

1 LESTER J. MARSTON
 California State Bar No. 081030
 2 RAPPORT AND MARSTON
 405 West Perkins Street
 3 Ukiah, CA 95482
 Telephone: 707-462-6846
 4 Facsimile: 707-462-4235
 e-mail: marston1@pacbell.net
 5
 Attorneys for Defendant
 6 Robinson Rancheria Citizens Business Council

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11	ALAN AND CHRISTINA HARRISON,)	Case No. C-13-1413-JST
	ROBERT QUITQUIT, KAREN)	
12	RAMOS, INEZ SANDS, and REUBEN)	
	WANT,)	DEFENDANTS' REPLY TO PLAINTIFFS'
13)	OPPOSITION TO DEFENDANTS' MOTION
	Plaintiffs,)	TO DISMISS
14)	
	v.)	DATE: September 19, 2013
15)	TIME: 2:00 p.m.
	ROBINSON RANCHERIA BAND OF)	CTRM.: 9, 19 th Floor
16	POMO INDIANS BUSINESS)	JUDGE: Hon. Jon S. Tigar
	COUNCIL, DOES)	
17)	
	Defendants.)	
18)	

19 **INTRODUCTION**

20 In their Opposition to Defendants' Motion to Dismiss ("Opposition"), Plaintiffs
 21 argue that dismissal is inappropriate in this case¹ and that the jurisdictional and
 22 substantive issues in this matter are so intertwined such that factual issues going to the
 23 merits must be resolved prior to the jurisdictional issues. Plaintiffs offer no factual or
 24 legal authority for this proposition. The jurisdictional and substantive issues of a
 25 matter may be considered "intertwined" where, "a statute provides the basis for both
 26

27 ¹ Plaintiffs cite *Hospital Building Co. v. Trustees of the Rex Hospital*, 425 U.S. 738
 28 (1976) for the proposition that "dismissals prior to giving the plaintiff ample opportunity
 for discovery should be granted sparingly." Plaintiff has omitted preceding language
 stating that this principle applies specifically to antitrust cases. *Id.* at 746.

1 the subject matter jurisdiction of the federal court and the plaintiff's substantive claim
2 for relief." *Safe Air v. Meyer*, 373 F.3d 1035, 1039-1040 (9th Cir. 2004). Plaintiff
3 points to no such statute, nor can plaintiff point to any statute that provides a basis for
4 this Court's jurisdiction. In this brief, the defendants will show: (1) that the plaintiffs
5 claims implicate tribal and state law and therefore do not arise under the construction,
6 laws or treaties of United States; (2) that no provision in the MHOAs waives the Tribe's
7 immunity from suit; (3) the fact that the Tribe does not have a court of appeals did not
8 deprive the plaintiffs of due process; and (4) that the doctrines of res judicata and
9 collateral estoppel ban plaintiffs claims for these reasons, and the reasons set forth in
10 the Tribe's opening brief filed in support of motion to dismiss, the Tribe's motion
11 should be granted.

12 I.

13 **THE MERE FACT THAT HUD HAS RESPONSIBILITY AND** 14 **OVERSIGHT OVER THE TRIBE'S HOUSING PROGRAM DOES** 15 **NOT SUPPORT THE ASSERTION THAT FEDERAL LAW IS** 16 **THE BASIS OF PLAINTIFFS' CAUSE OF ACTION.**

17 Plaintiffs allege that this action arises under federal law because federal
18 regulations apply to the administration of the Tribe's Housing Program and because
19 the U.S. Department of Housing and Urban Development ("HUD"), a federal agency,
20 may impose requirements on the Tribe's Housing Authority and its administration of
21 the HUD Housing Program. Specifically, plaintiffs state that because: (1) the
22 introduction to the MHOAs state that MHOAs should be used in conjunction with 24
23 CFR Part 905, (2) the MHOA alludes to HUD requirements for Indian Housing
24 Authorities ("IHA"), and (3) the MHOA arises under authority granted to IHAs by
25 HUD, this matter arises under federal law. Plaintiffs further state that this matter
26 involves a question of how federal laws apply, but does not elaborate on which federal
27 laws are in question or how said laws should apply. Even if plaintiffs had fleshed out
28 this assertion, "[n]ot every question of federal law emerging in a suit is proof that a
federal law is the basis of the suit." *Gully v. First Nat'l Bank*, 299 U.S. 109, 115 (1936).

A case arises under federal law, most directly and most frequently, when federal

1 law creates the cause of action asserted. *American Well Works Co. v. Layne & Bowler*
2 *Co.*, 241 U.S. 257, 260 (1916); *Franchise Tax Bd. of Cal. v. Construction Laborers*
3 *Vacation Trust for Southern Cal.*, 463 U.S. 1, 9 (1983). For federal question
4 jurisdiction to lie, “a right or immunity created by the Constitution or laws of the
5 United States must be an element, and an essential one, of the plaintiff’s cause of
6 action.” *Gully v. First Nat’l Bank*, 299 U.S. at 112. The right or immunity asserted must
7 be such that its success or failure in court is dependent on the construction or effect
8 given to the Constitution or laws of the United States. *Id.* “A genuine and present
9 controversy, not merely a possible or conjectural one, must exist. . . , and the
10 controversy must be disclosed upon the face of the complaint. . . .” *Id.* at 113.

11 Here, plaintiffs allege that this matter arises under federal law because the Tribe
12 breached the MHOAs and the administration of MHOAs is subject to HUD regulations.
13 The fact that a contract is subject to federal regulation does not definitively
14 demonstrate that Congress meant that all aspects of its performance or
15 nonperformance are governed by federal law rather than by state or local law
16 applicable to similar contracts with entities not subject to federal regulation. *Lindy v.*
17 *Lynn*, 501 F.2d 1367, 1369 (3d Cir. 1974) A number of federal courts have noted that
18 actions for money damages from breach of contract do not arise under federal law as
19 such matters require only the interpretation and application of contract principles
20 under state or local law and federal law did not expressly create the remedy sought,
21 even if the disputed contract may have a connection with activities undertaken as part
22 of HUD functions authorized by federal law or if resolution of the dispute might
23 involve interpretation of federal regulations. See *Weeks Constr., Inc. v. Oglala Sioux*
24 *Housing Authority*, 797 F.2d 668, 676 (8th Cir. 1986); *In re World Solar Corp.*, 81
25 B.R. 603, 607 (Bankr. S.D. Cal. 1988); *Jemo Associates Inc. v. Greene Metropolitan*
26 *Housing Authority*, 523 F. Supp. 186, 189 (D.C. Ohio, 1981). With respect to their
27
28

1 breach of contract claims², plaintiffs have not shown that resolution of their dispute
2 with the Tribe would involve interpretation and application of any federal laws or
3 regulations, nor have they shown that the remedy sought for the alleged breach is a
4 creation of federal law. That the MHOAs may be subject to HUD regulations is
5 irrelevant because plaintiffs point to no language in the MHOAs or any federal statutes
6 or regulations that determine the operation and effect of the MHOAs. This matter does
7 not, as such, arise under the laws of the United States.

8 Furthermore, in their opposition brief, plaintiffs mischaracterize the nature of
9 the current dispute and abruptly introduce claims that were not alleged in the
10 Complaint. Specifically, plaintiffs allege that the issue in controversy here is whether
11 plaintiffs acquired an ownership interest in the premises they once occupied according
12 to the terms of their respective MHOAs with the Tribe. To bolster this allegation,
13 plaintiffs point to the fact that the Tribe's Housing Authority has referred to plaintiffs'
14 failure to pay "rent", a word that doesn't appear in the MHOAs. Also notably absent
15 from the MHOA is any obligation on the part of the Tribe to convey title to a tenant
16 under an MHOA simply because the tenant takes possession and pays a minimal
17 number of required monthly payments when due. Here, plaintiffs did not fulfill their
18 obligations under the MHOA to purchase and take title to the homes they once
19 occupied. It is true that the monthly payment due under the MHOA is not rent per se,
20 but rather an administrative fee for maintenance of the premises, in which case the
21 plaintiffs occupied the premises rent-free. Quibbles over terminology notwithstanding,
22 plaintiffs consistently failed to pay the minimum monthly administrative fees, failed to
23 respond to offers to enter into payback agreements, and were eventually evicted for
24 failure to fulfill their obligations under the MHOAs. The Tribe's breach of contract

25 _____
26 ² In their Opposition, plaintiffs state that the Tribe breached the MHOAs by failing
27 to provide plaintiffs with deeds of ownership for their homes, deeds that were allegedly
28 promised by the Tribal Housing Director. Plaintiffs also allege that the Tribe's Housing
Authority has failed to provide a way for tenants to make payments. These facts are
inaccurate, immaterial, and inflammatory and, moreover, unsupported by affidavit, in
violation of Local Rule 7-5 and therefore should be stricken.

1 disputes with the current plaintiffs³ were then decided, appropriately, in Tribal Court
2 applying tribal law. There is simply no genuine and present controversy here that
3 arises from federal law, thus, federal question jurisdiction does not apply.

4 II.

5 **THE TRIBE'S SOVEREIGN IMMUNITY HAS NOT BEEN** 6 **UNEQUIVOCALLY OR CLEARLY WAIVED BY THE** 7 **TRIBE IN THE MHOAS.**

8 Plaintiffs argue that, because the MHOAs require that MHOA termination must
9 comply with the Indian Civil Rights Act and applicable state, local, or tribal law, the
10 Tribe has effectively waived its sovereign immunity and "subjected itself to laws
11 outside of the Tribe". Plaintiffs are mistaken.

12 As discussed in the Tribe's Motion to Dismiss, tribal sovereign immunity can be
13 abrogated by Congress or waived by a tribe, any such waiver must be unequivocally
14 expressed and is to be narrowly construed. *Santa Clara Pueblo v. Martinez*, 436 U.S.
15 49, 58 (1978); *C & L Enters. v. Citizen Band Potawatomi Indian Tribe*, 532 U.S. 411,
16 418 (2001). A tribe's waiver of its sovereign immunity must also be "clear." *Oklahoma*
17 *Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509, 112 L. Ed.
18 2d 1112, 111 S. Ct. 905 (1991). Here, general obligations to comply with applicable
19 federal, state, and local laws in administration of the MHOA do not unequivocally or
20 clearly express the Tribe's waiver of immunity with respect to disputes under the
21 MHOA. Though a tribe's waiver of sovereign immunity need not be explicit, the waiver
22 must clearly express the tribe's consent to be sued and to have the award or judgment
23 in that suit enforced. See *C & L Enters. v. Citizen Band Potawatomi Indian Tribe of*
24 *Okla.*, 532 U.S. 411 (2001). Plaintiffs simply have not pointed to any language in the
25 MHOA which indicates that the Tribe intended to waive its immunity by entering into

26 ³ Plaintiffs' Opposition states that plaintiffs Alan and Christina Harrison represent
27 Luwana Quitquit through power of attorney. Because a power of attorney expires on the
28 death of the individual, and because the Harrisons have not shown that they are otherwise
authorized to act as Ms. Quitquit's executors or representatives, they still do not have
standing in this matter.

1 the MHOA; absent such clear and unequivocal intent, the plaintiffs' claims are barred.
2 *Id.*

3 III.

4 **PLAINTIFFS WERE AFFORDED DUE PROCESS** 5 **BY A DULY CONSTITUTED TRIBAL COURT AND THROUGH** 6 **THE TRIBE'S ADMINISTRATIVE CLAIMS PROCEDURE.**

7 Plaintiff alleges that the Tribe's Tribal Court was not properly established
8 according to its own Tribal Court Ordinance and that plaintiffs did not receive due
9 process prior to being evicted from Tribal housing. Even if the Tribe has not yet
10 established a Court of Appeal, plaintiffs have not shown that they did not have
11 adequate due process and an opportunity to seek redress of any wrongs allegedly
12 inflicted on them by the Tribe. As discussed in the Tribe's Motion to Dismiss, the
13 plaintiffs were adequately provided with tribal administrative and judicial remedies
14 and were afforded due process.

15 The Tribe does not dispute that: 1) its Tribal Court Ordinance states that the
16 Tribal Court shall consist of a Trial Court and Court of Appeals, 2) that the Tribe has
17 not yet established an appeals process for its Tribal Court, and 3) until the Tribe's
18 Court of Appeals and its scope of review are established by a separate ordinance, the
19 decisions of the Trial Court are final and nonappealable. The Tribe does, however,
20 dispute that these facts lead to a conclusion that plaintiffs were not afforded due
21 process and that the decisions of its Tribal Court should not be entitled to comity.

22 In *Mullally v. Havasu Landing Casino*, 2011 U.S. Dist. LEXIS 151209 (C.D. Cal.
23 May 4, 2011)(“*Mullally*”)⁴ the United States District Court for the Central District of
24 California considered whether to recognize the judgment of the Chemehuevi Tribal
25 Court. In *Mullally*, the Chemehuevi Tribal Court, like the Robinson Rancheria Tribal
26 Court, employed procedures and practices that mirrored federal court procedures but
27 had not yet established an appeals process, so that the decisions of the Chemehuevi

28 ⁴ The Tribe filed an appropriate request that the Court take judicial notice of the
Mullally case.

1 Tribal Court were final and not subject to appeal. *Mullally* at *43-44. The Chemehuevi
2 Indian Tribe had also established an administrative claims procedure for claims for
3 money and damages, as had the Tribe in the matter before this Court, though, unlike
4 here, the plaintiff in *Mullally* availed himself of the administrative claims procedure in
5 a timely fashion. *Mullally* at 45.

6 The *Mullally* court found that “the lack of the right to appeal cannot be
7 characterized as an ‘outrageous departure’ ‘from our notions of civilized
8 jurisprudence’”, especially in the context of a civil action. *Mullally* at *45, citing *Bird v.*
9 *Glacier Elec. Coop., Inc.*, 255 F.3d 1136, 1142 (9th Cir. 2001). Noting that the plaintiff
10 had an opportunity to seek redress for his claims both through an administrative
11 claims procedure and through the tribal court, the *Mullally* court stated:

12 Plaintiff accordingly had the opportunity for his case to be heard before
13 two different bodies. The extensive rules and procedures governing
14 proceedings, as well as the notice accorded Plaintiff, the opportunity to
15 present evidence, the opportunity to submit motions and respond to
16 motions, and the opportunity to be represented by legal counsel, as well
17 as the Tribal Court's lengthy opinion, all support the conclusion that the
18 Court fully considered and weighed the evidence before it in reaching its
19 decision. These factors weigh heavily in favor of finding that the
20 proceedings were conducted in accordance with due process.

21 *Mullally* at *45-*46.

22 Here, as in *Mullally*, plaintiffs had the opportunity to seek redress for their
23 claims before two different bodies: the Tribal Council and the Tribal Court. Plaintiffs
24 opted not to avail themselves of the administrative remedies established in the Claims
25 Ordinance to address Plaintiffs' claims for damages incurred as a result of alleged
26 property loss⁵. As in *Mullally*, the plaintiffs appeared before a Tribal Court in which
27 proceedings are governed by extensive rules and procedures that mirror the federal
28 courts rules. Plaintiffs had notice of the Tribal Court proceedings, the opportunity to
29 present evidence, the opportunity to submit motions and respond to motions, and the

30 ⁵ Plaintiffs also opted not to attend hearings offered by the Board of Commissioners
31 of the Tribe's Housing Authority to contest the terminations of their respective MHOAs.
32 Declaration of Michelle Iniguez in Support of Defendants' Motion to Dismiss, pp. 4-5, ¶
33 18.

1 opportunity to be represented by legal counsel. On January 20, 2011, the Tribal Court
2 issued an order documenting the Tribal Court's analysis of plaintiffs' claims though a
3 careful consideration of the legal and evidentiary factors bolstering the Tribal Court's
4 decision. As in *Mullally*, these are factors that should weigh heavily in favor of finding
5 that the Tribe offered plaintiffs multiple opportunities for proceedings to address
6 plaintiffs' grievances and that these proceedings were conducted in accordance with
7 due process. Plaintiffs point to no cognizable legal authority stating that the lack of an
8 appeals process, in and of itself, must necessarily support a finding that a tribal court
9 decision must not be given comity. As such, this Court, like the District Court in
10 *Mullally*, may recognize the Tribal Court's judgment against plaintiffs.

11 IV.

12 **RES JUDICATA AND COLLATERAL ESTOPPEL APPLY TO** 13 **JURISDICTIONAL ISSUES.**

14 Plaintiffs allege that principles of res judicata and collateral estoppel do not
15 apply here because: 1) this Court did not make a decision on the merits in *Luwana*
16 *Quitquit, et al., v. Robinson Rancheria Citizens Business Council, et al.*, U.S. District
17 Court for the Northern District of California, No. C 11-0983-PJH (2011) ("*Quitquit I*")
18 and 2) the issues at stake in this matter are wholly different than those at stake in the
19 earlier action. However, this Court is precluded from relitigating issues of jurisdiction
20 already determined in *Quitquit I*, and Plaintiffs have not shown that the current
21 claims proceed under a different, cognizable jurisdictional basis.

22 As stated in defendants' motion to dismiss, principles of res judicata apply to
23 jurisdictional determinations. *Am. Sur. Co. v. Baldwin*, 287 U.S. 156, 166 (1932);
24 *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939). Recent U.S. Supreme Court
25 decisions treat res judicata as incorporating the concepts of both issue preclusion (also
26 known as collateral estoppel) and claim preclusion. *Taylor v. Sturgell*, 553 U.S. 880,
27 892, n. 5 (2008). "Issue preclusion refers to the effect of a judgment in foreclosing
28 relitigation of a matter that has been litigated and decided." *Migra v. Warren City Sch.*
Dist. Bd. of Educ., 465 U.S. 75, 77 n.1 (1984). A party is precluded from litigating such

1 a matter in a subsequent case, “whether or not the issue arises on the same or a
2 different claim.” *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001) (citing
3 Restatement (Second) of Judgments §§ 17, 27 (1980); D. Shapiro, *Civil Procedure:
4 Preclusion in Civil Actions* 32, 46 (2001)).

5 Although dismissal for lack of subject matter jurisdiction does not adjudicate
6 the merits of the claims asserted, it does adjudicate the court’s jurisdiction. See
7 *Kulinski v. Medtronic Bio-Medicus, Inc.*, 112 F.3d 368, 373 (8th Cir. 1997) (holding
8 that the complaint’s dismissal without prejudice for lack of subject matter jurisdiction
9 would preclude plaintiff from bringing another claim on the same jurisdictional basis,
10 but did not preclude “the same claim under a different theory and jurisdictional
11 basis”). Accordingly, plaintiffs may seek redress for the same claims and ask this Court
12 to decide issues brought in *Quitiquit I* that are not addressed in this Court’s July 11,
13 2011 order, but they must plead a different jurisdictional basis. The dismissal of the
14 complaint in *Quitiquit I* thus constitutes a “valid and final judgment” sufficient to bar
15 plaintiffs from relitigating the issue of subject matter jurisdiction.

16 As discussed in defendants’ Motion to Dismiss, in *Quitiquit I*, this Court
17 determined that it lacked jurisdiction under the ICRA to review an eviction notice that
18 was upheld by the Tribal Court. Additionally, this Court found that it lacked
19 jurisdiction over unlawful detainer actions. In their Opposition, plaintiffs state that
20 this matter should not be characterized as an unlawful detainer action and that this
21 matter is instead a breach of contract action not brought under the Indian Civil Rights
22 Act. However, plaintiffs also state that a basis for this Court’s jurisdiction is the
23 application of the Indian Civil Rights Act to the MHOAs the Tribe has allegedly
24 breached. While plaintiffs’ characterize their claims as arising from breach of contract,
25 as discussed *supra*, they do not identify any language in the MHOA or cognizable legal
26 authority standing for the proposition that they make seek redress for that alleged
27 breach in this Court. Plaintiffs make numerous, jumbled assertions regarding possible
28 bases for this Court’s jurisdiction but cannot show a different, cognizable basis for

1 jurisdiction here.

2 Because the district court previously had adjudicated the issue of subject matter
3 jurisdiction in *Quitiquit I* and Plaintiffs did not take an appeal from that decision or
4 point to a different, cognizable basis for jurisdiction in this matter, this Court cannot
5 reach the merits of Plaintiffs' claims or hear any issue not decided in the earlier action.

6 CONCLUSION

7 For several years, the plaintiffs did not pay their rent or administrative fees to
8 the Tribe's IHA as required by the MHOAs. The IHA sent them numerous letters
9 advising them that if they did not pay this rent they would be evicted. The IHA offered
10 the plaintiffs pay back agreements so that they could pay their back rent and stay in
11 their homes. Except for Luwana Quitiquit, none of the plaintiffs entered into a pay
12 back agreements, and Ms. Quitiquit stopped making her payments under the pay back
13 agreement one month after entering into it.

14 The IHA sent the plaintiffs letters advising them that they should appear before
15 the IHA Board of Commissioners to show cause why their MHOAs should not be
16 terminated for failure to pay rent. None of the plaintiffs availed themselves of this
17 remedy or showed up for the hearing.

18 The IHA then served the plaintiffs with a three (3) days notice to quit or pay
19 rent to which the plaintiffs failed to respond.

20 The IHA then sued the plaintiffs in Tribal Court where they were represented by
21 legal council, allowed to call and cross-examine witnesses, allowed to file briefs and
22 allowed to introduce evidence. After five (5) days of trial, the Tribal Court found them
23 in breach of contract and ordered them to vacate the homes they were occupying.

24 The plaintiffs then sought review of the Tribal Court's order in this Court. After
25 a hearing this Court dismissed the plaintiffs Complaint for lack of jurisdiction.

26 The plaintiffs then refused to comply with the Tribal Court's order of eviction.
27 The IHA then served the Plaintiffs with a Writ of Assistant demanding that they vacate
28 the premises they were occupying. Still the plaintiffs refused to leave.

1 Finally, Tribal Police officers executed the Writs of Assistant and removed the
2 plaintiffs from the premises.

3 This process has cost the Tribe thousands of dollars in court costs, legal fees,
4 and personnel costs. Money that is now not available to the Tribe to provide its
5 members with safe, sanitary and decent housing.

6 The plaintiffs have had a full and fair opportunity to have their claims heard
7 before the Tribal Council, the IHA Board of Commissioners, the Tribal Court and this
8 Court. They have been afforded due process and their claims are barred by the Tribe's
9 sovereign immunity, failure to exhaust administrative remedies, comity and res
10 judicata.

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

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,
RAPPORT AND MARSTON

DATED: September 6, 2013

By: /s/Lester J. Marston
Lester J. Marston
Attorneys for the Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Central District of California, by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Lester J. Marston
LESTER J. MARSTON
Attorneys for the Defendants