the “Underlying Action”). Id., ¶ 11; Def. Req.
24 for Judicial Notice (“RJN”), ECF No. 8-3, Exhs. 2, 3. Mehtani

25
26 ¹ This motion was determined to be suitable for decision without
27 oral argument. E.D. Cal. L.R. 230(g). The hearing was
28 scheduled for August 7, 2018. In deciding this motion, the
Court takes as true all well-pleaded facts in the operative
complaint.

1 brought claims against Defendant for breach of the insurance
2 contract and breach of the covenant of good faith and fair
3 dealing. RJN, Exhs. 2, 3.

4 Plaintiff provided Riego a defense in the Underlying Action
5 under the Underwriters E&O Policy. Compl., ¶ 14. Though the
6 fire damage exceeded \$1 million, Defendant paid Mehtani only
7 \$135,000 to settle his claim against it. Id., ¶ 15. After
8 Defendant settled with Mehtani, Plaintiff paid Mehtani \$1,000,000
9 under Riego's Underwriters E&O Policy. Id., ¶ 16. Plaintiff
10 alleges Defendant should have been paid this amount. Id., ¶ 16.
11 As a result, Plaintiff has brought the immediate equitable
12 indemnity claim against Defendant to recover the more than
13 \$865,000 that it paid to Mehtani. See Compl.

14 15 II. OPINION

16 A. Analysis

17 Defendant argues Plaintiff's claim for equitable indemnity
18 fails as a matter of law because Plaintiff has failed to allege
19 facts showing General Star owed Mehtani a tort duty of care.
20 Mem. at 3-4. The Court agrees.

21 The doctrine of equitable indemnity applies only to
22 defendants who are jointly and severally liable to the
23 underlying plaintiff. BFGG Architects Planners, Inc. v.
24 Forcum/Mackey Construction, Inc., 119 Cal. App. 4th 848, 852
25 (2004) (internal citation and quotation marks omitted); Leko v.
26 Cornerstone Building Inspection Service, 86 Cal. App. 4th 1109,
27 1115 (2001). Joint and several liability in the equitable
28 indemnity context can apply to acts that are concurrent or

1 successive, joint or several, so long as they create a detriment
2 caused by several actors. Id. There must be some basis for
3 tort liability against the proposed indemnitor and it is
4 generally based on a duty owed to the underlying plaintiff.
5 BFGC Architects, 119 Cal. App. 4th at 852. In the absence of
6 any such duty owed by the third-party defendant to the
7 underlying plaintiff, the claim of defendant and third-party
8 plaintiff for equitable indemnity fails as a matter of law.
9 Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Grp., 143
10 Cal. App. 4th 1036, 1041-42, 1044.

11 Plaintiff argues that Mehtani's underlying bad faith claim
12 against Defendant gives rise to tort liability and equitable
13 indemnity applies as a result. Opp. at 5-6. Plaintiff reasons
14 that Defendant violated the covenant of good faith and fair
15 dealing implied in every contract, including insurance policies,
16 and this gives rise to tort liability. Id. at 6. In support of
17 this argument, Plaintiff cites Wilson v. 21st Century Ins. Co.,
18 42 Cal. 4th 713, 720 (2007); Gruenberg v. Aetna Ins. Co., 9 Cal.
19 3d 566, 673 (1973); Chateau Chambray Homeowners Ass'n v.
20 Associated Int'l Ins. Co., 90 Cal. App. 4th 335, 346 (2001);
21 Brandwein v. Butler, 218 Cal. App. 4th 1485, 1514-1515 (2013);
22 Silberg v. California Life Ins. Co., 11 Cal. 3d 452, 461-462
23 (1974); California Shoppers, Inc. v. Royal Globe Ins. Co., 175
24 Cal. App. 3d 1, 54 (1985); Archdale v. American Int'l Specialty
25 Lines Co., 154 Cal. App. 4th 449, 465-66 n.19 (2007). Opp. at
26 5-6. None of these cases, however, hold that violation of the
27 covenant of good faith and fair dealing gives rise to tort
28 liability for the purpose of a third-party's equitable indemnity

1 claim. These cases simply do not apply.

2 Further, as Defendant points out, "Underwriters cite no
3 authority (because there is none) which establishes that an
4 insurer is subject to a claim for equitable indemnity based on
5 an underlying claim of breach of the implied covenant." Reply,
6 ECF No. 11, at 2. Even though Mehtani brought a claim for
7 breach of the covenant of good faith and fair dealing against
8 Defendant, Plaintiff lacks authority to support its claim that
9 Defendant is consequently liable in tort for the purpose of an
10 equitable indemnity claim. Because Plaintiff's claim for
11 equitable indemnity relies on an unsupported legal theory, the
12 Court finds that Plaintiff's claim may not proceed and that it
13 must be dismissed. See Bell Atlantic Corp. v. Twombly, 550 U.S.
14 544, 562 (2007) (stating that a complaint must contain either
15 direct or inferential allegations respecting all the material
16 elements necessary to sustain recovery under some viable legal
17 theory).

18 B. Leave to Amend

19 Defendant argues the Court should grant its motion with
20 prejudice because Plaintiff cannot state facts to show a tort
21 duty owed by General Start to Mehtani in this case since the
22 claims were based in contract. Mem. at 2-3, 6. Plaintiff
23 counters that it should be given leave to amend, seeming to
24 argue by implication that amendment would not be futile. Opp.
25 at 8-9 (citing Federal Rule 15(a); Independent Trust Corp. v.
26 Steward Information Services Corp., 665 F.3d 930, 943 (7th Cir.
27 2012) (the standard for granting leave is "generous"); National
28 Council of La Raza v. Chegavske, 800 F.3d 1032, 1041 (9th Cir.

1 2015) (stating that district court must give at least one chance
2 to amend absent clear showing that amendment would be futile)).
3 But Plaintiff does not explain what facts it would plead in an
4 amended complaint to cure any defects in its complaint. See
5 Opp. Moreover, as explained above, none of the cases either
6 party cites show that an underlying plaintiff's claim for breach
7 of the covenant of good faith and fair dealing against a
8 defendant makes that defendant liable in tort for the purpose of
9 an equitable indemnity claim brought by a third party. Finding
10 otherwise would seem to require this Court to create new law.
11 It will not do so. Accordingly, the Court finds that amendment
12 would clearly be futile and the Court need not, and does not,
13 grant leave to amend. See Deveraturda v. Globe Aviation Sec.
14 Servs., 454 F.3d 1043, 1049 (9th Cir. 2006).

15 16 III. SANCTIONS

17 The Court issued its Order re Filing Requirements ("Order")
18 on March 8, 2018. ECF No. 3-2. The Order limits memoranda in
19 support of and in opposition to motions to dismiss to fifteen
20 pages and reply memoranda in support of motions to dismiss to
21 five pages. The Order also states that an attorney who exceeds
22 the page limits must pay monetary sanctions of \$50.00 per page
23 and that the Court will not consider any arguments made past the
24 page limit. Defendant's reply memorandum exceeds the page limit
25 by two pages. The Court has not considered any arguments made
26 after page five of the reply brief. The Court ORDERS Defendant's
27 counsel to pay \$100.00 to the Clerk of the Court within five days
28 of the date of this Order.

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IV. ORDER

For the reasons set forth above, the Court GRANTS Defendant's motion WITH PREJUDICE.

IT IS SO ORDERED.

Dated: September 12, 2018


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE