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8 TERRENCE OLLIFF and DIANNE L. OLLIFF,
9 Individually and as Trustees of the Olliff Family Trust

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12 **(Sacramento Division)**

13 GRINDSTONE INDIAN RANCHERIA)
14 and ONE HUNDRED PLUS MEN,)
15 WOMEN AND CHILDREN LIVING ON)
16 GRINDSTONE INDIAN RESERVATION,)
17)
18 Plaintiff,)
19 vs.)
20 TERRENCE OLLIFF, individually and as)
21 a beneficiary/trustee of the Olliff family)
22 trust;)
23 DIANNE L. OLLIFF, individually and as a)
24 beneficiary/trustee of the Olliff family trust;)
25 DOES 1-10,)
26)
27 Defendants.)
28)

Case No. 2:17-CV-02292-JAM-EFB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY ADJUDICATION**

MSJ Date: August 13, 2019
Time: 1:30 P.M.
Dept.: Courtroom 6, 14th Floor
Judge: Hon. John A. Mendez

Trial Date October 21, 2019
First Amended Complaint: March 3, 2018

29 Counsel for Defendants, TERRENCE OLLIFF and DIANNE L OLLIFF, individually
30 and as Trustees of the Olliff Family Trust (herein referred to as "OLLIFF") submit this
31 Memorandum of Points and Authorities in support of the OLLIFF opposition to Plaintiffs'
32 Motion for Summary Adjudication of Declaratory Relief Claim, as follows:

1 **I. INTRODUCTION.**

2 This case involves a land dispute by and between the OLLIFF Defendants and Plaintiff
3 GRINDSTONE INDIAN RANCHERIA (“GRINDSTONE”). The OLLIFF Defendants
4 purchased their 15 acre parcel and home located at 3580 County Road 305, Orland, CA 95963,
5 in 1977 “OLLIFF Property”), GRINDSTONE obtained a 80 acre parcel at the southeast corner
6 of the OLLIFF Property in or about 1984 (the “Rancheria Parcel”), and purchased an additional
7 20 acres to the east of the OLLIFF Property in 1993 (hereinafter “Parcel 2”).

8
9 In 2011, the Bureau of Land Management (“BLM”) conducted a survey of the of the 80
10 acre Reservation Parcel and the 20 acre Rancheria Parcel which was noticed for filing in the
11 Federal Register on October 19, 2011 and subsequently filed in the Bureau of Land Management
12 California State Office, Sacramento (the “BLM Survey”).

13
14 OLLIFFS contend as alleged in their answer on file herein (Doc 22 at 4:15 5:6) that:

15 (1) The BLM Survey shows location of the Olliff Parcel east property line in the
16 same location as a 974 Pride Survey, save and except, noting a small overlapping conflict of the
17 Reservation Parcel in its North West corner onto the South East corner of the Olliff Parcel
18 containing approximately 40’ x 26’ square feet (referred to herein as the “Corner Conflict
19 Area”).

20
21 (2) The corner conflict was determined by the BLM Survey to be that the
22 historical cedar post corner marker for the North West corner of the Reservation Parcel was
23 originally established by T.L. Knock, “LS 6”, in his 1893 survey filed May 8, 1893, in Book 1 of
24 Maps and Surveys, Page 39, Glenn County Recorder’s Office, and is different in that it lays with
25 the South East corner of the Olliff Parcel as set in 1974 by the Pride Survey establishing the
26

1 corner marker position by more contemporary existent section control and the then current rules
2 for subdividing sections.

3 GRINDSTONE contends that the North West corner marker of the 80 acre Reservation
4 Parcel which is approximately 40 feet into the South East corner of the Olliff Parcel should be
5 adjudicated to extend and run due north approximately 1,082 feet along the eastern boundary of
6 Plaintiffs' Parcel 2 appurtenant to the Olliff Parcel to give GRINDSTONE approximately 43,500
7 square feet of the Olliff Parcel (the approximately 43,500 square feet is referred to herein as the
8 "Disputed Strip").
9

10 The OLLIFFS admit in their answer (Doc 22 at 5:7-8) that they did not object to the 2011
11 BLM Survey regarding the Corner Conflict Area and such land is that of GRINDSTONE as part
12 of the 80-acre Rancheria Parcel.
13

14 The OLLIFFS contend that the Disputed Strip is and has been for over 40 years property
15 occupied by Defendants, and that the BLM Survey did not and does not show the Disputed Strip
16 as being property of GRINDSTONE.
17

18 **II. STATEMENT OF DISPUTED AND ADDITIONAL FACTS.**

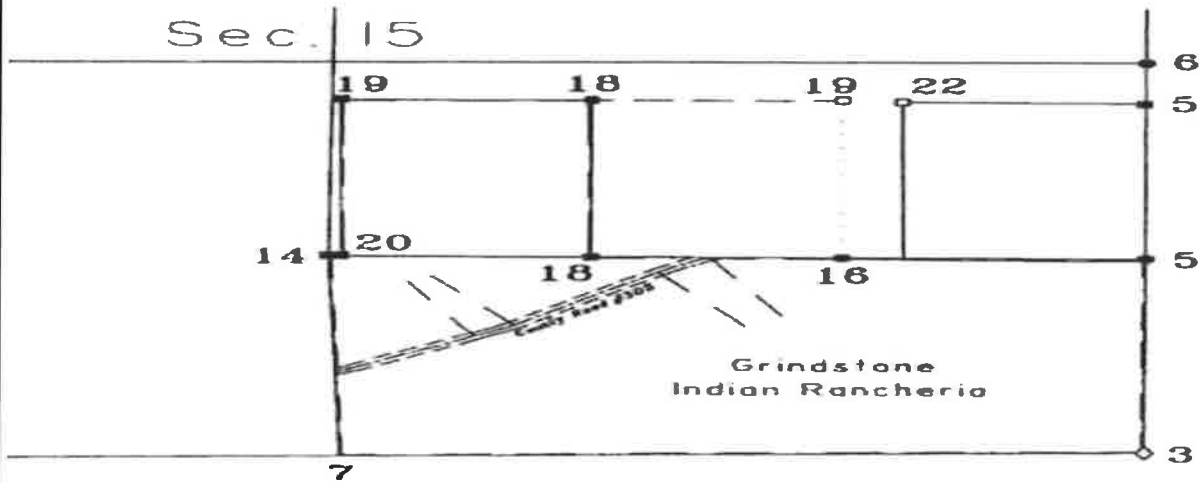
19 The disputed strip of land on the east side of the Olliff Property, west of what Plaintiffs
20 refer to as the 20 acre "Parcel 2", APN: 025-090-026 (hereinafter "Parcel 2") and at the north
21 west corner of the 80 Grindstone Rancheria (the "Rancheria Parcel"), the strip of land being
22 40.26 feet wide on the south end going north 1,675.86 feet and 23.85 feet wide at the north end
23 (hereinafter the "Disputed Strip") is not part of Plaintiffs' Parcel 2 to the east of the Olliff
24 Property. [see White Decl. ¶ 3.a, and White Decl. Ex. D]

25 The Disputed Strip is not part of Plaintiffs' 80-acre Rancheria Parcel. [see White Decl. ¶
26 3.b]

27 Neither the BLM Survey Field Notes or BLM Survey show or establish the Disputed
28 Strip as being part of Plaintiffs' Parcel 2 or Plaintiffs' 80-acre Rancheria. [see White Decl. ¶ 3.c]

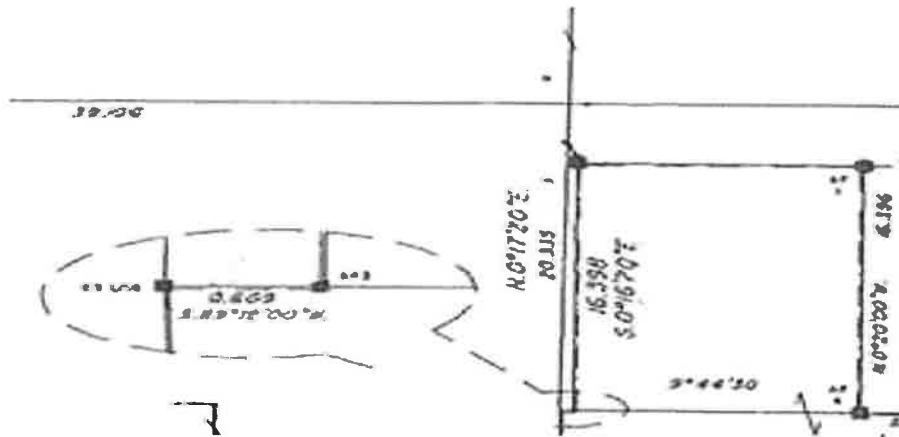
To the contrary, the BLM Survey Field Notes or BLM Survey show and establish the following as it relates to Plaintiffs' Parcel 2:

(1) The BLM Survey Field Notes at Doc. 29-4, at pg. 19, clearly shows on the diagram (Doc. No. 29-4, at pg. 19 of 64) the disputed area having reference to descriptions therein at 14, 19 and 20. The excerpt of the BLM Survey Field Notes Diagram (Doc. No. 29-4, at pg. 19 of 64) is as follows:



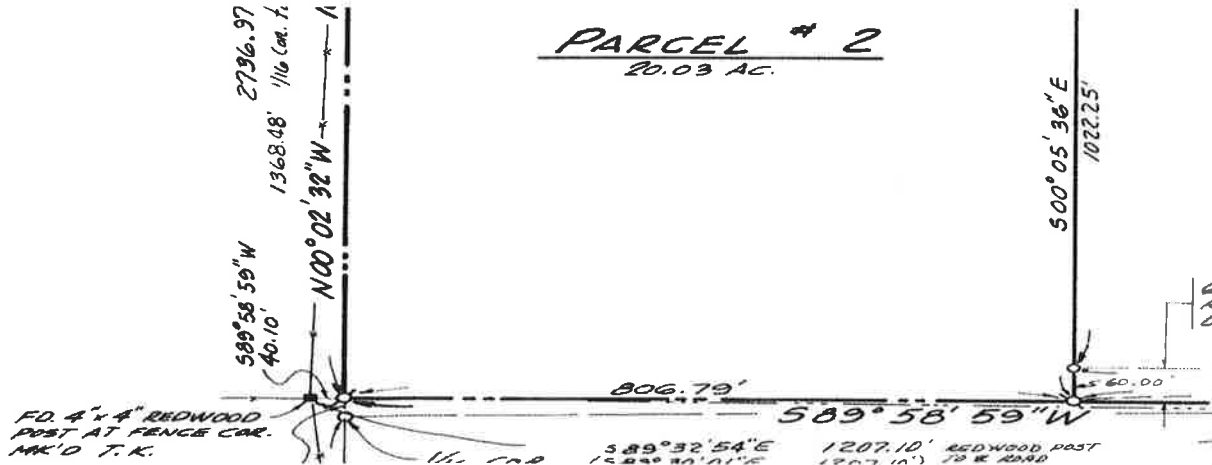
[see White Decl. ¶ 3.c(1)]

(2) Item 14 of the BLM Field Notes Diagram (Doc. No. 29-4, at pg. 33 of 64) establishes and shows the northwest corner (item 14 on the BLM Diagram above) for Plaintiffs' 80 acre Rancheria Parcel as being the 1893 Knock cedar post which is approximately 40 feet west of the south west corner of Plaintiffs' Parcel 2 (item 20 on the BLM Diagram) and as also shown on the BLM Survey (Ex. B attached hereto) in relevant part as follows:



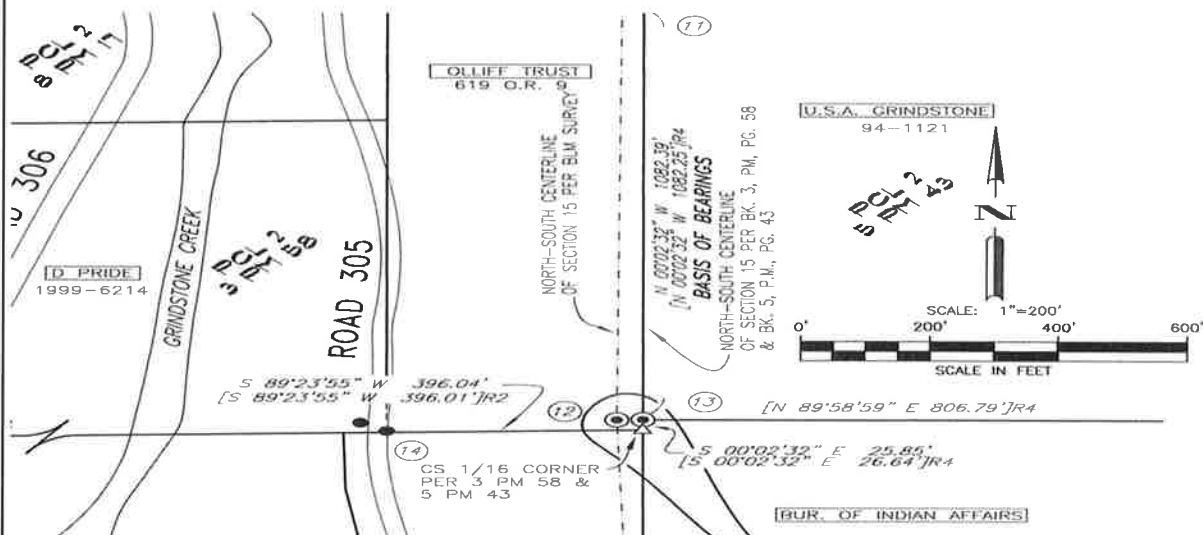
[see White Decl. ¶ 3.c(2)]

(3) Item 20 of the BLM Field Notes Diagram (Doc. No. 29-4, at pg. 39 of 64) establishes and shows the southwest corner of Plaintiffs 20 acre Parcel 2 to the east of the Olliff Property being the same southwest corner established by the 1976 Pride Survey, Ex. C attached hereto and shown in relevant part on Sheet 2 of 2 as follows:



[see White Decl. ¶ 3.c(3)]

The White Record of Survey of the Olliff Property and the western property line of Plaintiffs' 20 acre Parcel 2 also shows and establishes the western property line of Plaintiffs' Parcel 20 from the same point as the BLM Survey Diagram point "20" (Doc. No. 29-4, at pg. 39 of 64), BLM Survey (Ex. B attached hereto) as shown on Ex. A in relevant part as follows:



[see White Decl. ¶ 4, and White Decl. Ex. A]

1 Olliff purchased the Olliff Property in 1977 and has occupied and resided on the Olliff
2 Parcel since that time. [See Olliff Decl. ¶ 2]

3 Since 1997, Defendant Olliff has maintained the Disputed Strip of land giving rise to this
4 dispute. [See Olliff Decl. ¶ 3]

5 Since, 1997, Plaintiffs did not occupy or maintain the Disputed Strip of land and even
6 after obtaining title to Parcel 2 east of the Olliff Property have developed a portion of Parcel 2
7 east of the western property line for Parcel 2 as established and shown by the Pride Survey and
8 BLM Survey. [See Olliff Decl. ¶ 4]

9
10 **III. APPLICABLE LAW AND ARGUMENT.**

11 **A. Standard of Review.** The Federal Rules of Civil Procedure provide for summary
12 adjudication when "the pleadings, depositions, answers to interrogatories, and admissions on
13 file, together with affidavits, if any, show that there is no genuine issue as to any material fact
14 and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

15 In a motion for summary judgment, "[if] the moving party for summary judgment meets
16 its initial burden of identifying for the court those portions of the materials on file that it believes
17 demonstrate the absence of any genuine issues of material fact, the burden of production then
18 shifts so that "the non-moving party must set forth, by affidavit or as otherwise provided in Rule
19 56, 'specific facts showing that there is a genuine issue for trial.'" [See *T.W. Elec. Service, Inc. v.*
20 *Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex Corp. v.*
21 *Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

22 In judging evidence at the summary judgment stage, the Court does not make credibility
23 determinations or weigh conflicting evidence, and draws all inferences in the light most
24 favorable to the nonmoving party. [See *T.W. Electric*, 809 F.2d at 630-31 (citing *Matsushita*
25 *Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538
26 (1986)); *Ting v. United States*, 927 F.2d 1504, 1509 (9th Cir. 1991).

27 The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e).

1 Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise
2 genuine issues of fact and defeat summary judgment. [See *Falls Riverway Realty, Inc. v. City of*
3 *Niagara Falls*, 754 F.2d 49 (2d Cir. 1985); *Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d
4 730, 738 (9th Cir. 1979). Hearsay statements found in affidavits are inadmissible. [See, e.g.,
5 *Fong v. American Airlines, Inc.*, 626 F.2d 759, 762-63 (9th Cir. 1980)].
6

7 **B. Plaintiffs Have Failed to Establish that There Exist No Disputed Material Facts**
8 **and the Motion for Summary Adjudication Should be Denied.** None of the admissible
9 evidence submitted by Plaintiffs establishes that the western boundary of Plaintiffs' 20-acre
10 Parcel 2 is anywhere but was shown in the Pride Survey (White Decl. ¶ 2.e. and Ex. C), BLM
11 Survey (White Decl. ¶2.d and Ex. D), White Survey (White Decl. ¶2.b and Ex. A) or the
12 Hoagland Survey (Doc. No. 29-3, pgs. 1-9) as being anywhere else but approximately 40 feet
13 east of the northwest corner marker of the 80-acre Plaintiffs' Rancheria Parcel running north
14 approximately 1082 feet. [see White Decl. ¶ 3 and 4]

15 Neither the BLM Survey Field Notes (Doc. No. 29-4, at pgs. 18-75) or the BLM Survey
16 (White Decl. ¶2.d and Ex. D) show the western boundary of Plaintiff's 20-acre Parcel 2 as
17 running north from the northwest corner marker of the Plaintiffs' Rancheria Parcel as the
18 western boundary of Plaintiff's 20-acre Parcel 2. [see White Decl. ¶ 3.a and 3.c]

19 Because a disputed issue of fact remains as to the western boundary of Plaintiffs' 20-acre
20 Parcel 2, Plaintiffs' motion for summary adjudication of the declaratory relief claim should be
21 denied.

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1 **IV. CONCLUSION.**

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3 For the foregoing reasons, request is made that the Court deny Plaintiffs' motion for
4 summary adjudication of the declaratory relief claim.

5 Respectfully Submitted,

6 GRIFFITH & HORN, LLP

7
8 DATED: July 25, 2019.

9 By: /s/ David R. Griffith
10 Attorneys for Defendants,
11 TERRENCE OLLIFF and DIANNE L. OLLIFF,
12 Individually and as Trustees of the
13 Olliff Family Trust
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PROOF OF SERVICE

I, the below signed, declare,

I am employed in the County of Butte, State of California, I am over the age of 18 years and not a party to the within action; my business address is 1530 Humboldt Road, Suite 3, Chico, California 95928. On the date set forth below, I served the foregoing document described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANTS' OPPOSITION TO PLAINTIFFS
MOTION FOR SUMMARY ADJUDICATION**

Said document was served on the interested party or parties in this action by placing a true copy of the original document, enclosed in a sealed envelope, and addressed as noted below.

Jack Duran, Jr., Esq.
Duran Law Office
4010 Foothills Boulevard
Suite 103, No. 98
Roseville, CA 95747
Phone: (916) 779-3316
E-mail: duranlaw@yahoo.com

I am familiar with our firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Chico, California in the ordinary course of business.

(By Mail) I deposited such envelope in the mail at Chico, California. The envelope was mailed with postage thereon fully prepaid.

(By Personal Service) Such envelope was delivered by hand to the below addressee.

(By Electronic Mail) Such document was delivered by electronic mail to the persons at the addresses set forth above, with prior consent.

(By Express Mail/Overnight Delivery) I delivered this document to a driver authorized by the express services carrier to receive such documents in a package designated by the express service carrier with delivery fees paid and addressed to the person set forth above at the address last given by that person for purpose of effectuating service in this matter and with direction for delivery of the document to that person at that address on the next business day.

I declare under penalty of perjury under the laws of the United States that the above is true and correct. I further declare that I am employed by an officer of the bar of this court and have made the above-referenced service on the date set forth below.

Executed on July 29, 2019, at Chico, California.

By: 
Steven Chamberlin