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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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10 TONIA ANTONACCI, *et al.*,

11 Plaintiffs,

12 v.

13 ROXANNE SPARKS, *et al.*,

14 Defendants.

Case No. 2:14-cv-01876-LDG (CWH)

ORDER

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16 And Related Counterclaims and Cross-claims.

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18 As alleged by the parties in their pleadings, Roxanne Sparks worked as a
19 bookkeeper for both plaintiff Tonia Antonacci and defendant Linda Parraguirre's company,
20 defendant Colours, Inc. During her employment for both parties, and without the
21 authorization of any of the parties, Sparks transferred money from accounts held by
22 Antonacci (either personally or as Trustee of plaintiff The Toni Antonacci Family Trust) to
23 accounts in the names of Colours and Parraguirre, and also to Sparks.

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25 Parraguirre and Colours brought a counterclaim for negligent misrepresentation
26 against Antonacci. They allege that Antonacci had employed Sparks prior to Sparks
employment for Colours. Parraguirre indicated to Antonacci that Colours needed a new

1 bookkeeper, and asked Antonacci for any recommendations. Antonacci recommended
2 Sparks. Parraguirre reviewed Sparks' resume and interviewed her. Relying on this
3 information and Antonacci's recommendation, Colours hired Sparks as its bookkeeper.

4 Antonnaci now seeks partial summary judgment on the negligent misrepresentation
5 counterclaim (ECF No. 53). Colours and Parraguirre oppose the motion (ECF No. 59).

6 Having considered the papers and pleadings, the Court will grant the motion.

7 Motion for Summary Judgment

8 In considering a motion for summary judgment, the court performs "the threshold
9 inquiry of determining whether there is the need for a trial—whether, in other words, there
10 are any genuine factual issues that properly can be resolved only by a finder of fact
11 because they may reasonably be resolved in favor of either party." *Anderson v. Liberty*
12 *Lobby, Inc.*, 477 U.S. 242, 250 (1986); *United States v. Arango*, 670 F.3d 988, 992 (9th Cir.
13 2012). To succeed on a motion for summary judgment, the moving party must show (1)
14 the lack of a genuine issue of any material fact, and (2) that the court may grant judgment
15 as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
16 (1986); *Arango*, 670 F.3d at 992.

17 A material fact is one required to prove a basic element of a claim. *Anderson*, 477
18 U.S. at 248. The failure to show a fact essential to one element, however, "necessarily
19 renders all other facts immaterial." *Celotex*, 477 U.S. at 323. Additionally, "[t]he mere
20 existence of a scintilla of evidence in support of the plaintiff's position will be insufficient."
21 *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 638 (9th Cir. 2012) (quoting
22 *Anderson*, 477 U.S. at 252).

23 "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after
24 adequate time for discovery and upon motion, against a party who fails to make a showing
25 sufficient to establish the existence of an element essential to that party's case, and on
26 which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. "Of

1 course, a party seeking summary judgment always bears the initial responsibility of
2 informing the district court of the basis for its motion, and identifying those portions of ‘the
3 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
4 affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material
5 fact.” *Id.*, at 323. As such, when the non-moving party bears the initial burden of proving,
6 at trial, the claim or defense that the motion for summary judgment places in issue, the
7 moving party can meet its initial burden on summary judgment "by 'showing'—that is,
8 pointing out to the district court—that there is an absence of evidence to support the
9 nonmoving party's case." *Id.*, at 325. Conversely, when the burden of proof at trial rests
10 on the party moving for summary judgment, then in moving for summary judgment the
11 party must establish each element of its case.

12 Once the moving party meets its initial burden on summary judgment, the non-
13 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.
14 56(e); *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1103 (9th Cir.
15 2000). As summary judgment allows a court "to isolate and dispose of factually
16 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the
17 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.*
18 *Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however,
19 will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co.*
20 *v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). That is, the opposing party cannot
21 “rest upon the mere allegations or denials of [its] pleading’ but must instead produce
22 evidence that ‘sets forth specific facts showing that there is a genuine issue for trial.’”
23 *Estate of Tucker v. Interscope Records*, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting Fed.
24 R. Civ. Pro. 56(e)).

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1 Analysis

2 Nevada has adopted the definition in Restatement (Second) of Torts § 552 of
3 negligent misrepresentation:

4 One who, in the course of his business, profession or employment, or in any other
5 action in which he has a pecuniary interest, supplies false information for the
6 guidance of others in their business transactions, is subject to liability for pecuniary
7 loss caused to them by their justifiable reliance upon the information, if he fails to
8 exercise reasonable care or competence in obtaining or communicating the
9 information.

10 Barmettler v. Reno Air, Inc., 956 P.2d 1382, 1387 (Nev. 1998).

11 Citing *Barmettler*, Colours and Parraguirre assert that:

12 [a] successful negligent misrepresentation claim requires a showing of
13 three elements:

- 14 1. A defendant failed to exercise reasonable care or competence
15 in obtaining or communicating information to a plaintiff in an
16 action in which the defendant had a pecuniary interest;
- 17 2. The plaintiff justifiably relied on the information; and
- 18 3. The plaintiff suffered damages as a result.


19 *Opposition*, ECF No. 59, p. 7, ll. 6-12. This summary of elements is incomplete, as it omits
20 the requirement that the defendant “supplie[d] false information for the guidance of others
21 in their business transactions.” The counterclaimants brought a claim for negligent
22 misrepresentation. Negligent misrepresentation does not rest merely upon the supplying of
23 information (either obtained or communicated without the exercise of reasonable care or
24 competence), but the supplying of *false* information.

25 Unsurprisingly, given the counterclaimants’ omission of the element of supplying
26 false information, they fail to offer any argument or evidence that Antonacci supplied them
with false information. As Colours and Parraguirre cannot show that Antonacci supplied
them with false information, all disputes of facts as to the remaining elements of the
counterclaim are, by definition, immaterial to determining whether summary judgment is
appropriate. Accordingly, for good cause shown,

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THE COURT **ORDERS** that counter-defendant Tonia Antonacci's Motion for Partial Summary Judgment (#53) is GRANTED. The counterclaimants' counterclaim for negligent misrepresentation is DISMISSED without prejudice.

DATED this 19 day of March, 2017.


Lloyd D. George
United States District Judge