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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GRINDSTONE INDIAN RANCHERIA and
ONE HUNDRED PLUS MEN, WOMEN AND
CHILDREN LIVING ON THE
GRINDSTONE INDIAN RESERVATION,

Plaintiffs,

v.

TERRENCE OLLIFF, individually
and as a beneficiary/trustee of
the Olliff Family Trust, DIANNE
L. OLLIFF, individually and as a
beneficiary/trustee of the
Olliff Family Trust, and DOES 1-
10,

Defendants.

No. 2:17-cv-02292-JAM-JDP

**ORDER DENYING PLAINTIFFS'
MOTION FOR SUMMARY
ADJUDICATION; ORDER TO SHOW
CAUSE UNDER FRCP 11**

This lawsuit concerns a property dispute over a strip of land between Grindstone Indian Rancheria and 100 of its residents' ("Plaintiffs") and the Olliffs' ("Defendants") properties. See First Am. Compl. ("FAC"), ECF No. 10-2. Before the Court is Plaintiffs' second motion for summary adjudication on its declaratory relief claim. See Pls.' Second Mot. for Summ. Adjudication ("Mot."), ECF No. 52. Defendants oppose this motion. See Opp'n, ECF No. 54. Plaintiffs replied. See Reply, ECF No. 55. Because the motion is procedurally improper and

1 because genuine issues of material fact exist, the Court DENIES
2 Plaintiffs' motion.¹

3
4 I. BACKGROUND

5 The parties are familiar with the factual background of this
6 case—it is set forth extensively in the parties' briefings and
7 the Court's prior order. See Order denying Mot. for Summ.
8 Adjudication ("Prior Order"), ECF No. 37.

9 In July 2019, Plaintiffs filed a motion for summary
10 adjudication on their declaratory relief claim. See Pls.' Mot.
11 for Summ. Adjudication ("Prior Mot."), ECF No. 29. The Court
12 denied Plaintiffs' motion in August 2019. See Prior Order.
13 Almost two years later, Plaintiffs move again for summary
14 adjudication on the same claim. See Mot. Plaintiff asserts its
15 motion is "not simply a do-over of [the] motion previously denied
16 by this Court" and "relies on new declarations and the recent
17 deposition testimony of Defendants' expert." Reply at 1, 3.

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19 II. OPINION

20 A. Request for Judicial Notice

21 Rule 201 of the Federal Rules of Evidence allows a court to
22 take judicial notice of an adjudicative fact that is "not
23 subject to reasonable dispute," because it (1) "is generally
24 known within the trial court's territorial jurisdiction"; or
25 (2) "can be accurately and readily determined from sources whose
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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for May 4, 2021.

1 accuracy cannot reasonably be questioned.” Fed. R. Evid.
2 201(a)-(b). A court may take judicial notice of matters of
3 public record. United States ex rel. Lee v. Corinthian
4 Colleges, 655 F.3d 984, 999 (9th Cir. 2011). Matters of public
5 record include “documents on file in federal or state courts.”
6 Harris v. County of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012).
7 However, courts may not take judicial notice of “disputed facts
8 stated in public records.” See Lee v. City of Los Angeles, 250
9 F.3d 668, 690 (9th Cir. 2001).

10 Defendants request the Court take judicial notice of three
11 documents in the Court’s records for this case. See Defs.’ Req.
12 for Jud. Notice (“RJN”), ECF No. 54-4. These documents are
13 matters of public record and therefore proper subjects of
14 judicial notice. Accordingly, the Court GRANTS Defendants’
15 Request for Judicial Notice. However, the Court takes judicial
16 notice only of the existence of these documents and declines to
17 take judicial notice of their substance, including any disputed
18 or irrelevant facts within them. Lee, 250 F.3d at 690.

19 B. Evidentiary Objections

20 Defendants also raise evidentiary objections to Plaintiffs’
21 statement of undisputed facts. See Defs.’ Objections, ECF No.
22 54-3. The Court has reviewed these evidentiary objections but
23 declines to rule on each one individually as courts self-police
24 evidentiary issues on motions for summary judgment and a formal
25 ruling is unnecessary to the determination of this motion. See
26 Sandoval v. Cty. Of San Diego, 985 F.3d 657, 665 (9th Cir. Jan.
27 13, 2021) (citing to Burch v. Regents of the University of
28 California, 433 F.Supp.2d 1110, 1119) (E.D. Cal. 2006) (noting

1 objections "are generally unnecessary on summary judgment because
2 they are "duplicative of the summary judgment standard itself"
3 and that "parties briefing summary judgment motions would be
4 better served to 'simply argue' the import of the facts reflected
5 in the evidence rather than expending time and resources
6 compiling laundry lists of objections").

7 C. Legal Standard

8 A Court must grant a party's motion for summary judgment
9 "if the movant shows that there is no genuine dispute as to any
10 material fact and the movant is entitled to judgment as a matter
11 of law." Fed. R. Civ. Proc. 56(a). The movant bears the
12 initial burden of "informing the district court of the basis for
13 its motion, and identifying [the documents] which it believes
14 demonstrate the absence of a genuine issue of a material fact."
15 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A fact is
16 material if it "might affect the outcome of the suit under the
17 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
18 248 (1986). Once the movant makes this initial showing, the
19 burden rests upon the nonmoving party to "set forth specific
20 facts showing that there is a genuine issue for trial." Id. An
21 issue of fact is genuine if "the evidence is such that a
22 reasonable jury could return a verdict for the nonmoving party."
23 Id.

24 D. Analysis

25 Defendants argue Plaintiffs have, without justification,
26 "re-filed the exact same Motion for Summary Adjudication of the
27 Declaratory Relief Claim which was previously adjudicated and
28 ruled on." Id. at 1-2, 7. The Court agrees.

1 “The order of denial of summary judgment is an interlocutory
2 decree” and “the court in its discretion may reconsider such
3 order.” Kern-Tulare Water Dist. v. City of Bakersfield, 634
4 F.Supp.656, 665 (E.D. Cal. 1986) (internal citations omitted).
5 Thus, a district court has discretion to consider a second motion
6 for summary judgment. Nightlife Partners, Ltd. v. City of
7 Beverly Hills, 304 F Supp.2d 1208, 1214-1215 (C.D. Cal 2004)
8 (internal citations omitted). A renewed or successive summary
9 judgment motion is appropriate if one of the following grounds
10 exists: “(1) an intervening change in controlling law; (2) the
11 availability of new evidence or an expanded factual record; and
12 (3) [the] need to correct a clear error or prevent manifest
13 injustice.” Id. at 1215(internal citations omitted); see also
14 Advanced Semiconductor Materials Am., Inc. v. Applied Materials,
15 Inc., 922 F.Supp. 1439, 1442 (N.D. Cal 1996) (“a moving party may
16 renew a motion for summary judgment notwithstanding denial of an
17 earlier motion by showing a different set of facts or some other
18 reason justifying renewal of the motion”).

19 Plaintiffs do not contend there has been an intervening
20 change in controlling law or that there is need to correct a
21 clear error or prevent manifest injustice. See Mot; Reply.
22 Rather, Plaintiff asserts the grounds for this motion are an
23 expanded factual record, particularly “new declarations and the
24 recent deposition testimony of Defendants’ expert.” Reply at 3.

25 However, while there are new declarations and new
26 deposition testimony, Plaintiffs raise the same argument that
27 this Court previously considered and rejected: that they are
28

1 entitled to summary judgment based upon Defendants' failure to
2 exhaust their administrative remedies. Mot. at 1, 19-20; Reply
3 at 5-6. Specifically, they stress the fact that Defendants had
4 a 60-day period to file a protest of the 2011 Bureau of Land
5 Management ("BLM") Cadastral Survey "which expired on October
6 16, 2012" yet failed to do so. Mot. at 7. However, Plaintiff
7 raised and the Court specifically rejected this argument in its
8 prior order: "Plaintiffs ... do[] not meaningfully respond to
9 Defendants' argument that disputed issues of fact preclude
10 summary adjudication. Instead, they double-down on their theory
11 that Defendants failed to timely exhaust their administrative
12 remedies and are now using a 'backdoor approach' to 'completely
13 contradict and challenge the BLM Survey.' Despite these
14 accusations, Plaintiffs are the only ones who seek to muddle the
15 distinction between interpreting the BLM's survey and
16 challenging the validity of that survey. Citing to the APA, 5.
17 U.S.C. § 704, Plaintiffs argue the Court is without authority
18 to interpret the BLM Survey. This argument misses the mark.
19 The APA allows courts to review the accuracy of an
20 administrative decision under certain circumstances. 5 U.S.C. §
21 702. It does not curtail the Court's ability to discern how an
22 agency's decision applies to a set of facts. As explained
23 above, Defendants do not challenge the accuracy of the BLM
24 Survey; they challenge Plaintiffs' reading of it." Prior Order
25 at_9-10 (internal citations omitted) (emphasis added). The same
26 reasoning holds true here.

27 The disputed issues of fact that led the Court to deny
28 Plaintiffs' prior motion again preclude summary judgment. See

1 Defs.' Response to Statement of Undisputed Facts ("RSUF") ¶¶ 7,
2 8, 16, 18, ECF No. 54-1. Defendants are not challenging the
3 validity of the 2011 BLM Survey or the fact that they did not
4 object to the Survey. Prior Order at 9; Opp'n at 2. Rather,
5 Defendants dispute Plaintiffs' interpretation of the Survey,
6 particularly where it sets the "western boundary of Plaintiffs'
7 20-acre Parcel 2." Opp'n at 8; RSUF ¶¶ 7, 8, 18. Plaintiffs
8 interpret the Survey as reinstating the Knox corner marker to
9 Parcel 2 and thus including the disputed strip of land in Parcel
10 2. Mot. at 3-6. Defendants disagree. See Opp'n at 2-3, 7-8.
11 These are material issues of fact. See U.S. v. State Inv. Co.,
12 264 U.S. 206, 2011 (1924) (instructing that questions of "where
13 the line run by a survey lies on the ground, and whether any
14 particular tract is on one side or the other of that line, are
15 questions of fact").

16 Accordingly, Plaintiffs have not demonstrated proper
17 grounds for bringing this second motion let alone that they are
18 entitled to summary adjudication. See Nightlife Partners, Ltd.,
19 304 F Supp.2d at 1214-1215; see also Advanced Semiconductor
20 Materials Am., Inc., 922 F. Supp. at 1442.

21 E. Sanctions

22 Under Federal Rule of Civil Procedure 11(c)(3), a court may
23 order a party to show cause why Rule 11(b) has not been violated
24 and why sanctions should not be imposed. Rule 11(b)(1) provides:
25 "By presenting to the court a pleading, written motion or other
26 paper - whether by signing, filing, submitting, or later
27 advocating it - an attorney or unrepresented party certifies that
28 to the best of the person's knowledge, information, and belief,

1 formed after an inquiry reasonable under the circumstances: (1)
2 it is not presented for any improper purpose, such as to . .
3 cause unnecessary delay or needlessly increase the cost of
4 litigation.”

5 Plaintiffs are ordered to show cause why filing this second
6 motion for summary adjudication - based on the same arguments
7 that the Court already considered and rejected - did not violate
8 Rule 11(b)(1). Plaintiffs shall file their response within ten
9 (10) days of this order.

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11 III. ORDER

12 For the reasons set forth above, the Court DENIES
13 Plaintiffs' motion for summary adjudication on their declaratory
14 judgment claim.

15 IT IS SO ORDERED.

16 Dated: July 20, 2021

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19 JOHN A. MENDEZ,
20 UNITED STATES DISTRICT JUDGE
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