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14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

17 ALAN and CHRISTINA HARRISON, ROBERT  
18 QUITIQUIT, KAREN RAMOS, INEZ SANDS, and  
19 REUBEN WANT,

20 Plaintiffs,

21 v.

22 ROBINSON RANCHERIA BAND OF POMO INDIANS  
23 BUSINESS COUNCIL, DOES

24 Defendants.

Case No. C-13-1413-JST  
Hon. Jon S. Tigar

**BRIEF IN OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS**

Date: September 19, 2013  
Time: 2:00pm

Courtroom.: 9, 19<sup>th</sup> Floor

1 **STATEMENT OF ISSUES**

2  
3 The Defendants, the Business Council of the Robinson Rancheria Band of Pomo Indians  
4 (“Business Council”) or (“Defendants”), request that this Court decide whether: (a) the  
5 Plaintiffs’ claims are founded on federal law, (b) the defense of sovereign immunity is available  
6 to the Business Council in this case, (c) Plaintiff has failed to exhaust all remedies, (d) the  
7 principles of res judicata and collateral estoppel apply; and whether (e) this Court must recognize  
8 the Tribal Court’s decision and finding of fact. As set forth below, the Motion must be denied as:

- 9
- 10 1. Subject matter jurisdiction is proper in that the Plaintiffs’ allege that the Business  
11 Council has breached a contract, the Mutual Help and Occupancy Agreement  
12 (“MHOA”), whereby it assumed the liabilities and responsibilities of the contract.  
The contract’s administration is subject to the federal rules and regulations of  
Housing and Urban Development.
  - 13 2. The defense of sovereign immunity does not apply to violation of applicable federal  
14 statutes; which even if the defense did apply; it was waived when the Business  
15 Council assumed administration of the contract.
  - 16 3. Defendants’ Court, albeit defunct, provides that its decisions are unreviewable  
17 thereby eliminating any other remedy besides the present case.
  - 18 4. Since the prior federal case was dismissed for lack of subject matter jurisdiction, the  
19 merits were never litigated and therefore the principles of res judicata and collateral  
estoppel do not apply.
  - 20 5. Comity is neither mandatory nor appropriate in this case.

21 **STATEMENT OF FACTS**

22  
23 Plaintiffs, Alan and Christina Harrison<sup>1</sup>, Robert Quitiquit, Karen Ramos, Inez Sands and  
24 Reuben Want (“Homeowners”) are previously enrolled Pomo Indians who owned their homes on  
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<sup>1</sup> Representing Luwana Quitiquit and Sue Castillo via a power of attorney.

1 the Robinson Rancheria. The Robinson Rancheria Band of Pomo Indians of California (“Tribe”)  
2 is a federally recognized Native American Tribe with its lands in Northern California. The  
3 Plaintiffs occupied said homes for over twenty years in full compliance with a lease/purchase  
4 agreement. Said lease agreement is named the Mutual Help and Occupancy Agreement  
5 (“MHOA”), a Tribal housing program funded by the federal government through the Department  
6 of Housing and Urban Development for the benefit of residents of the Rancheria. Prior to 2001,  
7 the program was managed by the Northern Circle Indian Housing Authority, a third party  
8 housing consortium. In 2001 the Robinson Rancheria accepted assignment of the lease  
9 agreements. The Plaintiffs and the other tenants met and formed a housing association. At the  
10 first meeting of this association the Tribal Housing Director, Stephanie Hansen, the first and  
11 present Housing Director for the Rancheria, informed the Homeowners and all the tenants that  
12 they would be receiving deeds of ownership for their homes. The Homeowners were promised  
13 deeds to their homes and new contracts that would provide the means for ownership. To date,  
14 neither has been provided. From the date of assignment in 2001, the Robinson Rancheria  
15 Housing Authority, through its seven different directors, has breached the assigned lease and  
16 failed to provide tenants with a proper basis for them to make payments.  
17

18 The Defendants’ failure to properly manage the housing program has been noted through  
19 citations from federal agencies. This fact has caused further confusion as to the Homeowners’  
20 contractual status and their obligations. The Defendants created a tribal court with limited  
21 jurisdiction to hear Unlawful Detainer cases while contemporaneously bringing cases against the  
22 Homeowners in the newly created Trial Court. Unable to hear counterclaims or due process  
23 claims against the Tribal Housing authority, the Tribal Court ruled against the Homeowners.  
24

25 Prior to this case, the Defendants brought an action in federal court seeking to have the  
26 Tribal Court’s ruling enforced and for U.S. Marshalls to evict the Homeowners. However, when  
27 the Judge, in reviewing cross Motions for Summary Judgment, sent the case to a magistrate for  
28

1 evaluation, the Defendants voluntarily withdrew the case.

2 Later, without informing the Homeowners' counsel, the Defendants filed for and received  
3 writs of assistance from the defunct Tribal Court to evict the Homeowners. In a clandestine early  
4 morning assault, the Defendants, using the assistance of the local Sheriff's Department,<sup>2</sup> forced  
5 their way into the homes using dogs, guns and police cruisers. The Homeowners consist of  
6 elderly and disabled native men and women. The Tribal police informed the Homeowners that  
7 they had a very limited time to vacate, but that the belongings they could not remove  
8 immediately would be carefully documented on videotape and stored for their retrieval. Instead,  
9 many of their belongings were thrown into trucks and dumped at a storage unit while other  
10 belongings were discarded after the hired movers were allowed to pick through them. Reuben  
11 Wants' wife, Rosalie, had to be taken away after suffering what was thought to be a stroke. All  
12 of her prescription medications disappeared from their home. The order to document and record  
13 the Homeowners' possessions was rescinded by Defendants.

14 Without any compensation for lost, stolen and damaged possessions, much less their  
15 homes, Plaintiffs were evicted and debarred such that should they enter the Rancheria to see  
16 family, they will be arrested for criminal trespass. The homes that were forcibly taken from them  
17 have since been given randomly to others.

## 18 19 20 **ARGUMENT**

### 21 **I. THE TERMS OF THE MHOA AND THE FEDERAL REGULATIONS 22 GUIDING IT, PROVIDE JURISDICTION.**

23 The HUD provided form contract, MHOA, states that in addition to the terms of the  
24 MHOA, the federal regulations at 24 CFR §905 are to be used. Dkt. No 24-7, page 1. Further

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25  
26 <sup>2</sup> The Sheriff, Mr. Rivera, reported that he had been told that the evictees were armed and likely  
27 to be dangerous.

1 evidence of the applicability of federal regulations and thus, subject matter jurisdiction, is seen in  
2 the HUD responsibility and oversight by imposing requirements on the IHA via the MHOA. Dkt.  
3 No. 24-7, Article XIV, Section 14.2(a) entitled “Insurance.” (“The IHA shall carry all insurance  
4 prescribed by HUD, including fire and extended coverage upon the home.”). The question of  
5 how the federal laws apply and how they support Plaintiffs’ claims establishes subject matter  
6 jurisdiction under 28 U.S.C. §1331. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513 (2006) (“A  
7 plaintiff properly invokes §1331 jurisdiction when she pleads a colorable claim ‘arising under’  
8 the Constitution or laws of the United States.”). The MHOA “arises under” the authority granted  
9 by HUD in its federal regulations.  
10

11           There is a distinct dispute as to whether the MHOA conveyed ownership via a lease  
12 with purchase option or was a mere rental agreement. This is evinced by the fact that  
13 Defendants’ Complaint cites the Plaintiffs’ alleged breach for “. . . failing to pay rent as required  
14 under their MHOA.” Paragraph 10, lines 22-23. This is in conflict with Defendants’ Exhibit  
15 Letter , Dkt. 24-3, page 2, fn. 1, (“Under the terms of the Mutual Housing [*sic*] Occupancy  
16 Agreement, **title** to the house occupied by Luwana Quitiquit reverted to the Tribe.” Emphasis  
17 added. This description of the ownership rights is consistent with the Plaintiffs’ case and the  
18 basis of this lawsuit. Despite the use the word “rent” in the Declaration by Stephanie Rodriquez,  
19 Dkt. 24-4, page 2, line 12, the Plaintiffs have been unable to find the word “rent” in any of the  
20 MHOAs or federal regulations. This re-characterization of the Plaintiffs’ possessory interest and  
21 the subsequent violation of the rights that come with ownership is the issue in controversy.  
22  
23  
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## 25           **II. SOVEREIGN IMMUNITY DOES NOT APPLY.**

1 The MHOAs provides in Article XII, Section 12.2, "Such procedures [termination of  
 2 the MHOA] shall comply with the Indian Civil Rights Act; if applicable, and shall incorporate all  
 3 the steps and provisions needed to comply with State, local or Tribal law, with the least possible  
 4 delay." Dkt. 24-7. Although the Supreme Court has eviscerated the Indian Civil Rights Act, *Santa*  
 5 *Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), the contract is clear that termination procedures  
 6 must comply with state and local rules as well as Tribal law. In order to enforce this term of the  
 7 contract, which the Defendants voluntarily assumed from the previous Indian Housing Authority  
 8 ("IHA"), Northern Circle, the Defendants' defense of sovereign immunity must have been  
 9 waived. Another provision illustrating the fact that the Defendant, as the IHA of the MHOA,  
 10 subjected itself to laws outside of the Tribe is found in Article XIV, Section 14.3, which states,  
 11 "Any notices by the IHA to the homebuyer required under this Agreement **or by law** shall be  
 12 delivered . . ." Emphasis added. Dkt. No. 24-7.

### 15 **III. THE ROBINSON RANCHERIA TRIBAL COURT IS DEFUNCT AND** 16 **UNDESERVING OF COMITY.**

#### 17 **A. The Tribal Court Was Not Properly Established According To Its** 18 **Ordinance.**

19 The Robinson Rancheria Tribal Court has not been properly established.<sup>3</sup> The  
 20 Robinson Rancheria adopted Ordinance No. 2009-06-03 which purportedly established the  
 21 Tribal Court. Section 9.5.020 entitled, "Establishment of Court," states that the Tribal Court, ". . .  
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23  
 24 <sup>3</sup>It should be noted that the Declaration of Buffy Jimenez offered Tribal Court procedural  
 25 documents that were unsigned and on their face, the court documents of the Chemehuevi Tribe,  
 26 e.g. Rule 47 of the "Rules of Pleading Practice and Procedure of the Tribal Court of the  
 27 Robinson Rancheria," Articles II and III of the "Robinson Rancheria Tribal Court Personnel  
 28 Policy and Clerk of Court Procedures Manual," *See Dkt. 18, Decl. of Buffy Jimenez, Robinson  
 Rancheria Band of Pomo Indians v. Quitiquit, et. al., Case No. 4:11-cv-04348-YGR.*

1 shall consist of two divisions, the Trial Court and the Court of Appeals.” *See Dkt. 1, Exhibit A,*  
2 “*An Ordinance of the Robinson Rancheria Citizens Business Council of the Robinson Rancheria*  
3 *Establishing a Tribal Court,*” *Robinson Rancheria Band of Pomo Indians v. Quitiquit, et. al.,*  
4 *Case No. 4:11-cv-04348-YGR.* Although the language in section 9.5.070 (A) provides that,  
5 “[u]ntil the Business Council adopts a separate ordinance establishing a Court of Appeal and  
6 providing for its scope of review, the decisions of the Trial Court shall be final and  
7 nonappealable,<sup>4</sup>” subsection (C) entitled “Right to Appeal,” states that, “any party who is  
8 aggrieved by the final order, commitment, or judgment of Trial Court may appeal.” Further,  
9 other sections of the Ordinance regarding civil and criminal procedures mandate the  
10 development of procedures for the Court of Appeals. *Id.* At a minimum, the Ordinance, but for  
11 the sole provision cited above, contemplates and extends the right to appeal.  
12  
13

14 **B. The Tribal Court Violated The Defendants’ Due Process Right To Appeal As**  
15 **Established By The Tribal Court Ordinance.**

16 As was noted in the Tribal Court’s decisions, it lacked authority to review the  
17 administrative hearings that were mandatory as a precedent to the case in Tribal Court. Without  
18 the authority to review the administrative process, the Tribal Court was compelled to accept  
19 whatever facts were presented by the Plaintiff without the ability to review and was unable to  
20 rule on whether due process had been afforded the defendants, which should have been a factor  
21 in making any decision. *See Dkt. No. 1, Exhibit B, Tribal Court Decision dated January 20,*  
22 *2011, Robinson Rancheria Band of Pomo Indians v. Quitiquit, et. al., Case No. 4:11-cv-04348-*  
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24  
25 <sup>4</sup>The Tribal Court Ordinance creates a two court system; the Trial Court and Court of Appeals.  
26 However, Plaintiff only created a Trial Court. Nonetheless, the opinion refers to the Tribal Court  
27 not the Trial Court. This, coupled with the argument above, supports opposition to comity.  
28

1 YGR; *see also Mary Jane Wilson v. Thomas David Marchington*, 127 F.3d 805, 811 (9<sup>th</sup> Cir.  
2 1997)(the court held that failure to have access to appeal or review of a decision would support a  
3 conclusion to not recognize a tribal court decision).

4 **C. The Tribal Court Was Not Authorized To Review Administrative Procedures  
5 Involved In Terminating The MHOA, Which Was The Center Point Of The  
6 Controversy.**

7 From the Opinion, Decision and Order of the Robinson Rancheria Tribal Court,  
8 dated January 20, 2011, the Tribal Court did not review whether the Tribal Housing Authority  
9 followed the MHOA terms in terminating the agreement. The MHOA provides for certain rights  
10 to be protected as part of the procedures for terminating the MHOA. These rights were violated;  
11 however, the Tribal Court was not authorized to review the MHOA. Without the authority to  
12 review the MHOA and thus the rights afforded the Defendants, it is not appropriate to recognize  
13 the Tribal Court decision. *See Dkt. No. 1, Exhibit C, MHOA, Article XII, Section 12.2, Robinson  
14 Rancheria Band of Pomo Indians v. Quitiquit, et. al., Case No. 4:11-cv-04348-YGR.*

15 **IV. RES JUDICATA AND COLLATERAL ESTOPPEL DO NOT APPLY.**

16 **A. Res Judicata.**

17 The enunciated principle of res judicata is stated in *Taylor v. Sturgell*, 553 U.S.  
18 880, 892 (2008)(“The preclusive effect of a judgment is defined by claim preclusion and issue  
19 preclusion, which are collectively referred to as “**res judicata**.”) Together the doctrine prohibits  
20 the very same claim regardless of issues and the very same issues from being relitigated when  
21 they have been “. . . actually litigated and resolved in a valid court determination essential to the  
22 prior judgment.”



1 The Defendants' seek to have this Court utilize the doctrine of res judicata to foreclose  
2 consideration of the claims raised by the Plaintiffs by citing an earlier case wherein the  
3 Homeowners sought to avoid eviction by attempting to raise a habeas corpus action under the  
4 Indian Civil Rights Act. *Quitiquit v. Robinson Rancheria Citizens Council*, Case No. C 11-0983  
5 PJH. That Court determined that it did not have subject matter jurisdiction since, "[t]he Ninth  
6 Circuit has clearly held, however, that federal courts have no jurisdiction to hear habeas corpus  
7 under §1303 unless (1) the petitioner is in custody, and (2) the petitioner first exhausts tribal  
8 remedies." *Id.* at 8. Unlike the Defendants' argument now, which asserts that the Plaintiffs have  
9 failed to exhaust remedies, that Court found that "[i]t appears probable that petitioners have in  
10 fact exhausted their tribal remedies." *Id.* at 8. Further, the Defendant has acknowledged that the  
11 Tribal Court decision is non-appealable in its Complaint. Dkt. 24, paragraph 22, ("The Tribe has  
12 not established a Tribal Court of Appeals. Under the Tribe's Tribal Court Ordinance, the  
13 Decisions of the Tribal Trial Court are final and non-appealable.  
14  
15

16 The Plaintiffs engaged in several appeals before the Tribal Court, which in an incredibly  
17 display of indifference, simply ignored them. The Plaintiffs believe in good faith that it will be  
18 able to show that the Business Council has directed the actions of the judiciary at the Robinson  
19 Rancheria thereby tainting justice. Because of the long delay in response and the intervening  
20 forcible removal, the Plaintiffs have made understandable efforts to otherwise resolve the issues  
21 presented.  
22

23 This is not a case to avoid eviction; this case is about reversing a breach of contract  
24 that resulted in the physical taking of Plaintiffs' property, destroyed their belongings and the  
25 death of at least one pet without compensation. This case is not brought under the Indian Civil  
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27

1 Rights Act, but rather it is brought as a contracts case. Neither the Tribal Court nor the Federal  
2 Court heard the facts surrounding the Plaintiffs allegations of breach of contract. The Federal  
3 Court did not make a decision on the merits of the prior case and was not presented with the  
4 current issues. The Defendant also fails to cite the federal court case it brought seeking eviction  
5 assistance from U.S. Marshals. *Robinson Rancheria Band of Pomo Indians v. Quitiquit, et. al.*,  
6 *Case No. 4:11-cv-04348-YGR*. In that case, the Defendants, here the Plaintiffs, sought to raise  
7 the contractual issues, the Business Council asked for a dismissal. This case is brought,  
8 primarily, on the actions subsequent to both the Tribal Court and the federal court.  
9

#### 10 **B. Collateral Estoppel.**

11 The Defendant has referred to Plaintiffs' case as a "... simple eviction  
12 proceeding." Dkt. No. 24, page 20. This is a gross misrepresentation. This case represents the  
13 issue of whether or not a small group of people can frustrate federal laws designed to help Indian  
14 people and manipulate those programs to harm others by utilizing a less than honest court system  
15 and employing the muscle and guns of local police. This is no dramatization for the 6 people that  
16 were thrown out of their homes and made to carry what they could off the Rancheria, while the  
17 Defendants watched and jeered.  
18

19 The Defendants' statement of the doctrine of collateral estoppel is acceptable.  
20 However their conclusion is misplaced. The issue at stake is not whether or not the Tribe can  
21 evict the Homeowners, the issue is can the Defendants violate contractual and federal law by  
22 seizing property bought and paid for by the Plaintiffs. Second, the issues were not "actually"  
23 litigated as the Defendant withdrew before the facts could be presented. The only determination  
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1 made was that the Court lacked subject matter jurisdiction, which absent that there can be no  
2 other findings of fact and thus, there is no Collateral Estoppel.

3 **V. DISMISSAL WOULD BE INAPPROPRIATE.**

4 The courts have universally held that, “[a] complaint should not be dismissed unless it  
5 appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that  
6 would entitle it to relief.” *Colwell v. Dept. of Health and Human Services*, 558 F.3d 1112, 1121  
7 (9<sup>th</sup> Cir. 2009). The United States Supreme Court has added, “. . . dismissals prior to giving the  
8 plaintiff ample opportunity for discovery should be granted sparingly.” *Hospital Building Co. v.*  
9 *Trustees of the Rex Hospital*, 425 U.S. 738, 746 (1976). The fact that the Plaintiffs are alleging  
10 conduct on behalf of the Business Council that breaches the MOHAs is enough to warrant  
11 further litigation of these matters.  
12

13  
14 In addressing a motion to dismiss, courts generally view the facts alleged in the  
15 complaint as true for purposes of the motion. However, where there are factual challenges to  
16 subject matter jurisdiction, the courts do not apply the same presumption. *White v. Lee*, 227 F.3d  
17 1214, 1242 (9<sup>th</sup> Cir. 2000); *see generally*, 5C Fed. Prac. & Proc. Civ. § 1363 (3d ed.) Ch. 4,  
18 Pleadings and Motions. Once the moving party has presented factual evidence challenging  
19 jurisdiction, the opposing party must come forward with evidence establishing subject matter  
20 jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039-1040 (9<sup>th</sup> Cir. 2004)  
21 (quoting *Bell v. Hood*, 327 U.S. 678 (1946)).  
22

23  
24 However, courts should not engage in factual determinations of disputed facts where  
25 a jurisdictional question and the substantive issues in the case are intertwined such that the  
26 jurisdictional issue is dependent upon resolving factual issues going to the merits of the dispute.  
27

1 *Id.* at 1039. The Defendants would ask the Court to rearrange the Plaintiff's case, discount every  
2 fact alleged and convert the Plaintiffs claims from being brought against a vengeful, tyrannical  
3 tribal leadership into an action against the entire tribal entity that would disrupt tribal  
4 government and devastates the tribal economy. This is simply not true.  
5

6  
7 **CONCLUSION**

8 For the foregoing reasons stated above, the Plaintiffs respectfully request that this  
9 Court deny the Defendants' Motion to Dismiss.  
10

11  
12 Dated: August 26, 2013

13  
14 ALAN and CHRISTINA HARRISON, ROBERT  
15 QUITQUIT, KAREN RAMOS, INEZ SANDS,  
and REUBEN WANT

16 */S/ Jeffrey Daly, Esq.*  
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18 Attorney for the Plaintiffs  
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