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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KEITH R. CLAYTON,  
  
Plaintiff,  
  
v.  
  
AUTOMATED GAMING TECHNOLOGIES,  
INC., a Nevada corporation, JOHN  
R. PRATHER, and ROBERT MAGNANTI,  
  
Defendants.

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AUTOMATED GAMING TECHNOLOGIES,  
INC., a Nevada corporation,  
  
Counter-Claimant,  
  
v.  
  
KEITH R. CLAYTON, and DOES 1  
through 10, inclusive,  
  
Counter-Defendants.

No. 2:13-cv-00907-JAM-EFB

**ORDER GRANTING PLAINTIFF  
AND COUNTER DEFENDANT'S  
MOTION TO DISMISS**

This matter is before the Court on Plaintiff and Counter-Defendant Keith Clayton's ("Plaintiff") Motion to Dismiss (Doc.

1 #113) Defendant and Counter-Claimant Automated Gaming  
2 Technologies, Inc.'s ("AGT") Second Amended Counterclaim (Doc.  
3 #110) ("SAC"). AGT opposes the motion (Doc. #123). Plaintiff  
4 filed a reply (Doc. #124). For the reasons set forth below,  
5 Plaintiff's motion is GRANTED.

6  
7 I. PROCEDURAL BACKGROUND AND FACTUAL ALLEGATIONS

8 The factual allegations underlying the parties' respective  
9 claims are well known to all litigants and will not be repeated  
10 in detail here. In summary, Plaintiff's suit and AGT's  
11 counterclaims arise out of a series of negotiations between the  
12 parties regarding two iterations of an employment agreement, an  
13 alleged sales contract regarding software allegedly produced by  
14 Plaintiff, and the ensuing employment relationship between the  
15 parties.

16 AGT's original counterclaim (Doc. #34), filed on July 30,  
17 2013, alleged four claims against Plaintiff. The Court dismissed  
18 the first three claims (Doc. #59): breach of contract, breach of  
19 duty of loyalty, and negligence, with leave to amend. The Court  
20 dismissed the final claim of negligent interference with economic  
21 relations with prejudice.

22 AGT filed the First Amended Counterclaim (Doc. #69) on  
23 January 6, 2014, alleging claims for breach of contract, fraud,  
24 and breach of fiduciary duties. The Court dismissed the cause of  
25 action for fraud with leave to amend, dismissed the claim for  
26 breach of contract with prejudice, and denied the motion to  
27 dismiss the claim for breach of fiduciary duties (Doc. #106).

28 AGT filed the SAC on May 8, 2014. It states two causes of

1 action against Plaintiff: (1) breach of fiduciary duties and  
2 (2) fraud. The present motion seeks dismissal of the fraud  
3 claim.

## 4 5 II. OPINION

6 As the Court held in an earlier order (Doc. #59), the claims  
7 emanating from the employment relationship between the parties  
8 are governed by Nevada state law because of the Nevada choice of  
9 law provision in the Employment Agreement and the contract's  
10 substantial relationship to Nevada. According to Nevada law, the  
11 elements of fraud are: (1) a false representation made by the  
12 defendant; (2) defendant's knowledge or belief that the  
13 representation is false (or is insufficient basis for making the  
14 representation); (3) defendant's intention to induce the  
15 plaintiff to act or to refrain from acting in reliance upon the  
16 misrepresentation; (4) plaintiff's justifiable reliance upon the  
17 misrepresentation; and (5) damage to the plaintiff resulting from  
18 such reliance. Bulbman Inc. v. Nevada Bell, 825 P.2d 588, 592  
19 (Nev. 1992).

### 20 A. No-Reliance Clause

21 Plaintiff first argues that the "no reliance" clause found  
22 in the original Employment Agreement between the parties negates  
23 the element of justifiable reliance.

24 In a section entitled "Contract Terms are Exclusive," the  
25 relevant text of the Employment Agreement reads:

26 The parties agree that neither of them has made any  
27 representations with respect to the subject matter of  
28 this agreement or any representations inducing the  
execution and deliver hereof except such  
representations as are specifically set forth herein.

1 Each party acknowledges that each party has relied on  
2 his or its own judgment in entering into this  
3 agreement. The parties further acknowledge that any  
4 statements or representations that may have heretofore  
5 been made by either of them to the other are void and  
6 of no effect and that neither of them has relied  
7 thereon in connection with his or its dealings with the  
8 other.

9 SAC, Exh. A at p. 17.

10 According to Nevada law, "a fraudulent inducement claim  
11 fails as a matter of law where it directly contradicts the terms  
12 of an express written contract." Soffer v. Five Mile Capital  
13 Partners, LLC, 2:12-CV-1407 JCM GWF, 2013 WL 638832, at \*9 (D.  
14 Nev. 2013); see also Rd. & Highway Builders, LLC v. N. Nev.  
15 Rebar, Inc., 284 P.3d 377, 378 (Nev. 2012). AGT's claim is  
16 directly contrary to the language of the integrated contract.

17 The cause of action for fraud relies on representations made  
18 by Plaintiff before the contract was formed, specifically  
19 alleging that those representations led AGT to enter into the  
20 agreement. The terms of the contract, however, explicitly  
21 contradict the allegations in support of this claim, in that  
22 AGT agreed that any representations made previously were "void  
23 and of no effect" and that it would not rely on them specifically  
24 "in connection with . . . its dealings with" Plaintiff. AGT  
25 therefore promised not to rely on Plaintiff's representations  
26 concerning the parties' employment relationship, yet alleges in  
27 its SAC that it did in fact rely on Plaintiff's representations.  
28 This "necessarily implies that, to the extent it did rely on  
[Plaintiff], [AGT's] reliance was not justifiable." Bank of the  
West v. Valley Nat. Bank of Arizona, 41 F.3d 471, 477-78 (9th  
Cir. 1994).

1 AGT argues that the existence of this clause does not  
2 preclude its fraud claim, pointing to Nevada cases that allowed a  
3 party to present evidence of fraud regardless of an integration  
4 clause. See Blanchard v. Blanchard, 108 Nev. 908, 912 (1992).

5 Both parties make note that there is no controlling Nevada  
6 authority that specifically addresses the preclusive effect of a  
7 "no reliance" clause on a claim for fraudulent inducement.

8 However, when claims directly contradict terms considered and  
9 explicitly addressed in a contract, the law will not allow a  
10 party to attempt to prove fraudulent inducement. See Rd. &  
11 Highway Builders, 284 P.3d at 380-81. The subject of the  
12 contract was the employment relationship between the parties.  
13 The contract exhibits a very clear agreement as to what the  
14 parties were to rely upon in entering into that relationship.

15 AGT's alleged reliance is particularly questionable here,  
16 given that AGT was a sophisticated party to the contract, the  
17 party extending the offer to Plaintiff (in an agreement printed  
18 on AGT letterhead), and was the party that presumably drafted the  
19 contract. See Rd. & Highway Builders, 284 P.3d at 380-81; Woods  
20 v. Google Inc., 05:11-CV-1263-JF, 2011 WL 3501403, at \*8-9 (N.D.  
21 Cal. 2011); Insitu Inc. v. Kent, 388 F. App'x 745, 746 (9th Cir.  
22 2010) (finding the plaintiff could not show reasonable reliance  
23 given the "no reliance" clause and that he was "a sophisticated  
24 businessman, was represented by counsel, had an adversarial  
25 relationship with the company, and was allowed twenty-one days to  
26 consider whether to sign the Agreement").

27 AGT contends that even if the no reliance clause is  
28 enforced, its claim for fraud also encompasses the

1 misrepresentations made by Plaintiff inducing AGT to enter into  
2 the alleged software sales contract. However, AGT cannot bring  
3 an affirmative claim for fraudulent inducement of an agreement it  
4 alleges does not exist. See SAC ¶ 51.

5 As AGT has not sufficiently pled justifiable reliance, a  
6 necessary element of its fraud cause of action, the Court GRANTS  
7 Plaintiff's Motion to Dismiss. It does not appear from the  
8 numerous iterations of AGT's counterclaim that amendment would  
9 cure the defects identified above. As such, the Motion to  
10 Dismiss is granted without leave to amend.

11 B. Remaining Arguments

12 Plaintiff further argues AGT's claim for fraud should be  
13 dismissed because the SAC fails to meet the relevant pleading  
14 standards and is barred by the economic loss doctrine. Plaintiff  
15 also argues that if the Court does find the claim viable, it does  
16 not in any event state facts sufficient to support the specific  
17 demand for punitive damages. As the Court has granted the motion  
18 based on application of the "no reliance" clause, the remaining  
19 arguments need not be addressed.

20  
21 III. ORDER

22 For the reasons set forth above, the Court GRANTS WITHOUT  
23 LEAVE TO AMEND Plaintiff's Motion to Dismiss the Second Cause of  
24 Action for fraud in the Second Amended Counterclaim.

25 IT IS SO ORDERED.

26 Dated: August 11, 2014

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE