

1 that show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)(1)). Once the
2 moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party
3 fails to identify specific factual disputes that must be resolved at trial. Hexcel Corp. v. Ineos
4 Polymers, Inc., 681 F.3d 1055, 1059 (9th Cir. 2012). The mere existence of a scintilla of
5 evidence in support of the non-moving party's position will not preclude summary judgment,
6 however, unless a reasonable jury viewing the evidence in the light most favorable to the non-
7 moving party could return a verdict in its favor. U.S. v. Arango, 670 F.3d 988, 992 (9th Cir.
8 2012).

9 Having reviewed the memoranda, declarations, and exhibits submitted by the
10 parties,¹ the Court finds as follows:

11 Plaintiff's motion for summary judgment was based primarily on the fact that
12 defendants failed to make a separately identifiable transfer of cash to plaintiff, either on
13 December 31, 2010, or after closing. In opposition to the motion, defendants seem to concede
14 that a separate payment was not made, but argue (apparently for the first time) that no cash is
15 owing to plaintiff because defendants overpaid accounts receivable to such an extent that any
16 liability for failing to transfer cash assets has been offset. Defendants offered evidence of
17 numerous bank transfers to plaintiff and a summary suggesting that payments exceeded the
18 amount owed. In reply, plaintiff introduced a new variable: post-closing sales by plaintiff that
19 were never part of the accounts receivable purchased from defendants. Plaintiff provides the
20 declaration of Alan C. Bergschneider in support of the assertion that only \$1,451,219 of the
21 \$2,481,236 TDE transferred to plaintiff between April and October 2011 was related to pre-
22 closing sales and the assets purchased by plaintiff. Decl. of Alan C. Bergschneider (Dkt. # 25) at
23 ¶¶ 8-9. Under this analysis, the cash assets remain unpaid and other transfers do not offset the
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25 ¹ The Court finds that this matter can be decided on the papers submitted. Defendants' request
26 for oral argument is, therefore, DENIED.

1 liability.

2 Plaintiff chose to file its motion for summary judgment less than three months into
3 discovery. As a result, the parties' positions had not been established, and each new
4 memorandum raised an entirely new spectrum of factual issues and argument. The Court is
5 reluctant to make a definitive finding when defendants have not had an opportunity to review
6 plaintiff's accounting and respond to the arguments raised in reply.² The motion for summary
7 judgment (Dkt. # 17) is therefore DENIED without prejudice.

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9 Dated this 15th day of January, 2013.

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12 Robert S. Lasnik
13 United States District Judge
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23 ² The Court also notes that Mr. Bergschneider's assertions regarding the nature of the Transition
24 Services provided by TDE and both parties' contentions regarding the appropriate characterization of
25 the transferred funds are largely unsupported. If and when this motion is refiled, the Court expects not
26 only a summary statement regarding amounts owed and paid, but also some form of underlying
documentation so that the Court and the opposing party can evaluate the data to ensure accuracy and/or
identify any inconsistencies or errors.