

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 08-29-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING:** Before 4:00 p.m. today you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling  
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). You must use the current link.

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. **You may make an online reservation to reserve a date** before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at [www.scscourt.org](http://www.scscourt.org) to make the reservation.

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 08-29-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	21CV381799 Hearing: Order of Examination	Zhilin Li vs Jun Lu et al	It does not appear that a proper proof of service has been filed. All parties are to appear in Department 16 at 9:00 AM. If all parties appear, the Court will administer the oath and the examination will take place off line. If the debtor does not appear, the matter will be continued to allow proper notice. If there is no appearance by the moving party, the matter will be ordered off calendar.
<a href="#">LINE 2</a>	21CV381799 Hearing: Order of Examination	Zhilin Li vs Jun Lu et al	It does not appear that a proper proof of service has been filed. All parties are to appear in Department 16 at 9:00 AM. If all parties appear, the Court will administer the oath and the examination will take place off line. If the debtor does not appear, the matter will be continued to allow proper notice. If there is no appearance by the moving party, the matter will be ordered off calendar.

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 08-29-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 3</a>	23CV423540 Hearing: Order of Examination	NBT BANK vs RONALD MENDEZ	All parties are to appear for the hearing in Department 16 at 9:00 AM. If all parties appear, the Court will administer the oath and the examination will take place off line. If there is no appearance by the moving party, the matter will be ordered off calendar.
<a href="#">LINE 4</a>	21CV391826 Hearing: Demurrer	Frontier World, LLC vs Intero Real Estate Services, Inc.	See Tentative Ruling. Court will issue final order.
<a href="#">LINE 5</a>	23CV416289 Hearings Application for Prejudgment Writ of Attachment	A & S Enterprises, LLC et al vs MELISSA KOZAR et al	Case was mistakenly sent to D16. It has been continued to September 19, 2024 at 1:30 in Dept 18a
<a href="#">LINE 6</a>	23CV416289 Hearings Application for Prejudgment Writ of Attachment	A & S Enterprises, LLC et al vs MELISSA KOZAR et al	Case was mistakenly sent to D16. It has been continued to September 19, 2024 at 1:30 in Dept 18a
<a href="#">LINE 7</a>	23CV416289 Hearings Application for Prejudgment Writ of Attachment	A & S Enterprises, LLC et al vs MELISSA KOZAR et al	Case was mistakenly sent to D16. It has been continued to September 19, 2024 at 1:30 in Dept 18a
<a href="#">LINE 8</a>	23CV416289 Hearings Application for Prejudgment Writ of Attachment	A & S Enterprises, LLC et al vs MELISSA KOZAR et al	Case was mistakenly sent to D16. It has been continued to September 19, 2024 at 1:30 in Dept 18a
<a href="#">LINE 9</a>	24CV433838 Hearings Motion to Dismiss or Stay the Action	JILL STELFOX et al vs PANZURA, LLC	Off Calendar due to 170.6 challenge. Case now in D10.

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 08-29-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 10</a>	24CV435406 Hearing: Petition Compel Arbitration	Raymond Tesconi vs DARK RUN VENTURES, INC. et al	Off Calendar as motion withdrawn.
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

- 00000 -

#### **Calendar Line 4**

**Case Name:** *Frontier World, LLC v. Intero Real Estate Services, Inc.*

**Case No.:** 21CV391826

This is an action for breach of contract and professional negligence, among other things.

Now before the Court is William P. Ryan (“Ryan”), SCP Woodland, LLC (“SCP”), Green Valley Corporation (“Green Valley”), and Lee Ann Woodward’s (“Woodward”) (collectively, “Cross-Defendants”), demurrer to Intero Real Estate Services, Inc., (“Intero”) and Bitao Shen aka Betty Shen’s (“Shen”) (collectively, “Cross-Complainants”) Cross-Complaint (“CC”).

### **I. Background**

#### **A. Factual**

##### *1. Allegations in Plaintiff’s Original Complaint*

Plaintiff, Frontier World, LLC (“Frontier”) filed this action against Cross-Complainants, Intero, a real estate brokerage, and Shen, a broker, for professional negligence, negligent misrepresentation, and breach of fiduciary duty. These claims arise out of Cross-Complainants’ representation of Frontier in relation to the purchase of a commercial premises from Cross-Defendants. According to the complaint, the “main goal” for Frontier was to acquire property that had “predictable future cash flow and incomes.” (Complaint, ¶ 13.) Frontier envisioned achieving this goal by acquiring a property “fully occupied by a single tenant” who was in full performance of the lease agreement. (Complaint, ¶ 22.)

##### *2. Allegations in the Operative CC*

Cross-Defendants were co-owners of the commercial property located on 480 North First Street, San Jose, California (“Subject Property”) until it was purchased by Frontier on or around April 16, 2020. (CC, ¶¶ 3-7.) In July 2018, the Subject Property was leased to Services for Brain Injury (“SBI” or “Tenant”), a non-profit California corporation. (CC, ¶ 11.) Specifically, SBI had entered into “a 10-year triple net lease (NNN) agreement” with Cross-Defendants. (CC, ¶ 12.) In 2019, Cross-Defendants listed the Subject Property for sale. (CC, ¶ 11.) In 2019, at the time the Subject Property was leased to SBI, Frontier hired Cross-Complainants as realtors to represent it in negotiating the purchase of the Subject Property. (CC, ¶ 3.)

Cross-Complainant Shen contacted the sellers, Cross-Defendants, concerning Frontier’s interest in purchasing the Subject Property and prepared an offer for its purchase which was accepted by Cross-Defendants. (CC, ¶ 13, 16-18.) Specifically, on or around January 15, 2020, Frontier entered into a Commercial Property Purchase Agreement (“Purchase Agreement”) with Cross-Defendants to purchase the Subject Property for \$7.9 million. (CC, ¶ 13.) Subsequently, Cross-Defendants provided various documents and disclosures concerning the Subject Property to Cross-Complainants for review, and these documents were delivered to

Plaintiff. (CC, ¶¶ 14.) The documents included SBI’s “Tenant Estoppel Certificate,”<sup>1</sup> SBI’s financial statements and lease agreement, among other things. (*Ibid.*) On February 25, 2020, Plaintiff and Cross-Defendants executed an “Addendum” to the Purchase Agreement which included a reduced purchase price of \$6.5 million. (CC, ¶ 15; Exh. A – Purchase Agreement.) Plaintiff “directed” Cross-Complainants to continue negotiating with Cross-Defendants to further reduce the purchase price. (CC, ¶ 16.) After Frontier and Cross-Defendants agreed to “extend close of escrow” so that Frontier had more time to complete its “loan review,” tenant SBI defaulted on the lease on April 1, 2020. (CC, ¶ 19.) Despite this fact, Cross-Defendants allegedly failed to disclose SBI’s default to both Frontier and Cross-Complainants. (CC, ¶ 19.)

On April 13, 2020, Cross-Defendant Ryan, an individual and former co-owner of the Subject Property, represented to Plaintiff’s lender that SBI was not in default on its rent. (CC, ¶ 22.) At the time, Ryan knew this representation was false because SBI had failed to pay rent by April 1, 2020. (*Ibid.*) Allegedly relying on this misrepresentation, Plaintiff’s lender agreed that a supplemental “Tenant Estoppel Certificate” could be provided within sixty days after the close of escrow. (CC, ¶ 22; Exh. B – Email Exchange Between Ryan and Plaintiff’s Lender.)

On May 15, 2020, Cross-Defendants provided Plaintiff with an updated “Tenant Estoppel Certificate” that represented that SBI was not in default on its lease. (CC, ¶ 25; Exh. D – Updated Tenant Estoppel Certificate.)

On November 30, 2021, Plaintiff filed its Complaint against Cross-Complainants. Plaintiff’s claims are based upon allegations that Plaintiff was not provided all the material facts affecting the value or desirability of the Property before close of escrow. (CC, ¶ 26.)

## **B. Procedural**

Frontier initiated this action on November 30, 2021, with the filing of the original complaint against Cross-Complainants Intero and Shen for (1) professional negligence; (2) negligent misrepresentation; and (3) breach of fiduciary duty. On March 11, 2024, Cross-Complainants filed the CC against Cross-Defendants Ryan, SCP, Green Valley, and Woodward for (1) equitable indemnity, and (2) declaratory relief.

On May 15, 2024, Cross-Defendants filed their demurrer, and Cross-Complainants filed their opposition a month later. Cross-Defendants filed a reply on August 22, 2024.

## **II. Cross-Defendants’ Demurrer**

### **A. Legal Standard**

“The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure] section 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action[.]” (Code Civ. Proc., § 430.10, subd. (e).) A demurrer may be utilized by “[t]he party against whom a complaint [ ] has been filed” to object to the legal

---

<sup>1</sup> The “Tenant Estoppel Certificate” is a document signed by Tenant SBI confirming details of their lease agreement, including rent payment schedules. (CC, ¶ 14; Exh. B – Original Tenant Estoppel Certificate.)

sufficiency of the pleading as a whole, or to any “cause of action” stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

## **B. Merits of the Demurrer**

### **a. First Cause of Action – Equitable Indemnity**

In their CC, Cross-Complainants allege Cross-Defendants’ tortious conduct (misrepresentations that SBI was not in default) induced Plaintiff to close on escrow on the Subject Property, which resulted in damages. (CC, ¶¶ 23-29.)<sup>2</sup> The CC further alleges Cross-

---

<sup>2</sup> Citing *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531 (*Doe*), Cross-Defendants argue that Cross-Complainants’ allegations made on information and belief, “without disclosing the information that led to the belief,” may be ignored. (Memorandum of Points and Authorities in Support of Cross-Defendants’ Demurrer to CC (“Dem. MPA”), p. 6, fn. 1.) Specifically, paragraphs 21 through 24, 28, and 31 of the CC, are made on information and belief. Cross-Complainants argue, in opposition, that the above-cited allegations are not legal conclusions, but permissible ultimate facts. (Cross-Complainants’ Opposition to Cross-Defendants’ Dem. MPA to CC (“Opp.”) p. 4:15-22.)

A pleading must conform to the general rule that a complaint must contain allegations of ultimate facts rather than legal conclusions. (*Doe, supra*, 42 Cal.4th at p. 551, fn. 5.) However, “[a] ‘[p]laintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true.’ ” (*Doe, supra*, 42 Cal.4th at p. 550, quoting *Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792.) The court may infer the basis for allegations made on information and belief from the other allegations in the complaint and from general context. (See *J.W. v. Watchtower Bible and Tract Society of New York, Inc.* (2018) 29 Cal.App.5th 1142, 1166 [“It can reasonably be inferred from J.W.’s allegations that her belief that Simental was an elder was based upon her participation in the same congregation as Simental”].)

Here, the Court agrees with Cross-Complainants that only Cross-Defendants would have had personal knowledge of tenant SBI’s nonpayment of rent in April 2020 until after the close of escrow when Plaintiff Frontier became the landlord. (CC, ¶¶ 19-23.) Given the close working relationship between the Plaintiff, Cross-Defendants, and Cross-Complainants during the acquisition of the Subject Property, Cross-Complainants likely have “information leading

Defendants have “joint tort liability for the damages claimed by Plaintiff” because of their “negligent or wrongful acts or omissions.” (CC, ¶ 33.) Cross-Complainants allege they are entitled to “total and complete indemnity” from Cross-Defendants for “damages that the Plaintiff may recover from Cross-Complainants.” (CC, ¶¶ 34-35.)

Cross-Defendants demur to the first cause of action for equitable indemnity on the ground of failure to state sufficient facts to constitute a cause of action.

*i. Cross-Defendants’ Tort Liability*

As a preliminary matter, Cross-Defendants argue that their alleged misconduct is based on breach of contract, not tort. (Dem. MPA, p. 3:1-11.) Cross-Complainants counterargue that fraud is the alleged basis for tort liability, not breach of contract. (Opp., p. 3; see also CC, ¶¶ 22-26.)

As correctly noted in opposition, it is well settled in California that: “[W]here the seller knows of facts materially affecting the value or desirability of the property which are known or accessible only to him and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer... *Failure of the seller to fulfill such duty of disclosure constitutes actual fraud.*” (*Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 735, italics added; Opp., p. 3: 12-22.)

“[C]onduct amounting to a breach of contract becomes tortious only when it also violates a duty *independent of the contract* arising from principles of tort law. [Citation.] ‘ “*An omission to perform a contract obligation is never a tort, unless that omission is also an omission of a legal duty.*’ ” ’ [Citation.]” (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 551 (*Erlich*), italics added.)

“...The remedy for a breach of contract is generally limited to contract law, and recovery in tort is not permitted unless: ‘ “(1) [T]he breach is accompanied by a traditional common law tort, such as fraud or conversion; (2) the means used to breach the contract are tortious, involving deceit or undue coercion or; (3) one party intentionally breaches the 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.” [Citation.]’ ” (*Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group* (2006) 143 Cal.App.4th 1036, 1043, quoting, *Erlich, supra*, at pp. 552-554.)

“Concealment is a species of fraud or deceit. [Citations.] ‘[T]he elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as

---

[them] to believe the allegations are true.” (*Doe, supra*, 42 Cal.4th at p. 551, fn. 5.) Thus, it is appropriate for Cross-Complainants to allege such matters regarding Cross-Defendants’ nondisclosure of SBI’s default, on information and belief. This Court will consider them accordingly in ruling on Cross-Defendants’ demurrer.



a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.’ [Citations.]” (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 868.)

Here, Cross-Complainants adequately plead fraud by alleging the following in its CC: 1) Cross-Defendants’ alleged willful nondisclosure of SBI’s nonpayment of rent before the close of escrow; 2) Cross-Defendants’ misrepresentations induced Frontier to close on the purchase of the Subject Property; and 3) Frontier’s reliance on the misrepresentation resulted in damages. (CC, ¶¶ 22-25, 29, 31-32.) For the first time in reply, Cross-Defendants argue the fraud allegations set forth in this CC are barred by the economic loss rule because “there is no allegation of personal injury or damages to other property, and any obligations owed by Cross-Defendants to Plaintiff are merely contractual.” (Reply Memorandum in Support of Cross-Defendants’ Dem. to CC (“Reply”), p. 4:25-26-5:21-24.) This Court however declines to consider this argument as it is being raised for the first time in reply. (See *Tellez v. Rich Voss Trucking Inc.* (2015) 240 Cal.App.4th 1052, 1066 [courts do not consider points raised for the first time in a reply brief]; see also *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 [points raised for the first time in a reply brief will ordinarily be disregarded because the other party is deprived of the opportunity to counter the argument].)

*ii. The Cross-Complaint Adequately Alleges Equitable Indemnity for the Same Injury*

Cross-Complainants argue the instant case involves “one alleged indivisible injury” – Plaintiff’s purchase of a less valuable or desirable property that did not meet Plaintiff’s requirements. (Opp., p. 6:13-14.)

Equitable indemnity principles govern the allocation of loss or damages among multiple tortfeasors whose liability for the underlying injury is joint and several. (*American Motorcycle v. Superior Court* (1978) 20 Cal. 3d 578 at pp. 583, 595, 597-598; *GEM Developers v. Hallcraft Homes of San Diego, Inc.* (1989) 213 Cal. App. 3d 419, 426.) The doctrine of equitable indemnity applies only among defendants who are jointly and severally liable to the plaintiff. (*BFGC Architects Planners, Inc. v. Forcum/Mackey Construction, Inc.* (2004) 119 Cal.App.4th 848, 852.) “There must be some basis for tort liability against the proposed indemnitor.” (*Ibid.*) Joint and several liability in the equitable indemnity context can apply to acts that are concurrent or successive, joint or several, as long as they create a detriment caused by several actors. (*Ibid.*, citing *Yamaha Motor Corp. v. Paseman* (1990) 219 Cal.App.3d 958, 964.) “The elements of a cause of action for equitable indemnity are (1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is contractually or equally responsible.” (*Expressions at Rancho Niguel Ass’n v. Ahmanson Developments, Inc.* (2001) 86 Cal.4th 1135, 1139.)

Here, Cross-Defendants contend that, even if Plaintiff’s allegations of wrongdoing were tortious in nature, they are not jointly and severally liable tortfeasors with Cross-Complainants. (Dem. MPA, p. 7:1-4.) In both its demurrer and reply, Cross-Defendants further contend that “a broker’s relationship and breach of that relationship with her client is fundamentally distinct from any conduct of the seller to the buyer.” (Dem. MPA, p. 7:3-4; Reply, p. 4:1-14.) Cross-Defendants label Cross-Complainant’s relationship with their client Frontier as a “special relationship” that cannot be interfered by Cross-Defendants’ relationship with said client.

(Reply, p. 4:12-14.) Cross-Defendants fails to cite authority supporting the contention that there is a “special relationship” status between a broker and his or her client and do not explain how that would create a bar to an equitable indemnity claim against Cross-Defendants. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [points asserted without authority for the proposition advanced are without foundation and require no discussion].) Accordingly, the Court will reject this argument.

Next, Cross-Defendants argue that there are strong policy reasons for not permitting equitable indemnity in favor of negligent Cross-Complainant brokers. They rely primarily on *Munoz v. Davis* (1983) 141 Cal.App.3d 420 (“*Munoz*”) and *Leko v. Cornerstone Bldg. Inspection Serv.* (2001) 86 Cal.App.4th 1109, 1115 (“*Leko*”) for this proposition. In *Munoz*, the plaintiff was injured in an automobile accident. (*Munoz, supra*, at p. 422.) The plaintiff hired defendant, an attorney, to file a lawsuit against the driver of the other automobile involved in the accident. (*Ibid.*) However, the attorney failed to file a lawsuit before the expiration of the statute of limitations. (*Ibid.*) When the plaintiff sued the attorney, the latter filed a cross-complaint against the driver for equitable indemnification. (*Ibid.*) The trial court sustained the driver’s demurrer without leave to amend. (*Id.* at p. 427.)

The Second Appellate District affirmed, holding that the attorney and the driver were not jointly and severally liable for the plaintiff’s injuries. (*Munoz, supra*, 141 Cal.3d at p. 425.) In part, the court stated that the nexus between the driver’s conduct and the risk of the injury later suffered because of the attorney’s conduct was too tenuous for the imposition of a duty upon the driver with respect to the actions of the attorney. (*Id.* at pp. 426-427.) The appellate court emphasized that the driver did not select the plaintiff’s attorney and did not have any control over the attorney’s actions or any opportunity to protect himself from the ramifications of the attorney’s conduct. (*Id.* at p. 429.) Furthermore, the court stated that:

There are strong public policy reasons for not permitting equitable indemnity in favor of a negligent lawyer from his client’s adversary. The effect of allowing a negligent attorney to recover indemnity from his client’s adversary would be to judicially repeal the statutes of limitation, make every tortfeasor the guarantor of his victim’s adequate compensation as well as the malpractice insurer of his victim’s attorney and undermine the fiduciary duty of the nonnegligent attorney to his client.

(*Munoz, supra*, 141 Cal.3d at p. 429.)

With respect to *Munoz*, Cross-Defendants argue that equitable indemnity should not be applied to them because the only allegations of Cross-Defendants’ misconduct are based on their alleged breach of contract. (Dem. MPA, p. 6:16-22; see also CC, ¶¶ 20-26, 29). Cross-Defendants conclude that this is an improper attempt “to recast a breach of contract cause of action as a tort claim” and that there is no social policy that “would demand resort to tort remedies.” (Dem. MPA, p. 6:18-22.) In opposition, Cross-Complainants allege Cross-Defendants misunderstand the law in *Munoz*, and more importantly, the case is distinguishable because here, the injury caused by both Cross-Defendants and Cross-Complainants’ tortious conduct is the same – “a less valuable or desirable” Subject Property. (Opp., p. 5:21-24.) This Court agrees that *Munoz* is distinguishable from the instant case.

Unlike the facts in *Munoz*, the facts here suggest a closer link between Cross-Defendants' purported negligence (failure to disclose relevant facts to Plaintiff Frontier and Cross-Complainants) and Cross-Complainants' purported professional negligence and breach of fiduciary duty (failure to determine the sufficiency of the various documents, including SBI's tax returns, provided by Cross-Defendants pursuant to the Purchase Agreement). (CC, ¶¶ 29-32; Complaint, ¶¶ 52-53, 68.) Cross-Defendants' failure to disclose to Plaintiff Frontier that tenant SBI defaulted on the Subject Property lease is intimately tied to Cross-Complainants' failure to properly advise Frontier about the purchase of said encumbered Property. (CC, ¶¶ 29-32.) Thus, the facts presented here are distinguishable from *Munoz*.

Notably, both Cross-Defendants and Cross-Complainants cite *Leko v. Cornerstone Bldg. Inspection Serv.* (2001) 86 Cal.App.4th 1109, 1115 (*Leko*) where the court held that "[w]hen the negligent acts of two tortfeasors are both a proximate cause of an indivisible injury, the tortfeasors are jointly and severally liable for that injury." As noted in Cross-Complainants' opposition, in *Leko*, the cross-complainant realtor was sued for negligent nondisclosure of defect in real property by plaintiff buyer, and the realtor, in turn, sought equitable indemnity from cross-defendant home inspection company for failure to discover or disclose said defects to both plaintiff and cross-complainant. (*Ibid.*) The court ultimately concluded, in part:

Each of these duties includes an obligation to discover and disclose certain defects in the property. When two or more parties have an obligation to discover and disclose the same defect, the failure of each to do so may be a proximate cause of a single indivisible injury to the person to whom the disclosure should have been made. In such cases, realtors and home inspectors will be jointly and severally liable to the purchaser for that injury.

(*Leko, supra*, 86 Cal.App.4th at p. 1116.)

Given the facts in *Leko*, we agree with Cross-Complainants that the *Leko* court's holding is applicable to the instant case. (Opp., p. 5:21-24.) In sum, the allegations of the CC, which must be accepted as true on demurrer under *Doe, supra*, 42 Cal.4th at p. 551, fn. 5, demonstrate that Cross-Defendants created, in part, the conditions that resulted in Cross-Complainant's professional negligence, namely, by failing to disclose material facts to Cross-Complainants and Frontier about SBI's nonpayment of rent for the Subject Property. (CC, ¶¶ 22-25.) In other words, at this stage of the pleadings, the CC adequately alleges that Cross-Defendants' nondisclosure and concealment of SBI defaulting on its lease, ultimately resulted in Cross-Complainants' improper advice to Frontier to purchase the encumbered Subject Property. (CC, ¶¶ 29-32.)

Additionally, this Court disagrees with Cross-Defendants argument in reply that unlike in *Leko*, where both the realtor and home inspection company owed a duty to the plaintiff buyer, Cross-Defendants owed no such duty as a seller. (Reply, p. 4:6-11; see also *Leko, supra*, 86 Cal.App.4th at pp. 1116-1117.) This argument is undeveloped, and as noted above, the CC clearly alleges that Cross-Defendants and Plaintiff's lender worked closely together "to obtain any additional information needed to finalize Plaintiff's loan to purchase the Property," and extensive correspondence was exchanged between Cross-Defendant Ryan and Plaintiff's lender to help facilitate Plaintiff's purchase. (CC, ¶¶ 21, 29; Exh. B – Email Exchange between Cross-Defendant Ryan and Plaintiff's Lender, pp. 1-5; see also *Allen v. City of*

*Sacramento* (2015) 234 Cal.App.4th 41, 52 [“We are not required to examine undeveloped claims or to supply arguments for the litigants”].) Thus, this claim lacks merit.

Accordingly, Cross-Defendants’ demurrer to the first cause of action in Cross-Complainants’ Interco and Shen’s CC on the ground that the pleading does not state facts sufficient to constitute a cause of action, (Code Civ. Proc., § 430.10, subd. (e)), for equitable indemnity is **OVERRULED**.

#### **b. Second Cause of Action – Declaratory Relief**

The CC alleges “an actual controversy exists between Cross-Complainants and Cross-Defendants concerning their rights and obligations to indemnify Cross-Complainants and, therefore, a judicial determination of the rights and obligations of these parties is required.” (CC, ¶¶ 38-40.) In demurring to the declaratory relief cause of action, Cross-Defendants repeat the same arguments the Court rejected above. (Dem. MPA, p. 7:18-21.)

To obtain declaratory relief under Code of Civil Procedure section 1060, a Plaintiff must demonstrate that his or her action presents two essential elements: (1) a proper subject of declaratory relief, and (2) an actual present controversy involving justiciable questions relating to Plaintiff’s rights or obligations. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582.) In order for a party to pursue an action for declaratory relief, the actual, present controversy must be pleaded specifically. Thus, a claim must provide specific facts, as opposed to conclusions of law, which show a controversy of concrete actuality. (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal App 4th 497, 513-514, disapproved on another ground in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13.)

Cross-Complainants counter that an actual controversy exists between Cross-Complainants and Cross-Defendants concerning their respective liabilities as alleged joint tortfeasors. (Opp., p. 7:8-10; Cross-Complaint, ¶¶ 38-40.) The Court agrees. This cause of action seeks a declaration regarding responsibilities to indemnify and is therefore dependent on the first cause of action for equitable indemnity. (See *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606 [“A general demurrer to a cause of action for declaratory relief must be overruled as long as an actual controversy is alleged”].)

In light of the above, the demurrer to the second cause of action on the ground that it fails to state sufficient facts is **OVERRULED**.

#### **IV. Conclusion**

The demurrer is **OVERRULED** in its entirety.

The Court will prepare the final Order.