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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANDREW MOSANA,
Plaintiff,
v.
PROPERTY AND CASUALTY
INSURANCE COMPANY OF HARTFORD
AND TODD F. HAINES, ESQ.,
Defendants.

PROPERTY AND CASUALTY
INSURANCE COMPANY OF HARTFORD,
Cross-Claimant and Third-
Party Plaintiff,
v.
TODD F. HAINES, ESQ.,
Cross-Defendant,
AND
WILBER AND ASSOCIATES, P.C.,
Third-Party Defendant and
Cross-Claimant,
v.

Case No. 1:22-cv-00785-JLT-HBK

ORDER DISMISSING HARTFORD'S
CROSSCLAIM WITH PREJUDICE;
DISMISSING HARTFORD'S THIRD-PARTY
COMPLAINT WITHOUT PREJUDICE;
DISMISSING WILBER AND ASSOCIATES'
AMENDED CROSSCLAIM WITHOUT
PREJUDICE; AND DIRECTING CLERK OF
COURT TO CLOSE CASE

(Docs. 15, 18, 33, 50)

1 TODD F. HAINES, ESQ.,
2 Cross-Defendant.
3

4 The parties have responded to the Court’s recent Minute Order (Doc. 49) requesting
5 additional briefing regarding whether jurisdiction exists over the derivative cross and third-party
6 claims in this case. (Doc. 50.) For the following reasons, the Court dismisses Property and
7 Casualty Insurance Company of Hartford’s (“Hartford”) and Wilber and Associates, P.C.’s
8 (“Wilber”) separate crossclaims against Todd Haines, Esq. (“Haines”). (Docs. 15, 33.)
9 Additionally, the Court dismisses Hartford’s third-party complaint against Wilber. (Doc. 18.)
10 The Clerk of Court is therefore directed to close this case.

11 **I. Factual and Procedural Background**

12 This case arises from an underlying state court debt collection lawsuit. Plaintiff is an
13 active military servicemember of the United States Air Force. (Doc. 1 at ¶ 2.) Before entering
14 military service, Plaintiff was involved in a major automobile accident in 2018. (*Id.* at ¶ 22.) In
15 July 2020, Plaintiff entered into an agreement with Hartford to pay damages resulting from the
16 car accident in monthly installments, however, by 2021, Plaintiff—then deployed in the Air
17 Force—defaulted in his monthly payments. (*Id.* at ¶ 23; Doc. 50 at 2.) Hartford then retained
18 Wilber as collections counsel to seek recovery from Plaintiff. (Doc. 15 at ¶ 5; Doc. 18 at ¶ 2.)
19 Wilber referred the matter to attorney Haines to file a debt-collection lawsuit against Plaintiff.
20 (Doc. 15 at ¶ 6.)

21 In 2021, Hartford and Haines filed an underlying state court debt-collection lawsuit
22 against Plaintiff to recover his unpaid payments, however, Plaintiff—then deployed in the
23 military—failed to receive notice of the lawsuit and never appeared in the underlying action.
24 (Doc. 1 at ¶¶ 23–24; Doc. 15 at ¶ 8; Doc. 50 at 2–3.) In the state court proceeding, Haines and
25 Hartford filed an affidavit stating that Plaintiff was not an active member of the military (Doc. 1
26 at ¶¶ 24–29; Doc. 15 at ¶ 1) and moved for an entry of default against Plaintiff. (Doc. 15 at ¶ 9.)
27 The state court then entered default against Plaintiff. (*Id.*)

28 On June 24, 2022, Plaintiff filed a complaint in this Court against Hartford and Haines,

1 alleging two causes of action: (1) violation of the Servicemembers Civil Relief Act, 50 U.S.C. §§
2 3901, *et seq.*; and (2) violation of the California Military and Veterans Code § 402. (Doc. 1 at 5–
3 7.) Upon learning that Plaintiff was an active military servicemember, Hartford and Haines filed
4 a motion in the state court action to set aside the entry of default. (Doc. 15 at ¶ 11.) The state
5 court granted their motion, set aside the entry of default, and stayed the proceedings. (*Id.* at ¶ 12.)

6 On August 18, 2022, Haines filed an Amended Motion to Dismiss Plaintiff’s complaint
7 and Special Anti-SLAPP Motion to Strike. (Doc. 12.) The magistrate judge granted Haines
8 motion and dismissed Plaintiff’s complaint with leave to amend. (Doc. 44.) On October 17,
9 2023, the Court noted that Plaintiff failed to timely file an amended complaint and issued an order
10 to show cause why the complaint should not be dismissed with prejudice. (Doc. 47.) Plaintiff
11 failed to timely respond, and on October 25, 2023, the Court dismissed Plaintiff’s complaint with
12 prejudice. (Doc. 48.) Still pending are the Defendants’ derivative claims, which the Court details
13 further below.

14 A. Hartford’s Crossclaim Against Haines

15 On August 18, 2022, Hartford filed its crossclaim against Haines. (Doc. 15.) Hartford
16 represents that it “is in no way responsible for the events or damages alleged in the Complaint,”
17 and that “[i]f Plaintiff sustained damages . . . such damages were caused entirely or partially by
18 the actions of Plaintiff, the Attorney, and/or other people or entities.” (*Id.* at 3.) Hartford
19 therefore brings three claims against Haines. (*Id.* at 3–5.)

20 First, Hartford alleges that it is entitled to equitable indemnification against Haines,
21 stating that “[i]f Plaintiff obtains any recovery from Hartford in this action, Hartford could only
22 be liable if the Attorney [Haines] failed to use reasonable care in performing his work as counsel
23 of record for Hartford in the Underlying Action.” (*Id.* at 3.) Hartford requests Haines indemnify
24 it “for all costs, attorneys’ fees, and expenses incurred in the defense of Plaintiff’s claims in this
25 action and for any resulting liability, including any judgment or settlement with Plaintiff.” (*Id.* at
26 4.) Finally, Hartford requests the Court declare that Haines has a duty to defend Hartford against
27 Plaintiff’s claims in this action (*id.*), and a duty to indemnify Hartford if Plaintiff recovers any
28 damages against Hartford in this action. (*Id.* at 5.)

1 B. Hartford’s Third-Party Complaint Against Wilber

2 On September 1, 2022, Hartford filed a third-party complaint against Wilber. (Doc. 18.)
3 Hartford alleges that it entered into a written agreement with Wilber to pursue collections
4 recovery for Hartford, “and through which [Wilber] would indemnify, defend and hold Hartford
5 harmless from all claims arising out of [Wilber’s] negligence or fault or [its] agents’ or
6 representatives’ negligence or fault.” (*Id.* at ¶ 2.) By September 2022, however, Wilber had “not
7 agreed to defend, indemnify, and hold Hartford harmless in this action.” (*Id.* at ¶ 20.) Hartford
8 therefore brings this third-party complaint against Wilber, alleging breach of contract and express
9 indemnification, and requesting declaratory relief that Wilber has a duty to defend and indemnify
10 Hartford. (*Id.* at 6–9.)

11 All allegations are contingent on Hartford’s contention that it “is in no way responsible for
12 the events or damages alleged in the Complaint” and that “[i]f Plaintiff sustained damages as
13 alleged in the Complaint, such damages were caused entirely or partially by the actions of
14 Plaintiff, the Attorney [Haines], the Agency [Wilber], and/or other people or entities.” (*Id.* at
15 ¶ 22; *see also id.* at ¶ 38 (“Hartford is entitled to express indemnification by [Wilber] . . . for any
16 resulting liability, including any judgment or settlement with Plaintiff.”))

17 C. Wilber’s Crossclaim against Haines

18 On November 17, 2022, Wilber filed its instant, mended crossclaim against Haines. (Doc.
19 33.) Wilber maintains that “if any liability is found on the part of Wilber by way of the
20 Complaint and third-party complaint, then Haines is solely or primarily responsible.” (*Id.* at 2.)
21 Thus, Wilber brings this crossclaim in the event that “[i]f Mosana suffered damages as alleged in
22 his Complaint, which Wilber denies, then such damages were caused entirely by the actions of
23 Haines and/or others, and are in no way attributable to any act or omission by Wilber.” (*Id.* at
24 ¶ 16.) In its crossclaim, Wilber alleges express indemnification and equitable indemnification,
25 and requests declaratory relief that Haines has a duty to indemnify Wilber “against any and all
26 losses and expenses that may arise from the defense of the Complaint and Third-Party
27 Complaint,” and that Haines has a duty to defend Wilber against the same. (*Id.* at 4–6.)

28 ///

1 D. Dismissal of Plaintiff's Complaint

2 As previously stated, the Court has dismissed Plaintiff's complaint with prejudice
3 pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docs. 44, 47, 48.) On October 25, 2023,
4 the Court issued an OSC, ordering the remaining parties with derivative claims in this action to
5 file a joint brief outlining whether the Court should continue to exercise jurisdiction over this
6 matter. (Doc. 49.) On November 15, 2023, the defendants filed their Joint Brief on Court's
7 Continued Exercise of Supplemental Jurisdiction. (Doc. 50.)

8 **II. Legal Standards**

9 A. Subject-Matter Jurisdiction

10 “Federal courts are courts of limited jurisdiction,’ possessing ‘only that power authorized
11 by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v.*
12 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)); *Exxon Mobil Corp. v. Allapattah*
13 *Servs., Inc.*, 545 U.S. 546, 552 (2005). As such, “[i]t is to be presumed that a cause lies outside
14 this limited jurisdiction . . . and the burden of establishing the contrary rests upon the party
15 asserting jurisdiction.” *Kokkonen*, 511 U.S. at 377 (internal citations omitted); *Advanced*
16 *Integrative Med. Sci. Inst., PLLC v. Garland*, 24 F.4th 1249, 1256 (9th Cir. 2022) (same).

17 1. *Diversity Jurisdiction*

18 In 28 U.S.C. §§ 1331 and 1332(a), Congress granted federal courts jurisdiction over two
19 general types of cases: (1) those raising federal-law questions (28 U.S.C. § 1331) and (2)
20 jurisdiction premised on diversity of citizenship (28 U.S.C. § 1332(a)). *Home Depot U.S.A., Inc.*
21 *v. Jackson*, 139 S. Ct. 1743, 1746 (2019). A party's citizenship is not determined by their
22 residency. *See Rainero v. Archon Corp.*, 844 F.3d 832, 839–840 (9th Cir. 2016) (affirming
23 dismissal of action because plaintiff “alleged only that he was a resident of Pennsylvania” and
24 residency does not equate to citizenship); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857–58
25 (9th Cir. 2001) (“[T]he diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not
26 of residency.”) Instead, a party's state citizenship is determined by his state of domicile. *Adams*
27 *v. W. Marine Prods., Inc.*, 958 F.3d 1216, 1221 (9th Cir. 2020). A party's domicile is their
28 “permanent home,” which is comprised of (1) where the party resides, (2) “with the intention to

1 remain or to which she intends to return.” *Id.* (internal quotation marks and citation omitted).
2 Thus, while residency “constitutes some evidence of domicile,” the plaintiff still bears the burden
3 to show that the parties’ citizenship is diverse to invoke diversity jurisdiction. *Id.*; *see also Miss.*
4 *Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) (“‘Domicile’ is not necessarily
5 synonymous with ‘residence’ . . . and one can reside in one place but be domiciled in another[.]”)
6 (internal citations omitted).

7 2. Mootness

8 An axiomatic component of subject-matter jurisdiction is the requirement that federal
9 courts may only hear “cases” or “controversies.” U.S. Const. art. III., § 2; *Wallingford v. Bonta*,
10 82 F.4th 797, 800–01 (9th Cir. 2023); *Matter of E. Coast Foods, Inc.*, 80 F.4th 901, 905–06 (9th
11 Cir. 2023) (Article III standing is a component of subject-matter jurisdiction). This “case or
12 controversy” requirement “applies through all stages of federal judicial proceedings, trial and
13 appellate.” *Wallingford*, 82 F.4th at 800 (internal quotation marks and citation omitted). “[I]t is
14 not enough that a dispute was very much alive when suit was filed. . . . the parties in a dispute
15 must continue to have a personal stake in the outcome of the lawsuit.” *Id.* (internal quotation
16 marks and citations omitted). “Thus, where an intervening circumstance deprives the plaintiff of
17 a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no
18 longer proceed and must be dismissed as moot.” *Fellowship of Christian Athletes v. San Jose*
19 *Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 681 (9th Cir. 2023) (internal quotation marks and
20 citation omitted); *Wallingford*, 82 F.4th at 800. Ultimately, “[m]ootness is a question of law . . .
21 and federal courts must consider mootness *sua sponte*.” *Wallingford*, 82 F.4th at 800–01 (internal
22 quotation marks and citations omitted).

23 B. Rule 13: Crossclaims

24 Federal Rule of Civil Procedure 13(g) provides the standard for when a party may launch
25 a crossclaim against a co-party. Fed. R. Civ. P. 13(g). Specifically, the Rule states:

26 CROSSCLAIM AGAINST A COPARTY. A pleading may state as a
27 crossclaim any claim by one party against a coparty if the claim
28 arises out of the transaction or occurrence that is the subject matter
of the original action or of a counterclaim, or if the claim relates to
any property that is the subject matter of the original action. The

1 crossclaim may include a claim that the coparty is or may be liable
2 to the crossclaimant for all or part of a claim asserted in the action
against the crossclaimant.

3 *Id.*

4 Crossclaims brought pursuant to Rule 13(g) are always permissive, *CMFG Life Ins. Co. v.*
5 *Smith*, No. CV 13-261 ABC (CWx), 2014 WL 12585794, at *2 (C.D. Cal. Mar. 3, 2014), and
6 “fall within the ‘ancillary jurisdiction’ of the district court.” *Danner v. Himmelfarb*, 858 F.2d
7 515, 521 (9th Cir. 1988). Accordingly, crossclaims do not need to present independent
8 jurisdictional grounds of federal jurisdiction: “Because the court already has jurisdiction over the
9 main claim between the plaintiff and defendants, convenience, economy and fairness dictate that
10 it should be able to resolve all other claims arising out of the same transaction or occurrence[.]”
11 *Danner*, 858 F.2d at 521 (citations omitted).

12 However, “if the main claim or the counterclaim out of which the crossclaim arises
13 involves a federal question and is dismissed early in the litigation[,] the court also should consider
14 dismissing the Rule 13(g) claim if there is no diversity of citizenship between the codefendants
15 and the crossclaim arises under state law.” 6 CHARLES ALAN WRIGHT & ARTHUR R. MILLER,
16 FEDERAL PRACTICE AND PROCEDURE § 1433 (3d ed. 2023) (collecting cases); *Smith*, 2014 WL
17 12585794, at *2 (“For crossclaims to be proper, they must either carry an independent basis for
18 subject matter jurisdiction or fall under the Court’s supplemental jurisdiction.”) (citations
19 omitted). Indeed, in *United Mine Workers of America v. Gibbs*, the Supreme Court admonished
20 that “[c]ertainly, if the federal claims are dismissed before trial, even though not insubstantial in a
21 jurisdictional sense, the state claims should be dismissed as well.” 383 U.S. 715, 726 (1966)
22 (footnote and citation omitted); *see also Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7
23 (1988) (“[I]n the usual case in which all federal-law claims are eliminated before trial, the balance
24 of factors to be considered under the pendent jurisdiction doctrine. . . will point toward declining
25 to exercise jurisdiction over the remaining state-law claims.”).

26 C. Rule 14: Third-Party Complaint

27 Federal Rule of Civil Procedure 14 allows a defendant to implead a third party into the
28

1 action, providing: “A defending party may, as third-party plaintiff, serve a summons and
2 complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed.
3 R. Civ. P. 14. “The decision to allow a third-party defendant to be impleaded under rule 14 is
4 entrusted to the sound discretion of the trial court.” *United States v. One 1977 Mercedes Benz*,
5 708 F.2d 444, 452 (9th Cir. 1983).

6 There are two principles to keep in mind regarding Rule 14 impleader. First, “[a] third-
7 party complaint depends at least in part upon the resolution of the primary lawsuit. . . . Its relation
8 to the original complaint is thus not mere factual similarity but logical dependence.” *Owen*
9 *Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 376 (1978) (internal citation omitted); *see also*
10 *JP Express Serv., Inc. v. KG Admin. Servs.*, 2019 WL 8060074, at *6 (C.D. Cal. Nov. 5, 2019)
11 (“Thus, if JP Express’s underlying claim fails, then Third-Party Plaintiffs’ claims against
12 PeopLease also fail because the relief they seek is wholly contingent upon the success of JP
13 Express’s claim.”). Accordingly, “a third-party claim may be asserted only when the third party’s
14 liability is in some way dependant [sic] on the outcome of the main claim and the third party’s
15 liability is secondary or derivative.” *One 1977*, 708 F.2d at 452 (collecting cases). “It is not
16 sufficient that the third-party’s claim is a related claim; the claim must be derivatively based on
17 the original plaintiff’s claim.” *Id.* This is because “[a] third-party claim . . . presupposes liability
18 on the part of the original defendant which he is attempting to pass on to the third-party
19 defendant.” *Pavillard v. Ignite Int’l, Ltd.*, No. 2:21-CV-01306-RGK-E, 2022 WL 2036316, at *1
20 (C.D. Cal. Mar. 31, 2022) (internal quotation marks and citation omitted) (emphasis omitted).

21 Second, the Ninth Circuit has “repeatedly held that parties may not be added to an action
22 absent an independent jurisdictional base for inclusion and that pendent party jurisdiction will not
23 substitute for complete diversity or federal question.” *Safeco Ins. Co. of Am. v. Guyton*, 692 F.2d
24 551, 555 (9th Cir. 1982). Logically then, “[a] defendant bringing a third-party complaint must
25 establish an independent federal jurisdictional basis.” *Berkshire Life Ins. Co. of Am. v. Medina*,
26 No. CV 21-9070 PA (KSX), 2022 WL 16894499, at *1 (C.D. Cal. Apr. 27, 2022); *Gen. Am. Life*
27 *Ins. Co. v. Rana*, 769 F. Supp. 1121, 1125 (N.D. Cal. 1991) (refusing to entertain third-party
28 complaint because the court lacked an independent basis for jurisdiction over the third-party

1 defendants).

2 **III. Discussion**

3 In their joint brief, the parties recite their respective positions regarding the existence of
4 jurisdiction over their derivative claims. (Doc. 50.) The Court addresses each derivative claim in
5 further detail below.

6 A. Hartford's Crossclaim Against Haines

7 First, Hartford requests the Court continue to exercise supplemental jurisdiction over its
8 state indemnity claims in *both* its crossclaim against Haines and its third-party complaint against
9 Wilber. (Doc. 50 at 3–5.) Hartford maintains that retaining jurisdiction is proper in both
10 instances because “the indemnification claims arise from the same set of facts as Plaintiff’s
11 original claims,” and “Hartford will rely on the same set of facts and circumstances addressed in
12 the Complaint in showing that Haines and Wilber are required to indemnify Hartford for the fees
13 and costs incurred in this action.” (*Id.* at 4.) Finally, Hartford argues that the factors to consider
14 regarding exercising supplemental jurisdiction over its state law claims all “strongly point toward
15 retaining jurisdiction,” the indemnity claims “do not involve a novel question of state law,” and
16 that if the Court dismissed its state claims, Hartford states it will re-file its action in state court
17 and then “remove the matter once the jurisdictional minimum in damages is at issue.” (*Id.* at 4–
18 5.)¹

19 *i. Supplemental Jurisdiction*

20 Because the Court has dismissed Plaintiff’s complaint with prejudice for failure to state a
21 claim (Doc. 48), there is no federal question jurisdictional basis for state law claims to fall within
22 the Court’s ancillary or supplemental jurisdiction. At this juncture, the Supreme Court has
23 strongly recommended dismissing state law claims from the action. *See Gibbs*, 383 U.S. at 726;
24 *see also Cohill*, 484 U.S. at 350 n.7. Notwithstanding the Supreme Court’s admonishments, the
25 continued exercise of supplemental jurisdiction requires that Hartford show that its crossclaims

26 ¹ The Court briefly responds to Hartford’s final representation regarding its intention to re-file and then remove its
27 case by noting that 28 U.S.C. § 1441 only allows for a *defendant* to remove a state court action to federal court. *See*
28 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State court . . . may be removed *by the defendant or the*
defendants, to the district court of the United States for the district and division embracing the place where such
action is pending.”) (emphasis added).

1 *Moitie*, 452 U.S. at 399 n.3). A plaintiff cannot re-allege claims dismissed with prejudice. *See*
2 *Cook v. State Farm Gen. Ins. Co.*, No. 21-CV-02458-MMC, 2022 WL 1225016, at *3 (N.D. Cal.
3 Apr. 26, 2022); 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND
4 PROCEDURE § 1357 (3d ed. 2023); *see also Dismissed with Prejudice*, BLACK’S LAW DICTIONARY
5 (11th ed. 2019) (“[R]emoved from the court’s docket in such a way that the plaintiff is foreclosed
6 from filing a suit again on the same claim or claims.”).

7 Thus, Hartford’s crossclaims against Haines are moot, as there is no live controversy
8 between the two co-defendants when Hartford premised liability contingent on Plaintiff’s
9 recovery. (Doc. 15 at ¶¶ 15, 17, 26, 29.) Nor is there a live controversy between the two co-
10 defendants to determine whether Haines had a duty to defend Hartford “against Plaintiff’s claims
11 in this action,” as Plaintiff’s claims are terminated. (*Id.* at ¶ 22.) Plaintiff has not recovered any
12 damages against either Hartford or Haines and in fact is precluded from doing so in the future as
13 well. *Cook*, 2022 WL 1225016, at *3; 5B WRIGHT & MILLER, *supra* § 1357. Hartford’s
14 crossclaims against Haines are therefore moot. *Fellowship of Christian Athletes v. San Jose*
15 *Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 681 (9th Cir. 2023).

16 As Hartford’s crossclaims not only lack an independent basis for subject-matter
17 jurisdiction, but are also moot in its claims for indemnity, the Court dismisses Hartford’s
18 crossclaim with prejudice. *Fed. Deposit Ins. Corp. v. Money Line Am., et al.*, No. CV-10-04452
19 DMG (RNBx), 2011 WL 13272413, at *1 n.2 (C.D. Cal. July 13, 2011). Accordingly, Hartford’s
20 crossclaim against Haines (Doc. 15) is **DISMISSED WITH PREJUDICE**.

21 B. Hartford’s Third-Party Complaint Against Wilber

22 i. *Independent Basis for Jurisdiction*

23 A third-party complaint requires the third-party plaintiff to present an independent basis
24 for subject-matter jurisdiction. *Safeco*, 692 F.2d at 555; *Berkshire Life Ins. Co.*, 2022 WL
25 16894499, at *1; *Rana*, 769 F. Supp. at 1125. Though Hartford’s third-party alleges the
26 citizenship of the parties (Doc. 18 at ¶¶ 4–5), it does not allege an amount in controversy. 28
27 U.S.C. § 1332(c); *see generally Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010).² This is a fatal

28 ² Causes of action alleging breach of contract and express indemnification sound in state law. *Hall v. N. Am. Van*

1 defect to establishing diversity jurisdiction. 28 U.S.C. § 1332(a)(1); *see also Naffe v. Frey*, 789
2 F.3d 1030, 1039 (9th Cir. 2015).

3 *i. Derivative Liability*

4 Hartford’s third-party complaint does not pre-suppose its own liability. For example, in
5 *Pavillard*, the Central District held that Defendant Ignite International, Ltd. failed to sufficiently
6 state a third-party claim for derivative liability because it alleged: “In the event of and to the
7 extent that Ignite is determined to be wholly or partially liable to Plaintiff, Ignite is entitled to
8 total or partial indemnification [and/or contribution] from [Third-Party Defendant] [Ryan].”
9 *Pavillard*, 2022 WL 2036316, at *1. There, the court held that Ignite’s third-party complaint
10 must fail because “Ignite does not presuppose its own liability,” but instead merely “attempts to
11 shift blame to Ryan by asserting that Ryan, and not Ignite, was responsible[.]” *Id.* That assertion,
12 the Court concluded, “may constitute a defense, [but] does not constitute a viable claim for
13 derivative liability.” *Id.*; *see also United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 452
14 (9th Cir. 1983) (requiring a third-party claim “be derivatively based on the original plaintiff’s
15 claim”).

16 The same principle is true regarding Hartford’s own third-party complaint, which fails to
17 presuppose its own liability. *See* Doc. 18 at ¶ 3 (“[S]hould any liability be found on the part of
18 Hartford, the Agency [Wilber] and/or the Attorney [Haines] is responsible for such damages.”),
19 ¶ 22 (“If Plaintiff sustained damages as alleged in the Complaint, such damages were caused
20 entirely or partially by the actions of Plaintiff, the Attorney, the Agency, and/or other people or
21 entities.”). These allegations reflect Hartford’s intention to shift liability rather than presuppose
22 it, making them possible defenses rather than viable claims for derivative liability. *Pavillard*,
23 2022 WL 2036316, at *1; *see also Kim v. Fujikawa*, 871 F.2d 1427, 1424 (9th Cir. 1989) (stating
24 that “while Rule 14 provides the procedural mechanism for the assertion of a claim for
25

26 *Lines, Inc.*, 476 F.3d 683, 686–87 (9th Cir. 2007) (breach of contract claim is a question of state law); *Focus 15, LLC*
27 *v. NICO Corp.*, No. 21-cv-01493-EMC, 2022 WL 267441, at *4 (N.D. Cal. Jan. 28, 2022) (“Express indemnity arises
28 out of express contractual language.”) (citing *Prince v. Pac. Gas & Elec. Co.*, 45 Cal. 4th 1151, 1157 (2009)). Finally, a request for declaratory relief is a remedy not a cause of action, and therefore has no significance in determining whether a complainant invokes the Court’s diversity or federal question jurisdiction. *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 975 (N.D. Cal. 2010).

1 contribution or indemnity, there must also exist a substantive basis for the third-party defendant's
2 liability.") (citation omitted); *Haynes v. Anna's Linens*, No. C 05 2670 MMC, 2005 WL 3021941,
3 at *2 (N.D. Cal. Nov. 10, 2005) (improper use of third-party complaint where "an original
4 defendant sought to join a third-party on the theory that the third-party, instead of the original
5 defendant, was the cause of the plaintiff's harm") (citation omitted).

6 Finally, by definition, a third-party complaint logically depends on the outcome of the
7 primary lawsuit. *Kroger*, 437 U.S. at 376; *JP Express Serv.*, 2019 WL 8060074, at *6. Thus,
8 even if the Court allowed Hartford's third-party complaint to shift potential liability to Wilber,
9 *see, e.g., JP Express Serv.*, 2019 WL 8060074, at *6, the dismissal of Plaintiff's complaint
10 resolves the disputes in the third-party complaint. (Doc. 48.) Accordingly, the Court
11 **DISMISSES WITHOUT PREJUDICE** Hartford's third-party complaint against Wilber. (Doc.
12 18.)

13 C. Wilber's Crossclaim against Haines

14 Because the Court has dismissed Wilber from this action as a third-party defendant, it has
15 no alternative but to also dismiss Wilber's amended Crossclaim against Haines. (Doc. 33.) Rule
16 13(g) only allows a party to state a crossclaim "against a coparty." Fed. R. Civ. P. 13(g).
17 Because Wilber is no longer a party to this action due to the Court's dismissal discussed above,
18 Wilbur may not bring a crossclaim against Haines.

19 Furthermore, as the federal question basis for jurisdiction no longer exists, Wilber was
20 required to state an independent basis for jurisdiction. *WRIGHT & MILLER, supra* § 1433; *Smith*,
21 2014 WL 12585794, at *2. Similar to Harford, Wilber has only alleged that Haines is "an
22 individual residing in Los Angeles County, California." (Doc. 33 at ¶ 2.) Residency does not
23 equate to citizenship, *Rainero*, 844 F.3d at 839–840, and Wilber has failed to allege an amount-
24 in-controversy. *Ibarra*, 775 F.3d at 1195; 28 U.S.C. § 1332(a).

25 Finally, Wilber's crossclaim seeks to impose liability against Haines only if Wilber itself
26 is held liable for Plaintiff's damages. (Doc. 33 at ¶ 1, ¶ 27 (alleging shift of liability to Haines),
27 ¶ 29 (same), ¶ 33.) The Court has dismissed Plaintiff's original lawsuit with prejudice (Doc. 48),
28 and as held above, has dismissed Wilber as a party to this action. Wilber's crossclaim is therefore

1 rendered moot. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** Wilber’s
2 amended crossclaim against Haines. (Doc. 33.)

3 D. Leave to Amend

4 Courts have broad discretion to grant leave to amend a complaint. *Nguyen v. Endologix,*
5 *Inc.*, 962 F.3d 405, 420 (9th Cir. 2020). Generally, Rule 15 advises that “[t]he court should freely
6 give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “[T]his policy is to be applied
7 with extreme liberality.” *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1160 (9th Cir. 2021)
8 (internal quotation marks and citation omitted). In determining whether a plaintiff should be
9 granted leave to amend, courts consider “the presence or absence of undue delay, bad faith,
10 dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to
11 the opposing party and futility of the proposed amendment.” *Kroessler v. CVS Health Corp.*, 977
12 F.3d 803, 814–15 (9th Cir. 2020) (internal quotation marks and citation omitted).

13 Thus, the policy of liberally granting a party leave to amend its complaint “does not
14 extend to cases in which any amendment would be an exercise in futility or where the amended
15 complaint would also be subject to dismissal.” *Novak v. United States*, 795 F.3d 1012, 1020 (9th
16 Cir. 2015) (internal quotation marks and citation omitted). “Futility alone can justify a court’s
17 refusal to grant leave to amend.” *Id.* (internal quotation marks and citation omitted). Granting
18 leave to amend is futile when “no set of facts can be proved under the amendment to the
19 pleadings that would constitute a valid and sufficient claim or defense.” *Barahona v. Union Pac.*
20 *R. R. Co.*, 881 F.3d 1122, 1134 (9th Cir. 2018) (internal quotation marks and citation omitted).

21 Although the Court would ordinarily grant leave to amend a complaint with a
22 jurisdictional defect, amendment is futile where the claims are rendered moot and fail to satisfy
23 Rule 14’s requirements. *Scott v. California*, No. 5:14-cv-2648-R (SK), 2018 WL 6070938, at *2
24 (C.D. Cal. Mar. 8, 2018) (denying leave to amend for moot claim); *Christensen v. Cotnoir*, No. C
25 11-03864 JSW, 2014 WL 576257, at *1 (N.D. Cal. Feb. 11, 2014) (denying leave to amend as
26 futile when defendant failed to comply with Rule 14). The Court therefore **DENIES** Hartford
27 leave to amend its third-party complaint. However, Hartford’s complaint is dismissed without
28 prejudice. (Doc. 18.)

1 Finally, it is futile to grant Wilber leave to amend its amended crossclaim, which was
2 entirely premised on the success of Hartford's third-party complaint against it. (Doc. 33.)
3 Accordingly, the Court **DISMISSES** the amended crossclaim without prejudice but without leave
4 to amend.

5 **CONCLUSION**

6 Based upon the foregoing, the Court **ORDERS**:

- 7 (1) Property and Casualty Insurance Company of Hartford's Crossclaim Against
8 Defendant Todd F. Haines (Doc. 15) is **DISMISSED WITH PREJUDICE**.
- 9 (2) Property and Casualty Insurance Company of Hartford's third-party complaint
10 Against third-party defendant Wilber and Associates, P.C. (Doc. 18) is
11 **DISMISSED WITHOUT PREJUDICE**. The Court **DENIES** Hartford leave to
12 amend its third-party complaint.
- 13 (3) Third-party defendant Wilber and Associates, P.C.'s mended Crossclaim against
14 Todd F. Haines (Doc. 33) is **DISMISSED WITHOUT PREJUDICE**. The Court
15 **DENIES** Wilber leave to amend its crossclaim.
- 16 (4) The Clerk of Court is directed to **CLOSE THIS CASE**.

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18 IT IS SO ORDERED.

19 Dated: **December 27, 2023**

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UNITED STATES DISTRICT JUDGE