

JS-6

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

THE TAMARISK RD. TRUST UDT  
08/19/2020, PROPERT T VIEW INC. AS  
TRUSTEE,

Plaintiff,

v.

MICHAEL J. PRIETO, an individual; and  
DOES 1 – 10,

Defendant.

Case No. 5:23-cv-01886 SPG SP

**ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS (ECF NO. 23)**

Before the Court is Defendant Prieto’s motion to dismiss Plaintiff The Tamarisk Rd. Trust UDT 8/19/2020, Proper T View Inc.’s (“Plaintiff”) Complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure (“Motion”). (ECF No. 23 (“Mot.”)). Plaintiff opposes the Motion. (ECF No. 25 (“Opp.”)). Having considered the submissions of the parties, the relevant law, arguments made during the hearing on the Motion, and the record in this case, the Court hereby GRANTS the Motion.

1 **I. BACKGROUND**

2 This case arises out of a dispute over a property located at 2170 East Tamarisk Road,  
3 Palm Springs, California 92262 (the “Property”). (ECF No. 1 (“Compl.”) ¶ 2). The  
4 following allegations are asserted in the Complaint.

5 The Property is part of Native American land. (*Id.* ¶ 3). Defendant is a member of  
6 the Agua Caliente tribe.<sup>1</sup> In or about April 1972, Defendant’s mother, Dora Joyce Prieto  
7 (“Dora Prieto”), acquired twenty acres of real property, which included the Property, that  
8 was later developed into single family homes. (*Id.* ¶ 5). On or about February 9, 1989,  
9 Dora Prieto and Defendant entered into a “long term and automatically renewing lease  
10 agreement” that enabled Defendant to “construct, improve, and/or maintain a dwelling and  
11 related structures on the [Property] and otherwise use and occupy the premises for  
12 residential purposes” (the “Leasehold Interest”), which was approved by the Department  
13 of the Interior Bureau of Indian Affairs (the “Bureau”). (*Id.* ¶ 6; ECF No. 1 at 21). Dora  
14 Prieto passed away on October 6, 2000. (Compl. ¶ 7).

15 On or about September 26, 2001, Defendant obtained a \$240,000 loan from Indy  
16 Mac Bank and used the Leasehold Interest as security. (*Id.* ¶ 8). In so doing, Defendant  
17 signed a “Promissory Note and Deed of Trust” granting and conveying the trustee thereof  
18 the power to sell the Leasehold Interest should Defendant default (the “September 2001  
19 Deed of Trust”). (*Id.*; ECF No. 1 at 23–36). On October 11, 2001, the Bureau approved  
20 the September 2001 Deed of Trust and all provisions therein. (Compl. ¶ 9; ECF No. 1 at  
21 38). Thereafter, Defendant failed to make payments and defaulted under the September  
22 2001 Deed of Trust. (Compl. ¶ 10). On or about January 29, 2020, a Notice of Default  
23 and Election to Sell Under Deed of Trust was recorded with the County of Riverside by  
24 the foreclosure trustee. (*Id.* ¶ 12). At an August 19, 2020, auction, the Leasehold Interest  
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28 <sup>1</sup> Though not alleged within the Complaint, based on the parties’ briefs, it appears  
undisputed that Defendant is a member of the Agua Caliente tribe. *See* (Mot. at 3; Opp. at  
7).

1 was sold to Plaintiff. (*Id.* ¶ 13). On or about August 25, 2020, Plaintiff acquired the  
2 Leasehold Interest. (*Id.* ¶¶ 13–14).

3 Defendant has not paid rent for his occupancy of the Property since, at least, Plaintiff  
4 acquired the Leasehold Interest. (*Id.* ¶ 15). However, at the time that Plaintiff acquired  
5 the Leasehold Interest, Plaintiff was not able to initiate an unlawful detainer proceeding  
6 against Defendant because of a residential eviction moratorium then in place, pursuant to  
7 then-governing COVID-19 guidelines. (*Id.* ¶ 14).

8 Starting on or about October 19, 2020, Plaintiff began to serve Defendant with  
9 various notices indicating that Plaintiff was seeking to enforce its rights under the  
10 Leasehold Interest. *See (id.* ¶¶ 16–18). Specifically, on February 1, 2021, Plaintiff filed a  
11 civil action against Defendant and the former foreclosure trustees of the September 2001  
12 Deed of Trust asserting various causes of action, including quiet title, in an action entitled  
13 *Proper T View, Inc., v. Prieto, Wilmington Savings Fund Society, FSB, and ZBS Law, LLP*,  
14 bearing the case number CVPS2100537 (the “Quiet Title Action”). *See Proper T View,*  
15 *Inc. v. Prieto et al.*, Case No. 22-cv-661-SPG-SP (C.D. Cal. Apr. 18, 2022), Dkt. No. 1-1.  
16 On December 14, 2021, Plaintiff also filed an unlawful detainer action against Defendant  
17 seeking to gain possession of the Property in an action entitled *The Tamarisk Rd. Trust*  
18 *UDT 8/19/2020, Proper T View Inc. v. Michael J. Prieto*, bearing the case number  
19 UDPS2100639 (the “UD Action”). (Compl. ¶ 18). Defendant removed both cases to  
20 federal court in April 2022. *See Tamarisk Rd. Tr. UDT 8/19/2020, Proper T View Inc. v.*  
21 *Prieto*, No. 22-CV-00650-SPG-SP (C.D. Cal. Apr. 14, 2022), Dkt. No. 1; *Proper T View,*  
22 *Inc. v. Prieto et al.*, Case No. 22-cv-661-SPG-SP (C.D. Cal. Apr. 18, 2022), Dkt. No. 1.  
23 On August 4, 2022, this Court granted Plaintiff’s motions to remand both the UD Action  
24 and the Quiet Title Action to state court due to Defendant’s untimely removal, awarding  
25 fees to Plaintiff in both cases. *Tamarisk Rd. Tr. UDT 8/19/2020, Proper T View Inc. v.*  
26 *Prieto*, No. 22-CV-00650-SPG-SP, 2022 WL 3098606, at \*5 (C.D. Cal. Aug. 4, 2022);  
27 *Proper T View, Inc. as Trustee of Tamarisk Rd. Tr. UDT 8/19/2020 v. Prieto*, No. EDCV  
28 22-00661-SPG-SP, 2022 WL 3098607, at \*4 (C.D. Cal. Aug. 4, 2022). Thereafter, the

1 Superior Court granted Defendant’s motion for judgment on the pleadings based on a lack  
2 of subject matter jurisdiction, which Plaintiff appealed. (ECF No. 1 at 58). On August 18,  
3 2023, the Appellate Division of the Superior Court of California, County of Riverside,  
4 issued a per curium opinion regarding the UD Action, ruling that “[t]he instant action is a  
5 dispute concerning Indian trust property and . . . the superior court has no subject matter  
6 jurisdiction over it.” (*Id.* ¶ 22; ECF No. 1 at 62).

7 After the California Court of Appeals issued its opinion, Plaintiff commenced this  
8 action in federal court on September 15, 2023, alleging that this Court has subject matter  
9 jurisdiction because the land at issue is Native American land and because the superior  
10 court does not have jurisdiction. *See* (Compl.); *see (id.* ¶ 3). The Complaint asserts two  
11 causes of action: ejectment and trespass; and unpaid rents. *See (id.* ¶¶ 23–26, 27–32).

12 On December 6, 2023, Defendant moved to dismiss the Complaint based on a  
13 purported lack of subject matter jurisdiction. (Mot.). Plaintiff opposed, and Defendant  
14 replied to the opposition. (Opp.; ECF No. 27 (“Reply”).

## 15 **II. LEGAL STANDARD**

16 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*  
17 *of Am.*, 511 U.S. 375, 377 (1994). Federal courts have original jurisdiction where an action  
18 arises under federal law, 28 U.S.C. § 1331, or where each plaintiff’s citizenship is diverse  
19 from each defendant’s citizenship and the amount “in controversy exceeds the sum or value  
20 of \$75,000, exclusive of interest and costs. . . .” 28 U.S.C. § 1332(a). Pursuant to Federal  
21 Rule of Civil Procedure 12(b)(1), a defendant may seek dismissal of a complaint for lack  
22 of subject matter jurisdiction. Attacks on jurisdiction under Rule 12(b)(1) may be “either  
23 facial or factual.” *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). In a facial attack,  
24 like the one here, the party challenging jurisdiction asserts that the “allegations contained  
25 in a complaint are insufficient on their face to invoke federal jurisdiction.” *Safe Air for*  
26 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (“By contrast, in a factual attack,  
27 the challenger disputes the truth of the allegations that, by themselves, would otherwise  
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1 invoke federal jurisdiction.”)<sup>2</sup> The burden of demonstrating subject matter jurisdiction  
2 rests on the party asserting jurisdiction. *United States v. Orr Water Ditch Co.*, 600 F.3d  
3 1152, 1157 (9th Cir. 2010).

### 4 **III. DISCUSSION**

5 Plaintiff’s Complaint asserts two causes of action against Defendant resulting from  
6 Defendant’s purported default on the September 2001 Deed of Trust. *See* (Compl.)  
7 Plaintiff alleges that it obtained possessory rights over the Property when on August 25,  
8 2020, Plaintiff bought the September 2001 Deed of Trust, which included the rights to the  
9 Leasehold Interest. (*Id.* ¶¶ 8, 13–14, 24). However, Defendant has remained in possession  
10 of the Property, and thus Plaintiff asserts that his possession is a trespass and seeks to eject  
11 Defendant from the Property. (*Id.* ¶¶ 24–26). Second, Plaintiff asserts an unpaid rents  
12 cause of action, alleging that Defendant has not paid rent during his purportedly unlawful  
13 occupancy of the Property, which has resulted in unpaid rent accruing at a rate of \$133.33  
14 per day since September 1, 2020. (*Id.* ¶¶ 29–32). Neither cause of action alleges a violation  
15 of federal law. Notwithstanding, the Complaint alleges that subject matter jurisdiction is  
16 grounded in a federal question, not diversity, jurisdiction. *See* (*id.* ¶ 3).

17 Defendant argues that the Complaint must be dismissed because the two asserted  
18 causes of action arise under state law and do not pose a federal question. Plaintiff argues  
19 that two federal statutes, 28 U.S.C. § 1346 and 25 U.S.C. § 349, confer federal jurisdiction  
20 over the dispute and that the dispute raises a substantial question of federal law because  
21 the Property is Indian Trust property.<sup>3</sup> The Court takes each of Plaintiff’s contentions in  
22 turn.

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24 <sup>2</sup> Though the parties do not directly specify the type of jurisdictional attack here, the Court  
25 finds that the Motion presents a facial challenge to jurisdiction by arguing that the  
26 Complaint, on its face, does not present a federal question to confer jurisdiction on this  
27 Court. *See, e.g.*, (Mot. at 3); *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.  
2004).

28 <sup>3</sup> Plaintiff also requests the Court to take judicial notice of the notices of removal Defendant  
filed in the UD Action and the Quiet Title action and to “disallow” Defendant from taking  
a position contrary to his position taken therein. (ECF Nos. 26, 26-1, 26-2; Opp. at 7).

1           **A.     Jurisdiction Under 28 U.S.C. § 1346**

2           Section 1346, entitled “United States as defendant,” provides that district courts have  
3 subject matter jurisdiction over certain claims against the United States, including those  
4 that are founded on the Constitution. 28 U.S.C. § 1346. Here, however, the United States  
5 is not named as a Defendant. Therefore, this statute provides no basis for federal  
6 jurisdiction in this case.

7           **B.     Jurisdiction Under 25 U.S.C. § 349**

8           Section 349, entitled “Patents in Fee to Allottees,” provides:

9           At the expiration of the trust period and when the lands have been conveyed  
10 to the Indians by patent in fee, as provided in section 348 of this title, then  
11 each and every allottee shall have the benefit of and be subject to the laws,  
12 both civil and criminal, of the State or Territory in which they may reside; and  
13 no Territory shall pass or enforce any law denying any such Indian within its  
14 jurisdiction the equal protection of the law: Provided, That the Secretary of  
15 the Interior may, in his discretion, and he is authorized, whenever he shall be  
16 satisfied that any Indian allottee is competent and capable of managing his or  
17 her affairs at any time to cause to be issued to such allottee a patent in fee  
18 simple, and thereafter all restrictions as to sale, incumbrance, or taxation of  
19 said land shall be removed and said land shall not be liable to the satisfaction  
20 of any debt contracted prior to the issuing of such patent: ***Provided further,  
That until the issuance of fee-simple patents all allottees to whom trust  
patents shall be issued shall be subject to the exclusive jurisdiction of the  
United States:*** And provided further, That the provisions of this Act shall not  
extend to any Indians in the former Indian Territory.

21 25 U.S.C. § 349 (emphasis added). Plaintiff argues that, because no fee-simple patent  
22 regarding the Property has occurred, the sentence in bold-face gives the district court  
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24 However, even if Defendant’s prior assertions contradict his positions taken here, such  
25 considerations are irrelevant because, regardless of the parties’ positions, a district court  
26 will not exercise jurisdiction over a case where it is wanting. *See Gonzalez v. Thaler*, 565  
27 U.S. 134, 141 (2012) (obliging courts to examine subject-matter jurisdiction issues *sua*  
28 *sponte*). Therefore, the Court denies as moot Plaintiff’s request to take judicial notice of  
the notices of removal in the UD Action and Quiet Title Action, as the Court has not relied  
on either of those other documents.

1 jurisdiction over this action. *See* (Opp. at 5–6). Defendant argues that section 349 is not  
2 the jurisdictional section for the United States chapter on Indian allotments, and the section  
3 that provides for jurisdiction, section 345, does not provide jurisdiction over state law  
4 claims *against* a person of Indian blood or descent. (Reply at 3).

5 Section 345, entitled “Actions for Allotments,” provides in relevant part:

6 All persons who are in whole or in part of Indian blood or descent who  
7 are entitled to an allotment of land under any law of Congress, or who claim  
8 to be so entitled to land under any allotment Act or under any grant made by  
9 Congress, or who claim to have been unlawfully denied or excluded from any  
10 allotment or any parcel of land to which they claim to be lawfully entitled by  
11 virtue of any Act of Congress, may commence and prosecute or defend any  
12 action, suit, or proceeding in relation to their right thereto in the proper district  
13 court of the United States; and said district courts are given jurisdiction to try  
14 and determine any action, suit, or proceeding arising within their respective  
15 jurisdictions involving the right of any person, in whole or in part of Indian  
16 blood or descent, to any allotment of land under any law or treaty (and in said  
17 suit the parties thereto shall be the claimant as plaintiff and the United States  
18 as party defendant); . . . Provided, That the right of appeal shall be allowed to  
19 either party as in other cases.

20 25 U.S.C. § 345; *see also Scholder v. United States*, 428 F.2d 1123, 1126 n.2 (9th Cir.  
21 1970) (“28 U.S.C. § 1353 is a recodification of the jurisdictional portion of § 345.”).<sup>4</sup>

22 As a threshold issue, the Court finds that § 349 does not appear to address whether  
23 district courts have jurisdiction to consider actions involving allotments. While § 349 does  
24 include the words “subject to the exclusive jurisdiction of the United States,” courts do not  
25 treat this section as conferring jurisdiction in the district courts, finding instead that it  
26 “seem[s] almost purely regulatory, invoking Congress’s plenary power over Indians,” and  
27 considering it in the context of which governing authorities have authority over tribes, for  
28 example, taxation authority. *See Mitchell v. United States*, 664 F.2d 265, 275 (Ct. Cl.

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<sup>4</sup> Section 1353 provides, in relevant part: “The district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty.” 28 U.S.C. § 1353.

1 1981), *aff'd and remanded*, 463 U.S. 206 (1983); *Plains Com. Bank v. Long Fam. Land &*  
2 *Cattle Co.*, 554 U.S. 316, 329 (2008) (discussing the effects of converting tribal land into  
3 fee simple, including under § 349, and which governing authority loses “plenary  
4 jurisdiction” which “necessarily entails . . . *regulatory* jurisdiction over the use of the land  
5 by others” (emphasis added)).<sup>5</sup> That § 349 does not address district court jurisdiction is  
6 confirmed by § 345, the earlier section in the same chapter, which expressly permits certain  
7 actions to proceed in United States district courts. 25 U.S.C. § 345 (Indian plaintiffs “may  
8 commence and prosecute or defend any action, suit, or proceeding in relation to their right  
9 thereto in the proper district court of the United States,” and “district courts are given  
10 jurisdiction to try and determine any action, suit, or proceeding arising within their  
11 respective jurisdictions involving the right of any person, in whole or in part of Indian  
12 blood or descent,” so long the parties to such suit is “the claimant as plaintiff and the United  
13 States as party defendant”).

14 However, Section 345 does not permit the Court’s jurisdiction over this case either.  
15 Section 345 limits its jurisdictional grant to suits brought by individuals of Indian blood or  
16 descent. *See Kumar v. Schildt*, No. CV-22-54-GF-BMM, 2022 WL 4299827, at \*3 (D.  
17 Mont. Sept. 19, 2022) (reviewing case law holding that § 1353 “limits its jurisdiction to  
18 cases brought by persons of Indian blood or descent” which does not apply when the person  
19 of Indian blood or descent is the defendant); *see also United States v. Preston*, 352 F.2d  
20 352, 354–56 (9th Cir. 1965) (finding no jurisdiction under § 345 when there was “no claim  
21 that the plaintiffs in this case are persons of Indian blood” even though the defendant was  
22 a member of the Agua Caliente tribe). Here, the person with “Indian blood or descent” is  
23 the Defendant. *See K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1033 (9th  
24 Cir. 2011) (rejecting the district court’s assumption that a corporation-plaintiff could sue

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26 <sup>5</sup> *See also Guardianship of Prieto v. City of Palm Springs*, 328 F. Supp. 716, 718 (C.D.  
27 Cal. 1971) (“25 U.S.C. § 349 is no authority for this suit being brought to the Federal court.  
28 . . . [because it] is part of the scheme of allotments of Indian lands and title affecting these  
allotments[,] . . . not a general grant of jurisdiction for all acts by or against an Indian  
allottee.” (citing *United States v. Preston*, 352 F.2d 352 (9th Cir.1965))).



1 under § 345 because it “do[es] not authorize suit by state corporations such as [the  
2 plaintiff]”). Therefore, § 345 provides no jurisdiction for this action.<sup>6</sup>

### 3 C. Jurisdiction Due to Substantial Federal Question

4 A federal court has federal question jurisdiction over all “civil actions arising under  
5 the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. An action  
6 “arises under” federal law pursuant to 28 U.S.C. § 1331 if the cause of action is created by  
7 federal law or necessarily requires resolution of a substantial question of federal law. *See*  
8 *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005).  
9 Whether a complaint presents a federal question “is governed by the ‘well-pleaded  
10 complaint rule,’ which provides that federal jurisdiction exists only when a federal question  
11 is presented on the face of the plaintiff’s properly pleaded complaint.” *Rainero v. Archon*  
12 *Corp.*, 844 F.3d 832, 837 (9th Cir. 2016) (quoting *California ex rel. Sacramento Metro.*  
13 *Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1014 (9th Cir. 2000)). As relevant  
14 here, “for jurisdiction to exist the Complaint must assert a present right arising under  
15 federal law as opposed to a case where ‘the underlying right or obligation arises only under  
16 state law and federal law is merely alleged as [an affirmative defense].” *Pacino v. Oliver*,  
17 No. 18-CV-06786-RS, 2019 WL 13128558, at \*2 (N.D. Cal. Aug. 29, 2019) (quoting  
18 *Oneida Indian Nation of N.Y. v. Cty. of Oneida* (“*Oneida P*”), 414 U.S. 661, 675 (1974)).

19 Plaintiff contends that a substantial federal question arises from the Complaint  
20 because Plaintiff disputes Defendant’s possessory rights to the Property, which is Indian  
21 Trust Property. (Opp. at 5). Defendant argues that the state law claims, even if over Indian  
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24 <sup>6</sup> Even if the plaintiff was a tribal member, § 345 does not automatically grant jurisdiction  
25 over all actions that involve allotments and an Indian plaintiff. “Of critical importance in  
26 deciding whether jurisdiction exists under section 345 for protection of interests  
27 appurtenant to the allotment are the claims advanced by plaintiffs.” *Pinkham v. Lewiston*  
28 *Orchards Irr. Dist.*, 862 F.2d 184, 187, 189 (9th Cir. 1988) (finding no § 345 jurisdiction  
over an Indian plaintiff’s claims of negligence and tortious invasion of their property  
“[b]ecause such claims are not related to the ownership of title, or any rights appurtenant  
to allotment”).

1 trust property, do not present a federal question based on the Complaint’s allegations,  
2 which do not require any consideration of federal law.

3 Courts consistently reject jurisdiction based on a substantial federal question when  
4 the state-law dispute over interest in Indian land does not require the court to interpret any  
5 federal right. *See, e.g., Pacino*, 2019 WL 13128558, at \*2; *ABBA Bail Bonds, Inc. v.*  
6 *Grubbe*, 643 F. App’x 634, 636 (9th Cir. 2016).; *Safari Park, Inc. v. Southridge Prop.*  
7 *Owners Ass’n of Palm Springs*, No. 18-CV-01233-CBM, 2018 WL 6843667, at \*3 (C.D.  
8 Cal. Dec. 4, 2018); *Round Valley Indian Hous. Auth. v. Hunter*, 907 F. Supp. 1343, 1349  
9 (N.D. Cal. 1995) (“[A]ctions which involve individual members of tribes where the  
10 underlying action does not involve an Indian tribe’s possessory rights should be  
11 adjudicated by the state courts.”). A federal question may be raised by a possessory dispute  
12 over interest in Indian land, however, when a complaint bases the rights to a land either  
13 challenging, or due to, a federal law, federal treaty, or other inherent federal right. For  
14 example, the plaintiff-tribe in *Oneida I* asserted that it had a possessory right to the land  
15 because “aboriginal title of an Indian tribe guaranteed by treaty and protected by statute  
16 ha[d] never been extinguished.” *Oneida I*, 414 U.S. at 676.<sup>7</sup> However, where a complaint  
17 presents only state law claims, without expressly challenging a substantial federal question,  
18 there is no federal subject matter jurisdiction only because a party is a tribal member and  
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21 <sup>7</sup> In *Oneida I*, Oneida, the plaintiff-tribe, alleged several issues of federal law on the face  
22 of the complaint:

23 The complaint alleged that from time immemorial down to the time of the  
24 American Revolution the Oneidas had owned and occupied some six million  
25 acres of land in the State of New York. The complaint also alleged that in the  
26 1780’s and 1790’s various treaties had been entered into between the Oneidas  
27 and the United States confirming the Indians’ right to possession of their lands  
28 until purchased by the United States and that in 1790 the treaties had been  
implemented by federal statute the Nonintercourse Act, 1 Stat. 137, forbidding  
the conveyance of Indian lands without the consent of the United States.

*Oneida I*, 414 U.S. at 663–64.

1 the land is Indian land.<sup>8</sup> The critical distinction “hinges on whether the claimed right of  
2 possession sought to be enforced arises from state law or federal law.” *Pacino*, 2019 WL  
3 13128558, at \*2 (citing *Oneida I*, 414 U.S. at 677).

4 Here, Plaintiff contends its right to possession of the Property is based on state law  
5 pursuant to its ownership of the September 2001 Deed of Trust, not on any federal law,  
6 treaty, or right. *See, e.g.*, (Compl. ¶¶ 14, 25, 29); *Round Valley*, 907 F. Supp. at 1348  
7 (finding no federal jurisdiction “[b]ecause landlord-tenant disputes are matters of state  
8 law”).<sup>9</sup> The Complaint does not seek to enforce Plaintiff’s rights under the September 2001  
9 Deed of Trust based on Defendant’s identity as a member of the Agua Caliente tribe. Nor  
10 does the Complaint raise any challenge to the validity of the September 2001 Deed of Trust,  
11 or the original Leasehold Interest. *Safari Park*, 2018 WL 6843667, at \*3 (finding no federal  
12 question invoked because the plaintiff did not “contend that the right-of-way [over the  
13 tribal land] (which was approved by the BIA) is invalid or defective, only that the right-of-  
14 way expired in 2010 and the Defendants[] continued to trespass the lands”); *see also Taylor*  
15 *v. Anderson*, 234 U.S. 74, 75–76 (1914) (finding no federal question jurisdiction because  
16 the challenge to the deed to the Indian individual’s land was only in anticipation of his  
17 defense and noting that the federal question must “appear[] in the plaintiff’s statement of  
18 his own claim in the bill or declaration, unaided by anything alleged in anticipation or  
19 avoidance of defenses”).

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22 <sup>8</sup> *See All Mission Indian Hous. Auth. v. Magante*, 526 F. Supp. 2d 1112, 1116 (S.D. Cal.  
23 2007) (“In the absence of similarly clear statutory direction, the Court does not believe that  
24 Congress intended that the federal courts would have jurisdiction over every eviction from  
25 an Indian housing unit. Such evictions could include those brought for repeated violations  
26 of miscellaneous lease provisions governing things like noise, or even landscaping  
27 requirements.”).

28 <sup>9</sup> *See also Round Valley*, 907 F. Supp. at 1348 (“An action involving an Indian *tribe*’s—as  
opposed to an individual tribe member’s—possessory rights of trust land would,  
unquestionably, create a question of federal common law.” (emphasis in original)).

1           The September 2001 Deed of Trust, even though it was issued only upon approval  
2 of the Bureau, does not raise a federal issue absent any “alleg[ations] [about] any problem  
3 with the underlying lease[] . . . .” *Peabody Coal Co. v. Navajo Nation*, 373 F.3d 945, 951–  
4 52 (9th Cir. 2004) (“Whether the Navajo Nation is somehow in breach of this award is an  
5 issue that can be resolved by the common law of contracts. Federal approval of the  
6 underlying leases or amendments has no material bearing on whether this award requires  
7 confirmation or enforcement.”). Based on the Court’s review of the Complaint, there is no  
8 claim to federal jurisdiction beyond the undisputed allegation that the Property is Indian  
9 land. Therefore, there is no substantial federal question that provides the Court with  
10 jurisdiction.

11           In sum, Plaintiff has failed to meet its burden of establishing this Court’s jurisdiction  
12 over the present action. Accordingly, the Court dismisses the Complaint based on a lack  
13 of subject matter jurisdiction.<sup>10</sup>

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20 <sup>10</sup> Plaintiff also states that, without federal jurisdiction, it has no legal recourse given the  
21 California Court of Appeal’s decision that the state courts did not have jurisdiction over  
22 possession disputes involving Indian land and because Plaintiff is unaware of a tribal court  
23 available to hear the dispute. *See* (Opp. at 7–8). Whether Plaintiff has legal recourse or  
24 not does not confer federal jurisdiction, as district courts “possess only that power  
25 authorized by Constitution and statute.” *Kokkonen*, 511 U.S. at 377; *see also All Mission*  
26 *Indian Hous. Auth. v. Magante*, 526 F. Supp. 2d 1112, 1117 (S.D. Cal. 2007) (rejecting the  
27 plaintiff’s claim for jurisdiction premised on that “no tribal courts exist” for the members  
28 of the tribe in the case because “the lack of a presently-available alternative forum does not  
provide the constitutional and statutory basis required to provide jurisdiction in federal  
court”).

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court GRANTS Defendant's motion to dismiss. The  
3 Complaint is hereby DISMISSED with prejudice.

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5 **IT IS SO ORDERED.**

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7 DATED: March 4, 2024



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HON. SHERILYN PEACE GARNETT  
UNITED STATES DISTRICT JUDGE

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