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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 CHRISTIAN LUIZ
12 Plaintiff,
13 vs.
14 NORTHERN CIRCLE INDIAN HOUSING
AUTHORITY, et al.

15
16 Defendants.

) Case No.: 18-CV-04712-RMI
)
) **DEFENDANTS' REPLY BRIEF IN**
) **SUPPORT OF MOTION TO DISMISS FOR**
) **LACK OF SUBJECT MATTER**
) **JURISDICTION AND FAILURE TO**
) **STATE A CLAIM**
)
) Date: 10/30/18
) Time: 10:00 a.m.
) Location: Eureka-McKinleyville Courthouse
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) Hon. Robert M. Illman
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) TELEPHONIC APPEARANCE REQUESTED

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I. INTRODUCTION

For this case to proceed, Plaintiff must first establish that this Court has jurisdiction. In his Petition for Writ of Habeas Corpus, Plaintiff alleged federal question jurisdiction under the Indian Civil Rights Act. But he did not address in his opposition brief the fact that relief under the Indian Civil Rights Act is limited to habeas corpus and Plaintiff is not detained. He also did not address in his opposition brief the fact that even if the Indian Civil Rights Act somehow applied, this Court would still lack jurisdiction based on the sovereign immunity of the Defendants.

Instead, without explaining the basis for jurisdiction, Plaintiff simply wants this Court to review and reverse the tribal decision. He complains that no further tribal remedy is available. But, this Court has no jurisdiction to review the findings and order of the tribal hearing officer. This Court also has no jurisdiction to grant habeas corpus relief under the Indian Civil Rights Act even if no additional remedy is available. This Court lacks jurisdiction and Plaintiff has failed to state a claim. Accordingly, this Court should dismiss this lawsuit with prejudice.

II. REPLY ARGUMENT

A. *This Court Has No Jurisdiction to Review the Findings and Order of the Tribal Hearing Officer*

Plaintiff acknowledges in his brief that he has the burden to establish this Court's jurisdiction. (See Oppo. Brf. at 3:2-3). But rather than state the basis of that jurisdiction or dispute the applicability of sovereign immunity, Plaintiff instead contends that this Court is a "court of last resort" and somehow has jurisdiction to review the merits of the underlying tribal decision. (See Oppo. Brf. at 3:7-25). This is wrong as a matter of law.

Given that federal courts are courts of limited jurisdiction, "federal court jurisdiction is not created by the mere fact that a case involves an Indian party or contract, or tribal or individual Indian property, or merely because it arises in Indian country." 1-7 Cohen's Handbook of Federal

1 Indian Law § 7.04 (2017). Unless a federal court determines that a tribal forum lacked jurisdiction
2 (which is not alleged in this case), proper deference to the tribal system precludes re-litigation of
3 issues raised and resolved in the tribal forum. Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 19
4 (1987). A federal court has no jurisdiction to inquire into the merits of a tribal decision once it is
5 determined that resolution of that tribal action was within the scope of the tribe’s power to
6 determine. Attorney's Process & Investigation Servs. v. Sac & Fox Tribe, 609 F.3d 927, 938 (8th
7 Cir. 2010).

8 In other words, a federal court has no power of appellate review on the merits of a tribal
9 court decision. See Lesperance v. Sault Ste. Marie Tribe of Chippewa Indians, 259 F. Supp.3d 713,
10 715-19 (W.D. Mich. 2017) (dismissing case for lack of jurisdiction where plaintiff sought to
11 overturn decision of the tribal court system). A party cannot re-litigate in federal court issues raised
12 and resolved in tribal court. Davis v. Mille Lacs Band of Chippewa Indians, 193 F.3d 990, 991-92
13 (8th Cir. 1999).

14 Here, Plaintiff is asking this Court to review the findings and order of the workers’
15 compensation tribal hearing officer. Plaintiff claims the facts do not support the findings and order.
16 But this Court has no jurisdiction to review those findings and order. This Court is not a court of
17 appeal for decisions rendered in the tribal forum. Plaintiff must first establish that this Court has
18 jurisdiction. Absent a separate federal question (or some other basis for federal court jurisdiction),
19 there can be no jurisdiction and this case should be dismissed.¹

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23 ¹ Interestingly, Plaintiff now says in his opposition brief that a formal due process review under the
24 Indian Civil Rights Act is not necessary. (See Oppo. Brf. at 3:23-25). Absent a due process
25 challenge under the Indian Civil Rights Act, there can be no possible federal question jurisdiction.
26 See Unite Here v. Pala Band of Mission Indians, 583 F.Supp.2d 1190, 1195 (S.D. Cal. 2008) (“The
27 fact that a defendant is a tribal sovereign is not, by itself, sufficient to raise a federal question”).
28 Even with a due process challenge under the Indian Civil Rights Act, there still is no federal court
jurisdiction except for habeas corpus relief. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 51-52
(1978) (“ICRA does not expressly authorize the bringing of civil actions for declaratory or
injunctive relief to enforce its substantive provisions.”)

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B. *This Court Has No Jurisdiction Even If There Is No Additional Remedy*

Plaintiff complains that there is no other court with jurisdiction and no means to compel Defendants to act further. (See Oppo. Brf. at 4:20-23). Plaintiff wants this Court to order Defendants to provide workers' compensation benefits to Plaintiff even though a tribal hearing officer has already denied those benefits. (See Oppo Brf. at 5:8-12). This Court has no jurisdiction to so order.

The law is "clear that tribal sovereign immunity may preclude federal court jurisdiction over non-Indian complaints brought under the ICRA even if tribal remedies are unavailable." Nero v. Cherokee Nation of Okla., 892 F.2d 1457, 1460 n.5 (10th Cir. 1989). The lack of a forum does not automatically prevent dismissal of a suit. Makah Indian Tribe v. Verity, 910 F.2d 555, 560 (9th Cir. 1990). "Sovereign immunity may leave a party with no forum for its claims." Lomayaktewa v. Hathaway, 520 F.2d 1324, 1326 (9th Cir. 1975).

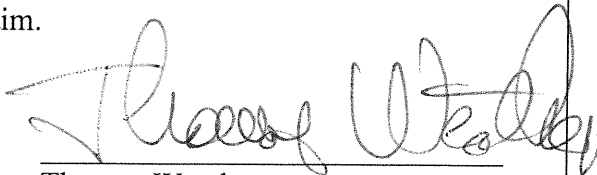
A plaintiff's "interest in litigating a claim may be outweighed by a tribe's interest in maintaining its sovereign immunity." Quileute Indian Tribe v. Babbitt, 18 F.3d 1456, 1460 (9th Cir. 1994). As a result, tribal immunity may bar federal jurisdiction even when no other forum or remedy is available. Fluent v. Salamanca Indian Lease Auth., 928 F.2d 542, 547 (2d Cir. 1991).

Here, Plaintiff had a tribal forum to address his workers' compensation claim. He simply does not like the outcome. So, he now wants this Court to reverse the tribal determination. What claims and what remedies exist is a matter solely for the tribal forum. The fact that Plaintiff has no remedy in this Court does not confer this Court with jurisdiction. This matter should be dismissed with prejudice.

IV. CONCLUSION

Based on the moving papers and this reply brief, this Court should dismiss this matter with prejudice for lack of jurisdiction and failure to state a claim.

Date: 10/16/18


Thomas Weathers
Attorney for Defendants