Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Thomas Mitchell and Patricia S. Johanson Mitchell, et. al, Plaintiffs, v. Tulalip Tribes of Washington, a federally recognized Indian Tribe, Defendant.	No. 2:17-cv-1279 JCC DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS NOTED ON MOTION CALENDAR: October 13, 2017

Defendant, the Tulalip Tribes, respectfully requests dismissal of this action on the grounds of sovereign immunity, res judicata, and lack of ripeness, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). As demonstrated in *Defendant Tulalip Tribes' Motion to Dismiss*, Dkt. # 6, there is simply no basis for this Court to exercise jurisdiction in this case. As the parties invoking this Court's jurisdiction, Plaintiffs have the burden to establish some basis for federal court jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182–83 (1936)). Plaintiffs have failed to meet this burden, and this case must be dismissed.

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Plaintiffs' response in opposition to the Tribes' motion to dismiss, Dkt. # 7, fails to identify any waiver of the Tulalip Tribes' sovereign immunity to allow this case to proceed, and the lack of a sovereign immunity waiver means that there is no subject matter jurisdiction in this case. Lack of subject matter jurisdiction based on tribal sovereign immunity is a distinct issue from federal question jurisdiction, and the Plaintiffs fail to allege a waiver of the Tribes' sovereign immunity to overcome a lack of subject matter jurisdiction. Plaintiffs also fail to rebut the res judicata effect of the prior state court action because dismissal with prejudice on the basis of sovereign immunity is a final determination on the merits, and because the claims arise from the same nucleus of facts as those presented in the state court. Lastly, Plaintiffs have not presented a justiciable case or controversy because Plaintiffs allege only the enactment of tribal statutes without any threatened or actual enforcement of those statutes. Therefore, dismissal of this case is proper pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

Plaintiffs' Claims Are Barred By Sovereign Immunity

It is beyond dispute that the Tulalip Tribes has sovereign immunity from suit. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978); *Aungst v. Roberts Constr. Co., Inc.*, 625 P.2d 167, 169 (1981). Generally, a sovereign entity is only subject to a court's jurisdiction when it consents to be sued. *See United States v. Sherwood*, 312 U.S. 584, 586 (1941). One federal court has recently found that an action seeking declaratory and injunctive relief against an Indian tribe, which effectively sought quiet title relief, as do Plaintiffs herein, could not proceed because there was no exception to or abrogation of tribal sovereign immunity for such an action. *Save the Valley, LLC v. Santa Ynez Band of Chumash Indians*, No. CV 15-02463-RGK (MANx), 2015 WL12552060, at *3 (C.D. Cal. July 2, 2015). It is well settled that a waiver of sovereign immunity cannot be implied, but must be unequivocally expressed. *Santa Clara Pueblo*, 436 U.S. at 58 (citations omitted).

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Nonetheless, Plaintiffs ask this Court to find an implied waiver of sovereign immunity, despite citing no law that supports such a waiver in this case.

Plaintiffs' argument begins with the logical fallacy that because the extent of tribal (or, more accurately, tribal *court*) jurisdiction may raise a federal question, there must exist some broad, implied waiver of tribal sovereign immunity to sue an Indian tribe in federal court to preemptively challenge tribal laws, or that sovereign immunity is not applicable to such claims. *See* Dkt. # 7 at page 5, lines 10-12. Plaintiffs make this argument despite citing no case law that finds such a sovereign immunity waiver, and no case law that allows this kind of action against a tribe seeking declaratory and injunctive relief. In fact, the case law is directly contrary to Plaintiffs' assertions. Sovereign immunity extends to actions against a tribe for declaratory and injunctive relief, and to actions alleging that a tribe acted beyond its powers. *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991). In addition, federal courts recognize tribal sovereign immunity, in large part, to promote tribal sovereignty and self-determination. *See Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 890 (1986). The Tribes' sovereign interests are particularly pronounced in cases such as this one, where Plaintiffs directly attack the legislative acts of the tribal government applicable to the tribe's reservation[1]. A suit which requests a federal court to review and enjoin the laws enacted by a tribe without reference to any tribal official actions being taken pursuant to those laws, and without having a tribal court first review and interpret those tribal laws, constitutes a direct infringement on the sovereignty of the tribe.

[1] Plaintiffs assert, by declaration, that their lands were once, but are no longer, a part of the Tulalip Reservation. *See* Dkt. # 9 at page 2. The Tulalip Reservation boundaries established by the 1855 Treaty of Point Elliott and the Executive Order of 1873 have never been altered or diminished. *See United States v. Celestine*, 215 U.S. 278 (1909) (allotted or patented land within Tulalip Reservation remains part of the Reservation); 18 U.S.C. § 1151. Diminishment of an Indian reservation is a legal issue, not a factual issue. *See Nebraska v. Parker*, 136 S.Ct. 1072, 1078-79 (2016).

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When a suit is brought against an Indian tribe, plaintiffs have the burden of demonstrating some waiver of sovereign immunity. *United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 924 (9th Cir. 2009). They have failed to do so.

None of the cases cited by Plaintiffs concerning jurisdiction are on point, and none support a waiver of sovereign immunity in this case, because they deal only with federal question jurisdiction and not a lack of subject matter jurisdiction based on tribal sovereign immunity.[2] Plaintiffs erroneously argue that sovereign immunity does not apply in this case facially challenging tribal laws because the extent of tribal court jurisdiction may raise a federal question under 28 U.S.C. § 1331. *See* Dkt. # 7 at page 4. This is not the state of the law. In fact, federal courts that have ruled on the issue of sovereign immunity in similar cases have expressly ruled that 28 U.S.C. § 1331 does not waive or abrogate sovereign immunity. *See, e.g., Western Shoshone Nat'l Council v. United States*, 408 F.Supp.2d 1040, 1047 (D. Nev. 2005) (28 U.S.C. § 1331 creates federal question jurisdiction but does not waive the United States' sovereign immunity); *Grondal v. United States*, No. CV-09-0018-JLQ, 2012 WL 523667, at *5 (E.D. Wash. Feb. 16, 2012) (28 U.S.C. § 1331 does not abrogate tribal sovereign immunity); *United Tribe of Shawnee Indians v. United States*, 55 F.Supp.2d 1238, 1243 (D. Kan. 1999) (28 U.S.C. § 1331 does not constitute a waiver of tribal sovereign immunity), *aff'd*, 253 F.3d 543 (10th Cir. 2001).

In support of their argument, Plaintiffs cite to *National Farmers Union Insurance Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 853 (1985). Dkt. # 7 at page 4. In that case, a school district and insurer brought an action in federal court against a tribe, a tribal court, and various tribal officials, after a Crow tribal member initiated an action and

[2] In fact, the Ninth Circuit makes clear that the line of cases cited by Plaintiffs, referring to a potential cause of action under 28 U.S.C. § 1331 to challenge the jurisdiction of a tribal *court* do not address "other possible jurisdictional problems," including challenges based on tribal sovereign immunity. *Boozer v. Wilder*, 381 F.3d 931, 934 n. 2 (9th Cir. 2004). Contrary to Plaintiffs' argument, these cases do not stand for the proposition that there is a general waiver or exception to tribal sovereign immunity to challenge tribal jurisdiction in the abstract.

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obtained a default judgment against the school district in tribal court. 471 U.S. at 848. Although the Court found that 28 U.S.C. § 1331 may allow a federal court to determine whether a tribal *court* has exceeded the lawful limits of its jurisdiction, *id.* at 853, the Court ultimately remanded the case for exhaustion of tribal court remedies, *id.* at 857. Therefore, the Court did not exercise federal court jurisdiction to review tribal court jurisdiction, even though it alludes to the possibility of so doing. Furthermore, nothing in the *National Farmers* case asserts or suggests that there is a general waiver of tribal sovereign immunity to review tribal jurisdiction or authority, particularly in cases such as the present case, wherein the Plaintiffs only challenge tribal statutes in the abstract, without any concomitant enforcement action by a tribal official or tribal court. Ultimately, the holding of the *National Farmers* case concerned exhaustion of tribal court remedies, and not tribal sovereign immunity – in other words, that case is not relevant to Plaintiffs' assertion that tribal sovereign immunity is waived or inapplicable in this case.

Plaintiffs also cite *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842 (9th Cir. 2009), for the proposition that 28 U.S.C. § 1331 somehow broadly waives tribal sovereign immunity for preemptive challenges to tribal law or tribal authority. Dkt. # 7 at page 4. Similar to the *National Farmers* case, the *Elliott* case concerns a federal court challenge to the exercise of tribal court jurisdiction under tribal law against a non-Indian. 566 F.3d at 844-45. This was not a case filed against an Indian tribe preemptively challenging any potential future application of tribal laws. As in the *National Farmers* case, the Court in this case alludes to the potential to review a challenge to tribal court jurisdiction, pursuant to 28 U.S.C. § 1331, but ultimately holds that the plaintiff must first exhaust tribal court remedies. 566 F.3d at 846-48. The case does not hold that there is a general sovereign immunity waiver for the purpose of challenging any potential future application of tribal laws or tribal authority, and its holding is not relevant to the issues presented in this case.

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In addition, the *Elliott* case contains a very important limitation in its holding that is relevant to this case. In alluding to the possibility for review of tribal court jurisdiction pursuant to 28 U.S.C. § 1331, the *Elliott* case relies on the case of *Boozer v. Wilder*, 381 F.3d 931 (9th Cir. 2004). *See* 566 F.3d at 846. Plaintiffs herein also cite to the *Boozer* case in support of their invocation of this Court's jurisdiction. Dkt. # 7 at page 5. The *Boozer* case, in turn, was another challenge in federal court to a tribal court's exercise of jurisdiction, this time relating to a child custody matter. 381 F.3d at 933. Like in the *National Farmers* case and the *Elliott* case, the *Boozer* case was ultimately a case about exhaustion of tribal court remedies, and not about waiver of tribal sovereign immunity. 381 F.3d at 937. Moreover, the *Boozer* case expressly recognizes that there are other "possible jurisdictional problems" with the plaintiff's suit against the tribe, including tribal sovereign immunity, and expressly disclaims any consideration of sovereign immunity or other such "jurisdictional problems." 381 F.3d at 934 n. 2. In other words, the Ninth Circuit in the *Boozer* case recognizes that the exercise of federal court jurisdiction to review tribal court jurisdiction raises jurisdictional concerns relating to tribal sovereign immunity that would need to be addressed if the case were not instead remanded on the grounds of exhaustion of tribal court remedies. The Ninth Circuit also makes clear in its footnote that *Boozer* and related cases concerning federal review of tribal court jurisdiction are not relevant to the question of tribal sovereign immunity – i.e., they are only relevant to the exhaustion question at issue in those cases. Federal question jurisdiction under 28 U.S.C. § 1331 and lack of subject matter jurisdiction due to tribal sovereign immunity are identified as distinct issues. Therefore, these cases do not support Plaintiffs' argument that 28 U.S.C. § 1331 somehow summarily defeats or waives tribal sovereign immunity.

The case of *Jones v. Lummi Tribal Court*, No. C12-1915JLR, 2012 WL 6149666 (W.D. Wash. Dec. 10, 2012), is another case in the *Boozer* line of cases challenging an

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exercise of tribal court jurisdiction, wherein the ultimate holding concerns only exhaustion of tribal court remedies, and not waiver of tribal sovereign immunity to preemptively challenge any future application of tribal law. The *Jones* case is not relevant to this case.

Plaintiffs also cite *Evans v. Shoshone-Shoshone Bannock Land Use Policy Commission*, 736 F.3d 1298 (9th Cir. 2013) in support of their argument in favor of jurisdiction in this case. Like the other cases cited by the Plaintiffs, this case involves a challenge to an actual tribal enforcement action and subsequent tribal court proceeding. 736 F.3d at 1301. Plaintiffs therein were not allowed to bring suit in federal court against the tribe in the absence of some kind of enforcement action under tribal law, as Plaintiffs attempt to do in this case. The *Evans* case does not address the question of sovereign immunity of a tribal government. Rather, the ultimate holding of this case concerned only the requirement for exhaustion of tribal court remedies. 736 F.3d at 1307.

Lastly, Plaintiffs present a repeated and strained argument that the Tulalip Tribes has somehow acceded to this Court's jurisdiction because of a single sentence in a reply brief that was filed by the Tulalip Tribes in Snohomish County Superior Court. Dkt. # 7 at pages 5, 8, and 14; Dkt. # 8 at page 14. The Tribes' brief in the Snohomish County Superior Court is not relevant to any exercise of federal court jurisdiction under the circumstances presented in this case. That brief simply noted that, in the event that Plaintiffs are actually aggrieved by the assessment of a tribal excise tax or the enforcement of tribal land use laws, there exist remedies at tribal law to review such actions. Dkt. # 8 at page 14, lines 1-11. That brief also notes that, in the event that the tribal court actually exercises jurisdiction in such a case, the *National Farmers* case alludes to the possibility of federal court review of such tribal *court* actions. *Id.* That is not the situation in the present case, wherein no action has been taken by the Tribes or the Tribal Courts. Those remedies at tribal law remain available to Plaintiffs, should the Tribes actually take any

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action to enforce these tribal laws against Plaintiffs in a manner consistent with federal law. *See Montana v. United States*, 450 U.S. 544, 566 (1981).

The government of the Tulalip Tribes includes a comprehensive judicial system, including trial and appellate courts. *See* Tulalip Tribal Code ("TTC") Title 2, ch. 2.05 & 2.20.[3] Tribal real estate excise taxes are subject to administrative and judicial review under TTC §§ 12.20.160(6) & (7), and Tribal land use actions are subject to appeal pursuant to TTC ch. 7.180. Nothing in tribal or federal law, however, allows Plaintiffs to bring an action such as this one, preemptively challenging tribal statutes in the absence of any kind of enforcement action based on specific jurisdictional facts or subsequent suit in tribal court.

Plaintiffs' Claims Are Barred By Res Judicata

Regarding the Tribes' showing that this action is barred by res judicata, Plaintiffs contest only that there is identity of claims, and that the prior state court action constitutes a final determination on the merits. Dkt. # 7 at pages 12-13. Plaintiffs are incorrect on both counts.

First, the dismissal order of the state court is a final judgment on the merits for purposes of res judicata. The state court's dismissal was plainly issued "with prejudice." Dkt. # 6-2 at page 3. Plaintiffs do not dispute this fact, nor do Plaintiffs dispute that they failed to appeal the state court's order of dismissal. Dkt. # 7 at page 12 n. 2. This fact, standing alone, is sufficient to find that the order of the superior court is a final judgment on the merits. *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002); *In re Marino*, 181 F.3d 1142, 1144 (9th Cir. 1999) ("There can be little doubt that a dismissal with prejudice bars any further action between the parties on the issues subtended by the case."). Plaintiffs cite only a case from the Seventh Circuit that a dismissal for lack of

[3] The Tulalip Tribal Code is publicly available online at http://www.codepublishing.com/WA/Tulalip/

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subject matter jurisdiction is not on the merits. Dkt. # 7 at page 14. Nonetheless, Plaintiffs admit that an order of dismissal for lack of subject matter jurisdiction has res judicata effect *as to the question of jurisdiction*. *Id*. This case, and the prior state court case, concern subject matter jurisdiction insofar as tribal sovereign immunity deprives a court of subject matter jurisdiction. *Lewis v. Norton*, 424 F.3d 959, 961 (9th Cir. 2005). The jurisdictional question presented in both cases is the same – i.e. that subject matter jurisdiction is lacking because the Tulalip Tribes has sovereign immunity. Accordingly, the state court action should be given preclusive effect as to the question of tribal sovereign immunity. Furthermore, the Court in *Miller v. Wright*, 705 F.3d 919 (9th Cir. 2013), makes clear that a prior action against a tribe that is dismissed on the grounds of tribal sovereign immunity has res judicata effect on a subsequent federal court action. Therefore, the order of the Snohomish County Superior Court must be given preclusive effect as a final judgment on the merits.

As to the issue of identity of claims, Plaintiffs attempt to distinguish the present case by arguing a difference in the statutory basis for the respective cases, and that the state court action is somehow distinct because the complaint therein was styled as an action *in rem*. Dkt. # 7 at pages 12-13. However, the relief sought in both cases is nearly identical. *See* Dkt. # 6 at pages 7-8. Furthermore, the state court found in dismissing the case that, although that case was pled as a quiet title complaint (i.e., an *in rem* action), the relief sought implicated the sovereign interests of the Tulalip Tribes, and the Tribes was a necessary and indispensable party. Dkt. # 6-2 at page 3. In other words, Plaintiffs sought *in personam* relief against the Tulalip Tribes, just as they seek in the present case. Furthermore, the law of res judicata is clear that identity of claims may not be avoided simply "by attaching a different legal label to an issue that has, or could have, been litigated." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077-78. "The central criterion in determining whether there is an identity of

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claims between the first and second adjudications is 'whether the two suits arise out of the same transactional nucleus of facts.'" *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000) (citing *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201-02 (9th Cir. 1982)). In the present case, Plaintiffs attempt to have a second bite at the apple in this Court based on the exact same set of facts that was previously presented in state court. They cannot escape the res judicata effect of the state court case simply by attaching the label of *in personam* rather than *in rem*, when this action clearly arises out of the same nucleus of facts – i.e. the same properties, the same plaintiffs, the same tribal ordinances.

For the foregoing reasons, this matter is barred on the grounds of res judicata and must be dismissed on that basis.

Plaintiffs' Fails to Identify a Justiciable Case or Controversy

Plaintiffs have further failed to identify a justiciable case or controversy for purposes of Article III of the United States Constitution. *See Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). The law is clear that "neither the mere existence of a proscriptive statute nor a generalized threat of prosecution satisfies the 'case or controversy' requirement." *Ass'n of Am. R.R. v. Cal. Office of Spill Prevention & Response*, 113 F.Supp.3d 1052, 1057 (E.D. Cal. 2015) (citing *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126-27 (9th Cir. 1996)). Nonetheless, Plaintiffs have brought this action preemptively challenge Tribal statutes, even though no action has been brought or threatened against Plaintiffs to enforce those statutes. In fact, Plaintiff Robert Dobler admits that, when he sold a property on the Tulalip Reservation in 2009, the Tulalip Tribes ultimately did not enforce any excise tax on that transaction whatsoever. Dkt. # 9 at page 2, ¶ 3. By all accounts, the tribal statutes at issue in this case have not been enforced against Plaintiffs, and therefore cause them no Article III injury. Plaintiffs' speculative statements regarding property values do not give rise to a justiciable case or controversy.

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Dkt. # 9 at page 2, ¶ 6. Furthermore, an email regarding the closing of a property sale does not support Plaintiffs contention that they have suffered an injury.[4] Dkt. # 8 at page 1, ¶ 3. Plaintiffs fail to allege "actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99 (1979). Title companies presumably issue title exceptions based on federal law principles applicable to properties located within reservation boundaries. These exceptions do not give rise to a justiciable case or controversy. The Tulalip Tribes did not issue the title exceptions, nor did the Tulalip Tribes take any action against Plaintiffs pursuant to the tribal statutes at issue in this case to cause Plaintiffs any injury that would give rise to a justiciable case or controversy.

If a Justiciable Case or Controversy Over Actual Tribal Enforcement Action Were to Arise, Plaintiffs Would Be Required to Exhaust Tribal Court Remedies

Lastly, Plaintiffs mischaracterize the Tulalip Tribes as arguing in favor of exhaustion of tribal remedies, which was not raised by the Tulalip Tribes either in this Court or the superior court. *See* Dkt. # 7 at pages 7-8. The Tulalip Tribes notes, however, that should Plaintiffs ever be aggrieved by a tribal action under TTC ch. 12.20, entitled "Real Estate Sales Excise Tax," or TTC Title 7, entitled "Land Use," there exist remedies in the courts of the Tulalip Tribes pursuant to TTC § 12.20.130 and TTC ch. 7.180 of which Plaintiffs could avail themselves.

Furthermore, insofar as Plaintiffs attempt to sidestep the threshold issues of jurisdiction and failure to state a claim, and proceed directly to the merits of this case, Plaintiffs are incorrect on the law. Established federal law recognizes that, in certain circumstances, Indian tribes have jurisdiction to apply tribal laws to land use activities and

[4] The email does not state whether the seller of the property applied for an exemption from the tribal real estate excise tax. The Tribal Code specifically incorporates federal jurisdictional standards in determining which sales are subject to the tax. *See* TTC § 12.20.040.

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to collect taxes related to the activities of non-members within a reservation. A tribe has jurisdiction over non-Indians who enter into consensual relationships with the tribe, and to regulate "the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe." *Montana v. United States*, 450 U.S. 544, 566 (1981); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) (taxation). Activities posing fire risks and contamination of a tribe's water quality are but two examples found by the federal courts to be sufficient to sustain tribal jurisdiction. *See Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 850 (9th Cir. 2009), *cert. denied*, 558 U.S. 1024 (2009); *Montana v. U.S. Envtl. Prot. Agency*, 137 F.3d 1135, 1139-40 (9th Cir. 1998), *cert. denied*, 525 U.S. 921 (1998). Tulalip Tribal laws are consistent with federal law in this regard. *See* TTC § 12.20.040(1) (non-tribal members exempt except as consistent with federal law). The Tulalip Tribes declines Plaintiffs' invitation to argue the merits of a *Montana* exception because such an analysis is necessarily fact-specific when the tribal law is actually applied. *See Montana v. United States*, 450 U.S. at 566. Here, there are no facts to apply in order to reach a jurisdictional determination. If such were to occur, the Tribal Courts would be the appropriate bodies to interpret Tribal laws and determine the extent of Tribal jurisdiction in the first instance. *See National Farms Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. at 856. In this case, no fact-specific application of Tribal law has occurred to assert any *Montana* exception or associated review of Tribal jurisdiction, either in Tribal or federal courts. Furthermore, Plaintiffs have failed to establish subject matter jurisdiction.

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Conclusion

For the foregoing reasons, the Plaintiffs' Complaint against the Tulalip Tribes should be dismissed with prejudice. Plaintiffs have failed to identify any waiver of the Tulalip Tribes' sovereign immunity to allow this case to proceed. Plaintiffs' claims are barred under the doctrine of res judicata because of Plaintiffs' prior unsuccessful action in Snohomish County Superior Court under the same nucleus of facts, which was dismissed on the grounds of tribal sovereign immunity. Finally, Plaintiffs have not presented a justiciable case or controversy because they have not identified any actual or threatened injury caused by the Tulalip Tribes. Accordingly, dismissal is proper pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

DATED this 13th day of October 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2017, I electronically filed the foregoing reply with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Paul Brain
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DATED this 13th day of October 2017.

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