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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ALAN AND CHRISTINA HARRISON, ROBERT QUITIQUIT, KAREN RAMOS, INEZ SANDS, and REUBEN WANT, Plaintiffs, v. ROBINSON RANCHERIA BAND OF POMO INDIANS BUSINESS COUNCIL, DOES Defendants. _____	Case No. C-13-1413-JST DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF DATE: September 19, 2013 TIME: 2:00 p.m. CTRM.: 9, 19th Floor JUDGE: Hon. Jon S. Tigar

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TO THE PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on September 19, 2013, at 2:00 p.m., or as soon thereafter as the matter may be heard, Courtroom of the Honorable Jon S. Tigar, Judge of the United States District Court for the Northern District of California, Courtroom 9, located on the 19th Floor at 450 Golden Gate Avenue, San Francisco, California, Defendants, Robinson Rancheria Band of Pomo Indians Business Council, and each of them, will make a special appearance for the sole purpose of moving the Court, pursuant to Fed. R. Civ. P. Rule 12 (b)(1) and Fed. R. Civ. P. Rule 12 (b)(6), for an order dismissing all of the causes of action set forth in the Plaintiffs' complaint ("Complaint") against all the Defendants.

Specifically, Defendants move the Court for an order declaring:

1. That all of the claims set forth in the Complaint arise from a breach of contract action that is an internal tribal matter and do not arise under the Constitution, laws and treaties of the United States and therefore, this Court lacks subject matter jurisdiction to hear this case;

2. That the Defendants, as the elected officials of the Robinson Rancheria Band of Pomo Indians ("Tribe"), a federally recognized Indian Tribe, enjoy sovereign immunity from suit, have never given their consent to be sued and therefore, Plaintiffs' claims are barred by the Defendants' sovereign immunity; and

3. That, even if the doctrine of sovereign immunity does not bar this action against Defendants, because Plaintiffs' claims and the legal and factual issues presented in the instant case have already been litigated in this Court in the related case, *Luwana Quitiquit et al. v. Robinson Rancheria Citizens Business Council*, Case No. C 11-00983 PJH, Plaintiffs' claims are barred by *res judicata* and collateral estoppel.

4. That, even if the doctrine of sovereign immunity does not bar this action against Defendants, Plaintiffs' claims are precluded because Plaintiffs failed to exhaust available tribal administrative and judicial remedies.

5. That, even if the doctrine of sovereign immunity does not bar this action against Defendants, Plaintiffs' claims are precluded by the Defendants' Tribal Court Judgment that this Court is obligated to recognize and enforce under principles of comity.

For all of these reasons, the Court lacks jurisdiction over this case and Plaintiffs have failed to state a claim upon which relief can be granted.

This motion is made upon the grounds that there are no material issues of fact in dispute in this case and that the Defendants, and each of them, are entitled to a dismissal as a matter of law.

Plaintiffs should not be permitted to waste Defendants' time and financial resources or this Court's judicial resources by re-litigating claims and issues that Plaintiffs have had a full and fair opportunity to litigate before this Court and in Robinson Rancheria Tribal Court ("Tribal Court")

INTRODUCTION

In this memorandum, the defendants will show: (1) that plaintiffs' claims do not arise under the Constitution, laws and treaties of the United States; (2) that the Defendants; and each of them, enjoy sovereign immunity and cannot be sued without the Tribe's consent; and (3) that the Tribe has never given its consent for the Tribe or any of the Defendants to be sued in this case and, therefore, Plaintiffs' Complaint must be dismissed by this Court.

In the alternative, Defendants shall demonstrate, that even if the Defendants did not enjoy sovereign immunity from suit: (1) that the Plaintiffs failed to exhaust their tribal administrative remedies; (2) that the Plaintiffs failed to exhaust their Tribal Court remedies; (3) that Plaintiffs' claims are barred by res judicata, collateral estoppel; and (4) a Tribal Court judgment on the merits of Plaintiffs' claims should be recognized and enforced by this Court under principles of comity. Therefore, Plaintiffs' Complaint must be dismissed.

STATEMENT OF FACTS[1]

1. The Robinson Rancheria is a federally recognized Indian tribe, recognized by the Secretary of the United States Department of the Interior as maintaining a government-to-government relationship with the United States. Declaration of Michelle Iniguez in Support of Defendants' Motion to Dismiss ("Iniguez Declaration"), p. 1, ¶ 2.

2. The Tribe is organized under Section 16 of the Indian Reorganization Act of 1934, 48 Stat. 984 (25 U.S.C. § 476), under a written constitution ("Constitution"), which has been approved by the Secretary of the Interior and which designates the Robinson Rancheria Citizens Business Council ("Council") as the governing body of the Tribe. Iniguez Declaration, p. 2, ¶ 3 and Exhibit 1 thereto.

3. Under its Constitution and the IRA, the Council has the authority to enact its own laws and ordinances and to prevent the alienation and encumbrance of its lands. Iniguez Declaration, p. 2, ¶ 4; 25 U.S.C. § 476.

4. Under the Tribe's Constitution, the Business Council has never enacted a law or a resolution waiving the sovereign immunity of the Tribe or the Defendants, or in any way given its consent to allow the Plaintiffs to sue the Tribe or the Defendants. Iniguez Declaration, p. 2, ¶ 6.

5. Under the Tribe's Constitution, the general membership of the Tribe has never taken any action to waive the Tribe's sovereign immunity from suit, or to otherwise give its consent to allow the Plaintiffs in this case to sue the Defendants. Iniguez Declaration, p. 2, ¶ 7.

6. Pursuant to the authority granted to it by the Constitution, the Business

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[1] For the convenience of the Court, the Defendants now present the facts relevant to the issue of this Court's subject matter jurisdiction and preclusion of Plaintiffs' claims. Defendants will not allege facts that are not related to these issues, including alleged due process violations arising from the administrative hearings held by the Robinson Rancheria's Housing Department, the alleged due process violations in the Tribal Court proceedings, or alleged breaches of the Mutual Housing Occupancy Agreements ("MHOA"). Defendants do not admit the truth of any of those allegations.

Council has enacted a Tribal Court Ordinance. Iniguez Declaration, p. 2, ¶ 8 and Exhibit 2 thereto.

7. Neither the Constitution, nor the Tribal Court Ordinance, nor any other tribal law grants the Business Council the authority to overturn the decisions of the Tribal Court. Iniguez Declaration, pp. 2-3, ¶ 9.

8. Plaintiffs Luwana Quitiquit, Robert Quitiquit, Karen Ramos, Inez Sands, and Reuben Want entered into Mutual Help and Occupancy Agreements ("MHOA") with the Northern Circle Indian Housing Authority ("NCIHA"), pursuant to the Department of Housing and Urban Development's Mutual Help Homeownership Opportunity Program. In the agreements, each Plaintiff and/or their predecessor in interest agreed to rent the house located on a parcel of Reservation trust land that their presently occupies as a 25 year tenancy with an option to purchase the home. Under the MHOAs, each Plaintiff was required to pay a monthly administration fee as rent, which was due and payable on the first day of each month. Declaration of Stephanie Rodriguez in Support of Defendants' Motion to Dismiss ("Rodriguez Declaration"), pp. 1-2, ¶ 2, and Exhibits 1-4 thereto.

9. On November 29, 2001, NCIHA assigned all of its right, title, and interest in the MHOAs and the houses subject to the MHOAs, to the Tribe. Rodriguez Declaration, p. 2, ¶ 3.

10. Pursuant to the MHOAs, Robert Quitiquit, Karen Ramos, Inez Sands, and Reuben Want (hereinafter, "tenants") occupied homes on parcels of tribal trust land located on the Reservation. Each tenant breached their MHOA by failing to pay the rent as required under their MHOA. Rodriguez Declaration, p. 2, ¶ 4.

11. Each tenant was served with a notice of delinquency ("Notice of Delinquency") by the Tribe stating that the tenant owed back rent and that the notice constituted the final demand for payment of all amounts in arrears. The Notice of Delinquency requested that the tenant meet with officials of the Robinson Rancheria Housing Department ("RRHD"), to create a plan to resolve the MHOA violations.

None of the tenants resolved the delinquency. Iniguez Declaration, pp. 3-4, ¶ 15.

12. As a result of the tenants' failure to resolve their delinquencies, the Tribe caused each tenant to be personally served with a Notice of Termination of Mutual Help and Occupancy Agreement ("Notice of Termination") stating that tenant was in violation of the MHOA, that tenant had failed to respond to or comply with the Notice of Delinquency, and that the MHOA would be terminated unless the Plaintiff paid the past due rent and cured the violations of the MHOA or requested a hearing before the RRHD's Board of Commissioners. The Notice of Termination stated that the hearing would be held "to give you a fair opportunity to present your case and attempt to cure the breach of your MHOA." Iniguez Declaration, p. 4, ¶ 16.

13. Only Luwana Quitiquit met with RRHD officials in response to the Notice of Delinquency. She entered into a payment agreement for the amount in arrears, but violated the agreement by failing to make the payments required under the repayment agreement. None of the other tenants responded to the Notice of Termination. Iniguez Declaration, pp. 3-4, ¶¶ 15.

14. None of the tenants requested a hearing in response to the Notice of Termination. Nevertheless, on August 25, 2009, the RRHD's Board of Commissioners, after giving the tenants written notice of the time, date, and place of the hearing, held a hearing on the termination of each tenant's MHOA. None of the tenants attended the hearing on the termination of their MHOA or submitted any evidence or argument in opposition to the termination of their MHOA. At the end of the hearings, the Board of Commissioners voted to terminate each tenant's MHOA. Iniguez Declaration, p. 4, ¶ 17.

15. In January, 2010, the Tribe caused each of the tenants to be personally served with a Three Day Notice to Quit. The notice demanded payment of the delinquent rent and possession of the premises. In each case, the period stated in the notice expired without payment of the delinquent rent by the tenant and without the tenant vacating the premises. Iniguez Declaration, pp. 4-5, ¶ 18, and Exhibits 4-7

thereto.

16. The Tribe subsequently filed an unlawful detainer complaint against each of the tenants in the Robinson Rancheria Tribal Court: *Robinson Rancheria of Pomo Indians v. Luwana Quitiquit*, Case No. C-10-06-06-RM; *Robinson Rancheria of Pomo Indians v. Robert Quitiquit*, Case No. C-10-06-07-RM; *Robinson Rancheria of Pomo Indians v. Karen Ramos*, Case No. C-10-05-03-RM; *Robinson Rancheria of Pomo Indians v. Inez Sands*, Case No. C-10-05-05-RM; and *Robinson Rancheria of Pomo Indians v. Reuben Want*, Case No. C-10-05-02-RM. Declaration of Norma Lopez in Support of Plaintiff's Motion for Summary Judgment ("Lopez Declaration"), p. 2, ¶ 7.

17. Each of the tenants was personally served with a summons and the complaint in the Tribe's action. Lopez Declaration, p. 3, ¶ 8. Each of the tenants was represented by legal counsel of their choice admitted to practice law in the State of California by the California State Bar. Each of the tenants was given an opportunity in the Unlawful Detainer Cases to: (a) call and cross-examine witnesses; (b) introduce documentary evidence; and (c) present both oral and written arguments to the Tribal Court Judge. Lopez Declaration, p. 3, ¶ 9.

18. In October, 2010, after pretrial motions were heard and ruled upon, each of the Unlawful Detainer Cases was tried separately by the Tribal Court before Judge Robert Moeller, a former solicitor in the United States Department of the Interior, a non-Indian, non-member of the Tribe who has no personal relationship with the Tribe or any of its members. Lopez Declaration, p. 3, ¶ 9.

19. Following submission of post-trial briefs, on January 20, 2011, the Tribal Court issued an opinion, decision, and order finding in favor of the Tribe. Lopez Declaration, p. 3, ¶ 10, and Exhibit 7 thereto.

20. On February 28, 2011, the Tribal Court entered an Order Adopting Proposed Findings of Fact, Conclusions of Law, and Judgment ("Judgments") in *Robinson Rancheria of Pomo Indians v. Karen Ramos Inez Sands, Ruben Want, Robert Quitiquit and Luwana Quitiquit*. Lopez Declaration pp. 3-4, ¶ 11 and Exhibit 8

thereto.

21. Each of the Tribal Court defendants was served with the applicable Judgment, but none of them filed a motion to vacate the Judgments, a motion for rehearing, or any other challenge to the Judgments in the Tribal Court. Lopez Declaration, p. 3, ¶¶ 12-13.

22. The Tribe has not established a Tribal Court of Appeals. Under the Tribe's Tribal Court Ordinance, the decisions of the Tribal Trial Court are final and non-appealable. Iniguez Declaration, p. 3, ¶ 10, and Exhibit 2 thereto.

23. The Judgments are final, conclusive, enforceable, and non-appealable judgments under the laws of the Tribe. The Judgments have not been vacated, modified, stayed, or set aside. Lopez Declaration, p. 4, ¶ 14.

24. Plaintiffs Alan and Christina Harrison are the children of Luwana Quitiquit, who was evicted from a home on the Robinson Rancheria. Rodriguez Declaration, p. 2, ¶ 6.

25. Luwana Quitiquit had held a right to possession of a home on the Robinson Rancheria pursuant to a MHOA. Rodriguez Declaration, pp. 2-3, ¶ 2.

26. The successor to the MHOA entered into by Luwana Quitiquit was Suelamatra Castillo, another daughter of Luwana Quitiquit. Rodriguez Declaration, p. 2, ¶ 6.

27. Neither Alan nor Christina Harrison ever held a right to occupy the home of Luwana Quitiquit. Rodriguez Declaration, p. 2, ¶ 5.

28. After the eviction of Luwana Quitiquit, the Tribe arranged for, and paid for, transportation of Quitiquit's household goods to a storage facility. Rodriquez Declaration, pp. 2-3, ¶ 7.

29. The Harrisons inquired of the Housing Department for the Robinson Rancheria as to the amount of money owed the storage facility in order to retrieve Quitiquit's household goods. Rodriguez Declaration, p. 3, ¶ 8.

30. After the Housing Department officials informed the Harrisons of the

amount of money necessary to retrieve the household goods from storage, the Tribe received no further enquires from the Harrisons regarding payment of the invoices for storage of Quitiquit's household goods in the storage facility. Rodriguez Declaration, p. 3, ¶ 9.

31. On March 2, 2011, Plaintiffs served an ex parte application for a temporary restraining order in *Quitiquit, et al., v. Robinson Rancheria Citizens Business Council, et al.,* (C 11-00983 PJH). Declaration of Lester J. Marston in Support of Defendants' Motion to Dismiss ("Marston Declaration"), p. 2, ¶ 3.

32. On March 3, 2011, Plaintiffs served Defendants' attorney with a Petition for Writ of Habeas Corpus in the *Quitiquit, et al., v. Robinson Rancheria Citizens Business Council, et al.*, U.S. District Court for the Northern District of California, No. C 11-0983-PJH. Marston Declaration, p. 2, ¶ 4.

33. On July 1, 2011, Judge Phyllis J. Hamilton, United States District Judge, entered an Order Granting Motion to Dismiss in *Luwana Quitiquit, et al., v. Robinson Rancheria Citizens Business Council, et al.* Marston Declaration, p. 2, ¶ 5.

34. On March 29, 2013, Plaintiffs filed a complaint in the present action, failing however to properly serve Defendants with the complaint. By stipulation, service was accepted. Marston Declaration, p. 2, ¶¶ 6-10.

I.

THE COURT LACKS SUBJECT MATTER JURISDICTION BECAUSE PLAINTIFFS' CLAIMS DO NOT ARISE UNDER THE CONSTITUTION, LAWS, OR TREATIES OF THE UNITED STATES.

Rule 12 (b)(1) of the Federal Rules of Civil Procedure ("FRCP") permits a court to dismiss an action where the court lacks subject matter jurisdiction. Federal courts are, of course, courts of limited jurisdiction. Federal jurisdiction may arise from claims raising a federal question or from diversity of the parties as plead in the complaint.

> Federal jurisdiction must stem from an element pleaded in plaintiff's complaint. *Louisville & Nashville R.R. v. Mottley, 211 U.S. 149, 152, 53 L. Ed. 126, 29 S. Ct. 42 (1908)*; *American Invs-co Countryside v. Riverdale Bank, 596 F.2d 211 (1979).* Therefore the court must look at the well-pleaded complaint to determine whether it supports federal

> subject matter jurisdiction. *Countryside, 596 F.2d at 216* ("Federal question must appear in plaintiff's well-pleaded complaint in order to make the case arise under federal law.").

Round Valley Indian Housing Authority v. Hunter, 907 F. Supp. 1343, 1346. (N.D. Cal. 1995) ("*Round Valley*").

In the present case, Plaintiffs have neither plead diversity jurisdiction nor alleged any facts that would support such a claim. Federal court jurisdiction, to the extent that it exists, therefore, must be based on federal question jurisdiction.

Plaintiffs have plead jurisdiction pursuant to 28 U.S.C. § 1331 ("Section 1331"), generally alleging that their claims arise under the Constitution, laws, or treaties of the United States. Specifically, plaintiffs allege that they were denied due process in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302(8) ("ICRA"). The factual allegations set forth in the Petition reveal that the Plaintiffs' claims are based on eviction actions brought in the Tribal Court under tribal law. In *Round Valley*, *supra*, this Court found that federal courts do not have jurisdiction over an action brought by a housing authority to evict individual tribal member tenants:

> . . . actions involving an Indian tribe as a party claiming a possessory right in land arising under federal law should be adjudicated by the federal courts. *Oneida, 414 U.S. at 676*. In contrast, actions which involve individual members of tribes where the underlying action does not involve an Indian tribe's possessory rights should be adjudicated by the state courts.

Round Valley, 907 F. Supp. at 1349.

The United States District Court for the Southern District of California reached the same conclusion:

> The Ninth Circuit, in an opinion which was subsequently withdrawn, and thus is no longer precedential, explained that actions like the one presently before the Court do not "require an interpretation of [a] federal right" and, thus, do not arise under federal law. *Owens Valley Indian Housing Authority v. Turner, 185 F.3d 1029 (9th Cir. 1999)*, withdrawn and reh'g granted, *192 F.3d 1330 (9th Cir. 1999)*, appeal dismissed as moot, *201 F.3d 444 (9th Cir. 1999)*. The *Turner* court cited with approval both *Hunter, 907 F. Supp. at 1348*, and *Reese, 978 F. Supp. at 1266*. See *185 F.3d at 1033*. The court agreed that, while federal common law jurisdiction exists when resolution of a case requires an interpretation of an Indian tribe's federal right of possession, an unlawful detainer suit brought by an Indian Housing Authority merely asserts the rights of a

> landlord as against its tenant, and does not implicate the Indian tribe's federally protected right to possess and exclude others from its lands. *Id. at 1032-33*. Although the Ninth Circuit's opinion in *Owens Valley* was withdrawn, the Court finds the reasoning expressed therein wholly persuasive and concludes that federal common law jurisdiction does not exist for the present action.

All Mission Indian Housing Authority v. Magante, 526 F. Supp. 2d 1112, 1116-1117 (S.D. Cal. 2007) (emphasis added).

Furthermore, federal courts have consistently and repeatedly ruled that federal courts have no jurisdiction to rule on internal tribal disputes based on tribal law, including tribal leadership disputes. The Court of Appeals for the Eighth Circuit summarized those decisions:

> Jurisdiction to resolve internal tribal disputes, interpret tribal constitutions and laws, and issue tribal membership determinations lies with Indian tribes and not in the district courts. See *United States v. Wheeler*, 435 U.S. 313, 323-36, 55 L. Ed. 2d 303, 98 S. Ct. 1079 (1978) (noting that Indian tribes are "unique aggregations possessing attributes of sovereignty over both their members and their territory" and holding that a tribe possessed the power to punish its members for violations of tribal laws) (quoting *United States v. Kagama*, 118 U.S. 375, 381, 30 L. Ed. 228, 6 S. Ct. 1109 (1886)); *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985) (holding that the district court lacked jurisdiction to resolve "disputes involving questions of interpretation of the tribal constitution and tribal law") (citations omitted); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996) (holding that the district court lacked jurisdiction to hear what, in effect, was an appeal by individuals from an adverse tribal membership determination by a tribe). We have characterized an election dispute concerning competing tribal councils as this type of non-justiciable intra-tribal matter. See *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983) ("The district court overstepped the boundaries of its jurisdiction in interpreting the tribal constitution and bylaws and addressing the merits of the election dispute.").

In re: Sac & Fox Tribe of the Mississippi in Iowa / Meskwaki Casino Litigation, 340 F.3d 749, 763-764 (8th Cir. 2003). See also, *Sac & Fox Tribe of the Mississippi in Iowa v. Bureau of Indian Affairs*, 439 F.3d 832, 835 (8th Cir. 2006).

Consistent with this limitation on federal court jurisdiction, federal courts have concluded that the forums that have jurisdiction to address internal tribal disputes under tribal law are tribal forums. Indian tribes "have power to make their own substantive law in internal matters . . . and to enforce that law in their own forums."

Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1978) ("*Santa Clara*"). "Because tribal governance disputes are controlled by tribal law, they fall within the exclusive jurisdiction of tribal institutions." *Attorney's Process and Investigation Services, Inc., v. Sac & Fox Tribe of the Mississippi in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010). See, *Goodface v. Grassrope*, 708 F.2d 335, 338 n. 4 (8th Cir. 1983). See also, *Shortbull v. Looking Elk*, 677 F.2d 645, 650 (8th Cir. 1982).

This Court does not have jurisdiction over the Plaintiffs' claims to a possessory right in the homes they formerly occupied. The unlawful detainer actions brought against the Plaintiffs has been adjudicated in the appropriate forum, the Tribal Court. Attempting to repackage those breach of contract/unlawful detainer actions as an action arising under the Constitution and federal law does not transform those claims into matters that are subject to federal court jurisdiction.

The Petition, therefore, must be dismissed.

II.

PLAINTIFFS' CLAIMS ARE BARRED BY THE ROBINSON RANCHERIA'S SOVEREIGN IMMUNITY FROM SUIT.

Even if the Court concludes that it has jurisdiction pursuant to Section 1331, Plaintiffs' claims are barred by tribal sovereign immunity.

As a federally recognized Indian tribe, the Tribe enjoys the protection of tribal sovereign immunity. "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara* at 58.

The sovereign immunity of an Indian tribe is coextensive with that of the United States itself. *Chemehuevi Indian Tribe v. California State Board of Equalization*, 757 F.2d 1047, 1050 (9th Cir. 1985), rev'd on other grounds, 474 U.S. 9 (1985); *Kennerly v. United States*, 721 F.2d 1252, 1258 (9th Cir. 1983).

Although tribal sovereign immunity can be abrogated by Congress or waived by a tribe, any such waiver must be unequivocally expressed and is to be narrowly

construed. *Santa Clara* at 58; *C & L Enters. v. Citizen Band Potawatomi Indian Tribe*, 532 U.S. 411, 418 (2001).

Judicial recognition of a tribe's immunity from suit is not discretionary with a court or administrative forum. Rather, absent an effective waiver or abrogation, the assertion of sovereign immunity by a federally recognized Indian tribe deprives the court of jurisdiction to adjudicate the claim:

> Sovereign immunity involves a right which courts have no choice, in the absence of a waiver, but to recognize. It is not a remedy, as suggested by California's argument, the application of which is within the discretion of the court. . . . Consent alone gives jurisdiction to adjudge against the sovereign. Absent that consent, the attempted exercise of judicial power is void. . . . Public policy forbids the suit unless consent is given, as clearly as public policy makes jurisdiction exclusive by declaration of the legislative body.

People of the State of California v. Quechan Tribe of Indians, 595 F.2d 1153, 1155 (9th Cir. 1979). See, also, *United States v. United States Fidelity and Guarantee Co.*, 309 U.S. 506, 512-513 (1940).

Tribal sovereign immunity is jurisdictional in nature and applies "irrespective of the merits" of the claim asserted against the Tribe. *Rehner v. Rice*, 678 F.2d 1340, 1351 (9th Cir. 1982), rev'd on other grounds, 463 U.S. 713 (1983).

The doctrine of Tribal sovereign immunity that bars lawsuits brought against an Indian tribe without its consent, equally applies to lawsuits brought against tribal officials acting in their representative capacity and within the scope of their authority: "Tribal immunity extends to Tribal officials acting within their representative capacity and within the scope of their authority." *United States v. Oregon*, 657 F.2d 1009, 1012 n. 8 (9th Cir. 1981); see also, *Snow v. Quinault Indian Nation*, 709 F.2d 1319, 1321 (9th Cir. 1983). Federal courts have specifically found that tribal council members acting within the scope of their authority are protected by tribal sovereign immunity. *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269 (9th Cir. 1991); *Saucerman v. Norton*, 51 Fed. Appx. 241, 243 (9th Cir. 2002).

Here, Defendants were, at all times relevant to the events alleged in the Complaint, acting in their official capacities. Since any action taken by the Defendants

that relate to the claims set forth in the Complaint were within the course and scope of Defendants' duties as tribal officials, Defendants enjoy the protection of tribal sovereign immunity in the absence of a waiver by the Tribe or Congressional abrogation of that immunity. *People of the State of California v. Quechan Tribe of Indians*, 595 F.2d 1153 (9th Cir. 1979); *State of California v. Harvier*, 700 F.2d 1217 (9th Cir. 1983); *Chemehuevi Indian Tribe v. California State Board of Equalization*, 757 F.2d 1047, 1051 (9th Cir. 1985).

The Complaint does not contain any allegation that the Tribe has waived its sovereign immunity with regard to Plaintiffs' claims. The Tribe has, in fact, never consented to a waiver of its sovereign immunity with regard to itself or any of the Defendants for any of the claims set forth in the Complaint. Iniguez Declaration, p. 2, ¶¶ 6-7. In addition, Plaintiff does not claim that the Tribe's sovereign immunity has been abrogated by Congress Thus, Plaintiffs' claims are barred by tribal sovereign immunity.

III.

PLAINTIFFS' CLAIMS MUST ALSO BE DISMISSED BECAUSE THEY FAILED TO EXHAUST ADEQUATE ADMINISTRATIVE AND TRIBAL COURT REMEDIES.

The Tribe has established a Tribal Court that can exercise jurisdiction over civil disputes and criminal acts occurring on the Tribe's Reservation. The Tribe has also established, under the Tribe's Tort Claims Ordinance ("Claims Ordinance"), a claims process that provides an administrative remedy for any person who has a claim sounding in tort or contract against the Tribe. Iniguez Declaration, p. 3, ¶ 11, and Exhibit 3 attached thereto. The Tribe's administrative procedure is a quasi-judicial function. It can be considered analogous to a tribal court. As the court stated in *National Farmers Union Insurance Cos. v. Crow Tribe*, 471 U.S. 845 (1985):

> Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge.

Decisions of the federal courts have also recognized the mandatory, jurisdictional nature of the policy of exhausting administrative remedies as an anterior condition to maintaining a claim against the United States.

> In a claim for damages against the United States, an independent cause of action must first be submitted for administrative review before that claim can be filed in federal court. *See 28 U.S.C. § 2675(a)*. Where such a claim is not first presented to the appropriate agency, the district court, pursuant to *Federal Rule of Civil Procedure 12(b)(1)*, must dismiss the action for lack of subject matter jurisdiction.

Goodman v. United States, 298 F.3d 1048, 1055 (9th Cir. 2002), citing *McNeil v. United States*, 508 U.S. 106 (1993).

As stated above, the sovereignty of an Indian tribe, such as the Tribe in this case, is coextensive with the United States. *Kennerly v. United States*, 721 F.2d at 1258.

The Tribe's Claims Ordinance must also be implemented here based on the tribal exhaustion doctrine. "[W]hen a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court precedence and afford it a full and fair opportunity to determine the extent of its own jurisdiction over a particular claim or set of claims." *Ninigret Development v. Narragansett Indian*, 207 F.3d 21, 31 (1st Cir. 2000). The doctrine applies even when a tribal agency other than a tribal court arguably has jurisdiction, *Burlington Northern R. Co. v. Crow Tribal Council* 940 F.2d 1239, 1246 (9th Cir. 1991), and applies in state court as well as federal court, *U.S. v. Plainbull*, 957 F.2d 724, 728 (9th Cir. 1992); *Redding Rancheria, supra.*

It is, furthermore, the policy of Congress to give full faith and credit to tribal courts and laws. Under Public Law 280, 25 U.S.C. §1360, Congress specifically required states covered by the Act to recognize tribal law:

> Any tribal ordinance or custom heretofore or hereafter adopted by an Indian Tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of any civil causes of action pursuant to this section.

25 U.S.C. §1360(c).

The Tribe's Claims Ordinance enacted by the Tribal Council establishes an administrative procedure for making claims against the Tribe for money or damages. Section 1.16.010 of the Claims Ordinance states:

> All claims against the Tribe or any of its business enterprises for money or damages shall be presented to the Tribal Council for the Tribe and acted upon as a prerequisite to suit thereon as further provided in this Chapter.

Here, at no point have Plaintiffs availed themselves of the administrative remedies established in the Claims Ordinance to address Plaintiffs' claims for damages incurred as a result of alleged property loss. As Plaintiffs' allege that this property loss was caused by Defendants' denial of due process and breach of the MHOAs, Plaintiffs' claims could indeed be addressed by the remedies provided in the Claims Ordinance. Furthermore, all claims for money damages set forth in Plaintiffs' Complaint, having resulted from events transpiring on the Reservation and involving persons having contractual relationships with the Tribe, should have been brought in Tribal Court.

Because Plaintiffs' claims for money damages could and should have been first addressed through the Tribe's administrative claims procedure, and because the Tribe's Tribal Court could properly exercise jurisdiction over these claims, Plaintiffs must first exhaust these available administrative and judicial remedies prior to filing suit in this Court. For this reason alone, the Plaintiff's complaint must be dismissed.

IV.

PLAINTIFFS' CLAIMS ARE BARRED BY RES JUDICATA AND COLLATERAL ESTOPPEL.

A. Under the Doctrine of Res Judicata, This Court's July 1, 2011 Order Granting Motion To Dismiss Precludes Litigating the Same Cause of Action.

The doctrine of *res judicata* provides that a final judgment on the merits bars a subsequent action between the same parties or their privies over the same cause of action and prevents litigation of all grounds and defenses that were or could have been raised in the action. *Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1518 (9th Cir. 1985); *Allen v. McCurry*, 449 U.S. 90, 94 (1980). An action is barred by res judicata when it

arises out of the "same transactional nucleus of fact" as a prior action. See *International Union of Operating Engineers-Employers Constr. Industry Pension, Welfare, etc. v. Karr*, 994 F.2d 1426, 1430 (9th Cir. 1993). Res judicata applies to questions of subject matter and personal jurisdiction. *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939). A defendant may raise the affirmative defense of res judicata by a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984).

In *Federated Dep't Stores v. Moitie*, 452 U.S. 394 (1991), the United States Supreme Court held that where some plaintiffs in a lawsuit had appealed an adverse ruling and prevailed, others who had not so appealed were forever barred from doing so by *res judicata*. The Court's ruling was based on several principles, none so forcefully stated as the following:

> The Court of Appeals also rested its opinion in part on what it viewed as "simple justice." But we do not see the grave injustice which would be done by the application of accepted principles of res judicata. "Simple justice" is achieved when a complex body of law developed over a period of years is evenhandedly applied. The doctrine of res judicata serves vital public interests beyond any individual judge's ad hoc determination of the equities in a particular case. There is simply "no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of *res judicata." Heiser v. Woodruff, 327 U.S. 726, 733 (1946).*

Id., at 2429, 401-402.

In *Federated Dep't Stores, supra*, the Court was particularly adamant that a failure to appeal could not be excused:

> Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. *Angel v. Bullington, 330 U.S. 183, 187 (1947)*; *Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371 (1940)*; *Wilson's Executor v. Deen, 121 U.S. 525, 534 (1887).* As this Court explained in *Baltimore S.S. Co.* v. *Phillips, 274 U.S. 316, 325 (1927)*, an "erroneous conclusion" reached by the court in the first suit does not deprive the defendants in the second action "of their right to rely upon the plea of *res judicata*. . . . A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct

> review and not by bringing another action upon the same cause [of action]." We have observed that "[the] indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of *res judicata* to avert." *Reed v. Allen, 286 U.S. 191, 201 (1932).*

Id., at 2428, 398-399.

In 2009, the United States District Court of the Northern District of California cited *Federated Dep't Stores*, *supra,* for the proposition that an unappealed ruling is subject to res judicata:

> The res judicata consequences of the unappealed judgment in the [earlier] action are not "altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Federated Dep't Stores, 452 U.S. at 398.*

Johnson v. Flores, 2009 U.S. Dist. LEXIS 20386 (N.D. Cal. Mar. 9, 2009), at 21-22.

Clearly, failure to appeal timely invokes res judicata. *Tartt v. Northwest Cmty. Hosp.*, 453 F.3d 817, 822 (7th Cir. 2006), although not within the Ninth Circuit, offers a succinct statement of the consequences of failing to appeal. There, the plaintiff failed to appeal a judgment within the 30-day appeal period under Fed. R. App. Proc. R. 4, the court held that the judgment was on the merits for res judicata purposes.

> Because [Plaintiff] did not appeal the dismissal of the . . . action within 30 days, the entry of judgment pursuant to *Rules 12(b)(6)* and *41(b)* on January 29, 2003, amounts to a final judgment on the merits for res judicata purposes. *See Fed. R. App. P. 4(a)(1)(A).*

Id., at 822.

Here, Plaintiffs in the earlier habeas proceeding did not appeal its dismissal and therefore the doctrine of res judicata bars them from again bringing some of the same claims.

That Plaintiffs' requested relief differs from petitioners' requested relief does not generate a new cause of action so as to avoid the bar of res judicata. In *Bailey v. IRS*, 188 F.R.D. 346 (D. Ariz. 1998), the district court refused to allow relitigation of a

tax matter when plaintiff brought new facts to bear, alleging a fraud that he said could not have been litigated in a previous case:

> *Res judicata* bars assertion of every legal theory that might have been raised in first action: a party "is not permitted to fragment a single cause of action and to litigate piecemeal the issues which could have been resolved in one action." *Id.* It is well settled that one who has a choice of more than one remedy for a given wrong may not assert them serially, in successive action, but must advance all at once on pain of bar. *See Langston v. Insurance Company of North America, 827 F.2d 1044, 1046 (5th Cir. 1987), quoting Nilsen v. City of Moss Point, Mississippi, 701 F.2d 556, 559-560 (5th Cir. 1983), cert. denied, 423 U.S. 908, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).* In *Nilsen*, the Fifth Circuit Court of Appeals adopted the transactional test outlined in the Restatement (Second) of Judgments, which states:
>
> > Transaction may be single despite different harms, substantive theories, measures or kinds of relief. ... That a number of different legal theories casting liability on an actor may apply to a given episode does not create multiple transactions and hence multiple claims. This remains true although the several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts, or would call for different measures of liability or different kinds of relief. Restatement (Second) of Judgments (1980), § 24 at comment c.

Bailey, at 352.

Here, Plaintiffs' causes of action pursuant to violations of due process under the ICRA, the MHOA agreement, the Tribal Court Ordinance, and California landlord tenant law and the separate breach of contract claims could have been brought previously. That being the case, res judicata now bars these causes of action here.

Except for the Harrisons, the litigants in the present action previously brought an action in this Court based on the same facts and circumstances as in the present action. In the previous action, *Luwana Quitiquit, et al., v. Robinson Rancheria Citizens Business Council, et al.*, U.S. District Court for the Northern District of California, No. C 11-0983-PJH (2011), the Court dismissed the petitioners' Petition for habeas corpus, finding for the Defendants and holding that the District Court lacked jurisdiction under the ICRA to review an eviction notice that was upheld by the Tribal

Court. Additionally, this Court held that it lacked jurisdiction over unlawful detainer actions.

Furthermore, Plaintiffs/petitioners failed to appeal the dismissal of the habeas petition within the 30-day appeal period under Federal Rule of Appellate Procedure 4. Therefore, res judicata operates to bar relitigation of those claims that were brought or could have been brought in the habeas action based on the same nucleus of facts and law at issue in the habeas case.

Here, with the exception of the Harrisons, the same parties and eviction actions are present in this action. The Harrisons, who did not have any rights to the home at issue in the eviction action, simply lack standing to bring this action.

In the previous action, the Petitioners' alleged a violation of the ICRA, 25 U.S.C. 1302(8) and 1303. Their allegations included eviction, improper amending of the tribal court rules, failure to provide an impartial tribunal, application of tribal law in an arbitrary and capricious manner, disenrollment of Petitioners, exclusion of Petitioners from tribal land-- allegations that, when taken together, allegedly constituted unlawful detention and the equivalent of excessive bail or fines.

In this action, the first cause of action is for a deprivation of due process: (1) under the ICRA; (2) under the terms of the MHOA; (3) under the Tribal Court Ordinance; and (4) under state landlord tenant law. Plaintiffs' second cause of action is for breach of contract in that Plaintiffs allege Defendants failed: (1) to have homeowner meetings under the MHOA agreements; (2) failed to initiate settlement procedures as required by the MHOA; (3) to deliver deeds; (4) to counsel Plaintiffs under the MHOA; and (5) to provide an accounting of Plaintiffs' contributed funds. Additionally, Plaintiffs allege that Defendants initiated eviction procedures in violation of the MHOA, and finally, that Defendants were unjustly enriched by failing to compensate Plaintiffs for the evictions.

Because the habeas Petition and Plaintiffs' Complaint stem from the same eviction actions and arise under the same transactional nucleus of fact, res judicata bars this action.

B. Because this Court has Previously Reached a Decision on the Issues Presented By Plaintiff, Collateral Estoppel Precludes Plaintiff from Relitigating These Issues.

To the extent that Plaintiffs seek a remedy under a different cause of action than sought under Plaintiffs' habeas Petition, Plaintiff is still barred from relitigating issues already decided by this Court in Plaintiffs' previous action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. *Montana v. United States*, 440 U.S. 147, 153. That is to say, the court's prior determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5 (1979).

A party asserting collateral estoppel must establish that: (1) the issue at stake is identical to the one alleged in the prior litigation; (2) the issue was actually litigated in the prior litigation; and (3) the determination of the issue in the prior litigation was a critical and necessary part of the judgment in the earlier action. *Town of North Bonneville v. Callaway*, 10 F.3d 1505, 1508 (9th Cir. 1993).

Here, Plaintiffs, largely the same parties to the habeas Petition, now attempt to relitigate the issue of whether unlawful detainer is a basis for federal subject matter jurisdiction. In its July 1, 2011, Order this Court explicitly stated that it is not a basis for jurisdiction, that this Court has no jurisdiction to review tribal court orders in eviction actions, and that ICRA does not confer a basis for jurisdiction. This Court's decision on the jurisdictional issue underscored and was a critical and necessary part of this Court's Order dismissing the habeas petition. As such, Plaintiffs are precluded

from again claiming jurisdiction over the same issue here. In the interest of conserving judicial resources, and, by preventing inconsistent decisions, encouraging reliance on adjudication, this Court should dismiss this simple eviction proceeding on collateral estoppel grounds. *Allen v. McCurry*, 449 U.S. 90, 94 (U.S. 1980).

V.

AS A MATTER OF COMITY, THE JUDGMENTS ARE ENTITLED TO RECOGNITION AND ENFORCEMENT.

"As a general rule, federal courts must recognize and enforce tribal court judgments under principles of comity." *AT&T Corp. v. Coeur D'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002) citing, *Wilson v. Marchington*, 127 F.3d 805, 809-810 (9th Cir. 1997) ("*Marchington*"), ["[T]he recognition and enforcement of tribal court judgments in federal court must inevitably rest on the principles of comity."]. "Comity is neither a matter of absolute obligation on the one hand, nor mere courtesy and good will on the other." *Marchington*, 127 F.3d at 809 citing, *Hilton v. Guyot*, 159 U.S. 113, 163-164 (1895). "As a general policy, '[c]omity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.'" *Marchington*, 127 F.3d at 809.

Only two factors preclude recognition of a tribal court judgment by a federal court: "[F]ederal courts must neither recognize nor enforce tribal judgments if: (1) the tribal court did not have both personal and subject matter jurisdiction; or (2) the defendant was not afforded due process of law." *Marchington*, 127 F.3d at 810. "[U]nless a federal court determines that the tribal court lacked jurisdiction, . . . the proper deference to the tribal court system precludes relitigation of issues raised . . . and resolved in the tribal courts." *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1986).

Because comity is grounded in equity,

> a federal court may, in its discretion, decline to recognize and enforce a tribal judgment on equitable grounds, including the following circumstances: (1) the judgment was obtained by fraud; (2) the judgment conflicts with another final judgment that is entitled to recognition; (3) the judgment is inconsistent with the parties' contractual choice of forum; or (4) recognition of the judgment, or the cause of action upon which it is based, is against the public policy of the United States or the forum state in which recognition of the judgment is sought.

Marchington, 127 F.3d at 810.

Here, the Tribal Court had personal jurisdiction over the defendants and subject matter jurisdiction over the Tribe's claims, the defendants were afforded due process of law, and none of the discretionary factors for denial of recognition is present.

A. The Tribal Court Has Jurisdiction over the Plaintiffs and the Claims Against Them.

Section 9.5.030(3)(d) of the Tribe's Tribal Court Ordinance extends Tribal Court jurisdiction to "[p]ersons or legal entities who have entered contracts with the Tribe or its wholly owned legal entities." The delegation of jurisdiction in the Tribal Court Ordinance is consistent with the federal court decisions on the limits to tribal court jurisdiction over non-tribal members and entities.

In *Montana v. United States*, 450 U.S. 544 (1980) ("*Montana*"), the Supreme Court articulated what has come to be regarded as the fundamental test, under federal law, for determining whether a tribe's jurisdiction extends to non-tribal members and their activities:

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate through taxation, licensing, or other means, the activities of non-members who enter consensual relations with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements . . . . A Tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct affect on the political integrity, the economic security, or the health and welfare of the Tribe.

Montana at 565-566.

Subsequent Supreme Court decisions emphasized that the first *Montana* exception applied to those situations in which the non-member conduct, whether on or off tribal land, has a significant affect on fundamental tribal interests and its ability to govern itself. *Nevada v. Hicks*, 533 U.S. 353 (2001); *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008).

> The logic of *Montana* is that certain activities on non-Indian fee land (say, a business enterprise employing tribal members) or certain uses (say, commercial development) may intrude on the internal relations of the tribe or threaten tribal self-rule. To the extent they do, such activities or land uses may be regulated. See *Hicks, . . . at 361, . . .* ("Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them"). **Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations**.

Plains Commerce Bank v. Long Family Land & Cattle Co. at 334-335 (emphasis added).

Here, all Plaintiffs except for the Harrisons entered into MHOAs with the Tribe, under which they leased, with the option to purchase, homes owned by the Tribe that are located on land owned by the United Stats of America in trust for the Tribe on the Reservation. Such a contractual relationship clearly falls within the first *Montana* exception, as it is a "consensual relationship with the tribe or its members, through contracts, leases, or other arrangements." *Montana* at 565. For the same reason, defendants fall within the grant of personal jurisdiction to the Tribal Court set forth in the Tribal Court Ordinance: "Persons or legal entities who have entered contracts with the Tribe or its wholly owned legal entities." Tribal Court Ordinance, Sec. 9.5.030(3)(d).

Plaintiffs' conduct and relationship with the Tribe also invokes the second *Montana* exception, as Plaintiffs' recalcitrant behavior had an affect on the political

integrity, the economic security, or the health and welfare of the Tribe. The Tribe's claims against the Plaintiffs were based on the fact that the tenant Plaintiffs breached their MHOAs by refusing to pay rent or the administration fee they owed for a period of years. Plaintiffs' refusal to pay rent had the effect of reducing the funding available for the Tribe's housing programs by tens of thousands of dollars. Rodriguez Declaration, p. 3, ¶ 10. Plaintiffs' occupation of the Tribal Housing and land while refusing to pay rent also prevented eligible tribal members who were and are in need of housing from being granted the tribal housing. Rodriguez Declaration, p. 3, ¶ 11. Similarly, because of the impact of their actions on the Tribe and its members, the Plaintiffs were subject to the personal jurisdiction of the Tribal Court pursuant to Section 9.5.030(3)(k) of the Tribal Court Ordinance: "all other individuals whose conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe."

Finally, Plaintiffs were, at the time of the events alleged in the Tribal Court Complaint, residing on tribal trust land within the boundaries of the Reservation. They continued to reside on that land until evicted. Plaintiffs, therefore, fell within the Tribe's territorial jurisdiction. Tribal Court Ordinance, Sec. 9.5.030(2).

The Tribal Court also legitimately exercised jurisdiction over the Plaintiffs' claims. Article VIII, Section 1(j) of the Tribe's Constitution authorizes the Business Council to "promulgate and enforce such ordinances as are deemed necessary to safeguard and protect the peace, safety, health, and general welfare of the members of the Rancheria." *Id.*

In Section 9.5.030 of the Tribal Court Ordinance, the Business Council granted the Tribal Court "civil jurisdiction over all matters in law or in equity which the Business Council expressly authorizes by ordinance." The civil jurisdiction of the Tribal Court extends to "all causes of action that arise: (1) on lands within the exterior

boundaries of the Reservation, and (2) on all lands owned by the United States of America in trust for the Tribe." Tribal Court Ordinance, Section 9.5.030(2).

On June 2, 2009, the Business Council adopted Ordinance No. 2009-02-RR, entitled: An Ordinance of the Business Council of the Robinson Rancheria Establishing a Summary Tribal Court Procedure for Obtaining Possession of Trust Lands on the Robinson Rancheria ("Unlawful Detainer Ordinance"). Iniguez Declaration, p. 3, ¶ 11. Pursuant to the Unlawful Detainer Ordinance, the Tribal Court is granted jurisdiction to issue an order to evict and remove from tribal trust land or other Reservation land any person guilty of forcible or unlawful detainer. Exhibit 3 to Iniguez Declaration, Sections 2.010-2.090.

All of the Tribe's claims set forth in the unlawful detainer actions filed in the Tribal Court arose under tribal law and fell within the subject matter jurisdiction of the Tribal Court as granted to it by the Business Council under the Tribal Court Ordinance and the Unlawful Detainer Ordinance. The Tribal Court, therefore, had subject matter jurisdiction over the claims filed against the Plaintiffs in the Tribal Court.

All of the claims against the current Plaintiffs in the Tribal Court arose from claims to possession of tribal trust land within the boundaries of the Reservation and all of the events relevant to the Tribe's claims occurred on tribal trust land within the Reservation. The claims, therefore, fell within the territorial jurisdiction of the Tribal Court. Tribal Court Ordinance, Sec. 9.5.030(2).

B. Plaintiffs Were Afforded Due Process in the Tribal Court Proceedings.

The *Marchington* court defined due process for the purpose of the comity analysis as:

> Due process, as that term is employed in comity, [requires] . . . . that there has been opportunity for a full and fair trial before an impartial tribunal that

> conducts the trial upon regular proceedings after proper service or voluntary appearance of the defendant, and that there is no showing of prejudice in the tribal court or in the system of governing laws.

Marchington, 127 F.3d at 811.

> [E]vidence that the judiciary was dominated by an opposing litigant, or that a party was unable to obtain counsel, to secure documents or attendance of witness, or to have access to appeal or review, would support a conclusion that the legal system was one whose judgments are not entitled to recognition.

Id. (citing Restatement (Third) of Foreign Relations Law of the United States § 482 cmt. B (1986)); *Burrell v. Armijo*, 456 F.3d 1159, 1172 (10th Cir. 2006).

Based upon the authority granted to it by the Tribal Court Ordinance, the Tribal Court has established rules and procedures to govern adjudicative proceedings, including the "Rules of Pleading, Practice, and Procedure of the Tribal Court" ("Rules of Civil Procedure"), the "Rules of Evidence of the Tribal Court" ("Rules of Evidence"), the "Rules Governing the Conduct of Tribal Court Clerks for the Tribal Court," the "Rules of Admission and Professional Conduct Governing the Practice of Attorneys in the Tribal Court of the Robinson Rancheria," and the "Tribal Court Personnel Policy and Clerk of Court Procedures Manual." Lopez Declaration, pp. 1-2, ¶¶ 2-6, Exhibits 1-5 thereto. The Rules of Procedure and Evidence are modeled after and are nearly identical to the Federal Rules of Civil Procedure and Federal Rules of Evidence, respectively.

The Tribal Court proceedings against the Plaintiffs who currently have standing in this action were conducted pursuant to and in conformity with the Tribal Court's Rules of Procedure and Evidence. Lopez Declaration, pp. 2-3, ¶¶ 7-12. The Plaintiffs were personally served with the summons and complaint. *Id.* at p. 3, ¶ 8. Plaintiffs, through their legal counsel, were provided notice of and an opportunity to participate in all of the hearings conducted by the Tribal Court. *Id.* at p. 3, ¶¶ 8-9. Each Plaintiff

was represented by legal counsel of their choice in the proceedings. Each Plaintiff filed an answer to the Complaint. Each filed pretrial motions upon which the Tribal Court held a hearing and issued a written ruling. Each was given a separate trial in which each presented to the Tribal Court evidence and argument in support of their defenses and each was given an opportunity to confront and cross-examine witnesses. Each was permitted by the Tribal Court to submit an extensive post-trial brief. The Tribal Court issued an Opinion and Order relating to all of the cases and issued Findings of Fact, Conclusions of Law and Judgment in each case. Lopez Declaration, pp. 3, ¶¶ 9-10, Exhibit 7. After the Tribal Court issued the Judgments, Plaintiffs could have filed a motion to vacate the Judgments, a motion for rehearing, or otherwise challenge the Judgments in the Tribal Court, but did not. Lopez Declaration, pp. 3-4, ¶¶ 10-13.

The Tribal Court Judge is the Honorable Robert Moeller. Judge Moeller worked for the Office of the Solicitor, Department of the Interior, for 35 years, primarily in the area of Federal Indian law. Lopez Declaration, p. 3, ¶ 9. He is the Chief Judge of the Chemehuevi Indian Tribal Court and the Picayune Rancheria Tribal Court. Lopez Declaration, p. 3, ¶ 9. He has no personal or financial connection to the Tribe beyond the judicial services contract with the Tribe, pursuant to which he carries out his functions as judge of the Tribal Court. Lopez Declaration, p. 3, ¶ 9.

Thus, there is no basis for concluding that the Plaintiffs were not afforded due process at any point in the Tribal Court proceedings. As such, the Tribal Court judgment is entitled to recognition and enforcement.

CONCLUSION

For the reasons stated above, this Court should grant Defendants' motion to dismiss.

Respectfully submitted,

DATED: August 12, 2013

RAPPORT AND MARSTON

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