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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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9 GRINDSTONE INDIAN RANCHERIA
10 and ONE HUNDRED PLUS MEN,
11 WOMEN AND CHILDREN LIVING ON
12 THE GRINDSTONE INDIAN
13 RESERVATION,

14 Plaintiffs,

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16 v.

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18 TERRANCE OLLIFF, et al.,

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20 Defendants.

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

**ORDER DENYING PLAINTIFFS' RULE
60 (b) MOTION FOR RELIEF FROM THE
COURT'S DENIAL OF PLAINTIFFS'
MOTION FOR SUMMARY ADJUDICATION**

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23 With their present motion,¹ Plaintiffs attempt to take a
24 third bite at the apple. See Pls.' Mot. for Relief ("Mot."), ECF
25 No. 65. This attempt fails. For the reasons set forth below,
26 Plaintiffs' motion is denied.

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I. PROCEDURAL BACKGROUND

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30 On July 2, 2019, Plaintiffs filed a motion for summary
31 adjudication on their declaratory relief claim. See Pls.' Mot.
32 for Summ. Adjudication ("First Mot."), ECF No. 29. On August 14,

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for November 16, 2021.

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1 2019, the Court denied that motion. See August 2019 Order, ECF
2 No. 37.

3 On April 6, 2021, Plaintiffs moved again for summary
4 adjudication on the same declaratory relief claim. See Pls.'
5 Mot. for Summ. Adjudication ("Second Mot."), ECF No. 52. Citing
6 to "new declarations and the recent deposition of Defendants'
7 expert," Plaintiffs insisted their second motion was not
8 identical to their first motion and that summary judgment was now
9 warranted. Pl.'s Reply in support of Second Mot. at 3, ECF No.
10 55. The Court disagreed. See generally July 2021 Order, ECF No.
11 59. Thus, on July 21, 2021, the Court denied Plaintiffs' renewed
12 motion and ordered Plaintiffs to show cause why the second motion
13 based on the same arguments the Court already considered and
14 rejected did not violate Rule 11(b)(1). Id. at 8. Plaintiffs
15 submitted their response, see Pl.'s Response, ECF No. 60, and the
16 Court declined to impose Rule 11 sanctions, see Minute Order, ECF
17 No. 61.

18 Plaintiffs now bring a Rule 60(b) motion for relief from the
19 Court's July 2021 Order denying their second motion for summary
20 adjudication on the declaratory relief claim. See generally Mot.
21 Plaintiffs contend the Court made an error of law in denying the
22 motion. Id. Defendants filed an opposition. See Opp'n, ECF No.
23 68. Plaintiffs replied. See Reply, ECF No. 69.

24 25 II. OPINION

26 The parties first dispute whether the Plaintiffs' motion is
27 procedurally proper. Opp'n at 3-4; Reply at 2. Specifically,
28 Plaintiffs bring the motion under Rule 60(b), but Defendants

1 contend that it is an improper Rule 60(b) motion because that
2 rule relates only to final orders. Opp'n at 3. As Defendants
3 explain, an order denying summary judgment is an interlocutory
4 decree and therefore not a final order that can be challenged
5 under Rule 60(b). Id. In support of their position, Defendants
6 cite to Wilkins-Jones v. Cnty. of Alameda, No. C-08-1485 EMC,
7 2012 WL 3116025, at *2-3 (N.D. Cal. July 31, 2012), and BlueEarth
8 Biofuels, LLC, v. Hawaiian Elec. Co., Inc., Civ. No. 09-00181
9 DAE-KSC, 2011 WL 1230144, at *4-5 (D. Hawaii March 28, 2011).
10 Id. Both of these case support Defendants' position that Rule
11 60(b) applies only to final orders or judgments and that a
12 partial summary judgment order, like the one at issue here, is
13 not a final order. So does the language of Rule 60(b) itself.
14 See Fed. R. Civ. P. 60(b) ("the court may relieve a party or its
15 legal representative from a final judgment, order or
16 proceeding") (emphasis added).

17 Plaintiffs do not address either Wilkins-Jones or BlueEarth
18 Biofuels, LLC. See Reply. Significantly, Plaintiffs have no
19 response to the BlueEarth Biofuels, LLC court's clear statement
20 that partial summary judgment orders are "not appealable final
21 orders" because they "do not dispose of all claims and do not end
22 the litigation on the merits." 2011 WL 1230144, at *5.

23 In short, Plaintiffs use of Rule 60(b) as a vehicle to
24 challenge the Court's July 2021 Order denying partial summary
25 adjudication is improper. The Court thus construes Plaintiffs'
26 motion as a one for reconsideration.

27 The Federal Rules of Civil Procedure do not expressly
28 provide for motions for reconsideration. But where

1 reconsideration of a non-final order is sought, the court has
2 "inherent jurisdiction to modify, alter or revoke it." United
3 States v. Martin, 226 F.3d 1042, 1049 (9th Cir. 2000). "The
4 authority of district courts to reconsider their own orders
5 before they become final, absent some applicable rule or statute
6 to the contrary, allows them to correct not only simple mistakes,
7 but also decisions based on shifting precedent, rather than
8 waiting for the time-consuming, costly process of appeal." Id.
9 The Eastern District local rules too permit motions for
10 reconsideration but require counsel to identify "the material
11 facts and circumstances surrounding each motion for which
12 reconsideration is sought, including: (1) when and to what Judge
13 or Magistrate the prior motion was made; (2) what ruling,
14 decision, or order was made thereon; (3) what new or different
15 facts or circumstances are claimed to exist which did not exist
16 or were not shown upon such prior motion, or what other grounds
17 exist for the motion; and (4) why the facts or circumstances were
18 not shown at the time of the prior motion." E.D. Cal. Local R.
19 230(j). As other Eastern District courts have explained: "a
20 motion for reconsideration is not a vehicle to reargue the motion
21 or present evidence which should have been raised before."
22 United States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131
23 (E.D. Cal. 2001) (internal citations omitted). "A party seeking
24 reconsideration must show more than a disagreement with the
25 Court's decision, and recapitulation of the cases and arguments
26 considered by the court before rendering its original decision
27 fails to carry the moving party's burden." Id. (internal
28 citations and quotation marks omitted).

1 Here, Plaintiffs fails to carry their burden to show
2 reconsideration is warranted. Plaintiffs present only one ground
3 not before the Court when it ruled on Plaintiffs' second motion
4 for summary judgment: the Oregon Court of Appeals case Dykes v.
5 Arnold, 204 Or.App. 154 (Or. Ct. App. 2006). See Mot. at 12-13;
6 see also Exh. to Mot., ECF No. 65-1. But even though Plaintiffs
7 may have recently discovered this case, Dykes is a 2006 case,
8 decided well before the Court issued its July 2021 Order denying
9 summary adjudication. Plaintiffs therefore had the opportunity
10 to raise Dykes in its previous motion. They failed to do so.
11 See Second Mot.; see also Reply in support of Second Mot. That
12 Plaintiffs may have discovered this case for the first time
13 recently is of no import. The inquiry under the local rule is
14 whether "new facts or circumstances... which did not exist at the
15 time of the prior motion" are present. E.D. Cal. Local R.
16 230(j) (emphasis added). Here, Dykes clearly existed at that
17 time. Further, an Oregon Court of Appeals decision, Dykes is not
18 binding authority.

19 Nor does the substance of Dykes support Plaintiffs' position
20 that the Court that it erred in denying their motion. See 204
21 Or.App. 154. In Dykes, plaintiff-landowners brought an ejectment
22 action against the defendant-landowner who owned adjacent lots of
23 land over a disputed strip of land between their lots. Id. As
24 relevant here, the Dykes Court did not rely upon 43 U.S.C.
25 Section 752 in affirming the lower court's decision to dismiss
26 the ejectment action, quiet title to defendant, and declare
27 plaintiffs had a perpetual easement to defendant's adjacent
28 property. Id. at 179 (stating "federal law says nothing-one way

1 or the other"). Because the Dykes Court did not rely upon
2 Section 752 to reach its decision, that case does not support
3 Plaintiffs' legal argument here that Section 752 or Dykes
4 interpretation of Section 752 controls this case. See Reply at
5 2-3.

6 In sum, in addition to being presented in an untimely
7 manner, Dykes is not controlling caselaw warranting reversal of
8 the Court's prior Order. Dykes does not eliminate the disputed
9 issues of material fact identified by the Court in its prior
10 Order either. See July 2021 Order at 6-7.

11 Lastly, as to (1) the "new" testimony from Defendants'
12 expert and (2) the Section 752 arguments Plaintiffs raise in
13 their motion and reply, both were before the Court when it denied
14 Plaintiffs' motion in July. See Second Mot. Thus, neither
15 constitutes a new fact or circumstance that was not present at
16 the time of the prior motion. E.D. Cal. Local R. 230(j).
17 Rather, both represent "recapitulation of the . . . arguments
18 considered by the court" previously. Westlands Water Dist., 134
19 F.Supp.2d at 1131. This too is insufficient to warrant
20 reconsideration.

21 22 III. ORDER

23 For these reasons, Plaintiffs have not persuaded the Court
24 to reconsider its prior decision. Plaintiffs' Motion is DENIED.

25 The Court further orders Plaintiffs' counsel to submit a
26 declaration showing cause why Rule 11 sanctions should not be
27 imposed. Plaintiffs third motion concerning the same issues, on
28 its face, arguably has been presented for the improper purpose of

1 causing unnecessary delay and needlessly increasing the cost of
2 litigation. Defendants are invited to submit a declaration with
3 supporting documentation setting forth the attorneys' fees
4 incurred in opposing this most recent motion. Both submissions
5 should be filed by December 3, 2021.

6 IT IS SO ORDERED.

7 Dated: November 24, 2021

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9 JOHN A. MENDEZ,
10 UNITED STATES DISTRICT JUDGE
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