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

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, FIRST STREET FEDERAL**
11 **COURTHOUSE LOS ANGELES**

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

14 Plaintiff,

15 v.

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

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

Judge: Hon. Sherilyn Peace
Garnett

Department: 5C

**PLAINTIFF’S THE TAMARISK RD.
TRUST UDT 08/19/2020, PROPER T
VIEW INC. AS TRUSTEE
OPPOSITION TO DEFENDANT’S
SECOND AMENDED MOTION TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION [RULE
12(B)(1)]**

[Filed concurrently with supporting
Request for Judicial Notice]

Date: January 31, 2024

Time: 1:30 p.m.

Dept.: 5C

Action Filed: September 15, 2023

24 Plaintiff THE TAMARISK RD. TRUST UDT 8/19/2020, PROPER T VIEW
25 INC., AS TRUSTEE (“Plaintiff”) hereby submits the following Opposition to
26 Defendant MICHAEL J. PRIETO’S Second Amended Motion to Dismiss for Lack
27 of Subject Matter Jurisdiction [Rule 12(B)(1)]:
28

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I.
INTRODUCTION

Defendant Michael J. Prieto (“Defendant”) has remained in unlawful possession of the subject real property located at 2170 East Tamarisk Road, Palm Springs, California 92262 (“Subject Property”) since August 19, 2020, which is when Plaintiff became the successful bidder at the nonjudicial foreclosure sale of the Leasehold Interest in the Subject Property. For over three (3) years, Defendant has unlawfully resided at the Subject Property for free.

On February 1, 2021, Plaintiff initiated its first legal action to gain possession of the Subject Property in the Superior Court of California, County of Riverside. Since that time, Defendant has done everything in his power to prevent Plaintiff from gaining possession of the Subject Property. Defendant’s instant Second Amended Motion to Dismiss for Lack of Subject Matter Jurisdiction is yet another delay tactic. With the exception of a reference to counsel for the parties having conferred pursuant to L.R. 7-3, Defendant’s instant Second Amended Motion to Dismiss for Lack of Subject Matter Jurisdiction is nearly identical to the prior Motion to Dismiss he filed on November 7, 2023.

In the related Superior Court of California, County of Riverside Civil Action and Unlawful Detainer Action, Defendant insistently and vehemently argued that the California State Court lacked subject matter jurisdiction to adjudicate his rights, and the parties’ respective rights related to the possessory leasehold interest in the Subject Property. As evidenced by the exemplars attached to the concomitant Request for Judicial Notice filed concurrently herewith, Defendant repeatedly argued that only the Federal Court has subject matter jurisdiction over Defendant and the Subject Property. In his instant Second Amended Motion to Dismiss, Defendant again acknowledges that “Plaintiff’s claims do arise from federal law.” (Second Amended Motion to Dismiss, p. 3, l. 5-6, and p. 6, l. 17.) Following the Per Curiam Opinion of the Superior Court of California, County of Riverside,

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1 Appellate Division dated August 18, 2023 (“Opinion”), a copy of which is attached
2 as Exhibit 8 to the Complaint [DOC 1], the Superior Court of California, County of
3 Riverside ruled that it “has no subject matter jurisdiction.” Given the Superior Court
4 of California, County of Riverside’s recent Opinion, the fact that the Subject
5 Property is Indian Trust Property, Defendant’s repeated position that the Federal
6 Court has subject matter jurisdiction over Defendant and the Subject Property, and
7 based on the authorities cited to below, the Federal Court has subject matter
8 jurisdiction over Defendant, the Subject Property, and the possessory rights related
9 thereto. Arguments by Defendant to the contrary are inappropriate, and are only
10 intended to further delay Plaintiff’s ability to gain possession of the Subject
11 Property. Accordingly, Plaintiff respectfully requests that Defendant’s Second
12 Amended Motion to Dismiss for Lack of Subject Matter Jurisdiction be denied.

13 **II.**

14 **STATEMENT OF PERTINENT FACTS**

15 On February 1, 2021, Plaintiff filed a Verified Complaint for Declaratory
16 Relief; Ejectment and Trespass; Quiet Title and Cancellation/Rescission of Sale and
17 Trustee’s Deed Upon Sale against Defendant, the lender, Wilmington Savings Fund
18 Society FSB, as Trustee of the CSMC 2019-RP15 Trust, and the foreclosure trustee,
19 ZBS Law, LLP (“Civil Action”). The Civil Action was filed because there was a
20 countywide moratorium on residential eviction actions in Riverside County,
21 California at that time.

22 Following the lifting of the eviction moratorium, on December 14, 2021,
23 Plaintiff filed an unlawful detainer action against Prieto entitled *The Tamarisk Rd.*
24 *Trust UDT 08/19/2020, Proper T View Inc. as Trustee v. Michael J. Prieto/Case No.:*
25 *UDPS2100639* (“UD Action”) seeking to gain possession of the Subject Property.

26 On or about January 20, 2022, Plaintiff dismissed the Second Cause of Action
27 for Ejectment and Trespass from the Civil Action.
28

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1 On the eve of the trial in the UD Action, on April 18, 2022, Prieto filed a
2 Notice of Removal of Action Under 28 U.S.C. §§ 1346, 1360, 1441(f), 1442(a); and
3 25 U.S.C. 349 of both the Civil Action and the UD Action.

4 Thereafter, Plaintiff filed successful Motions to Remand both the Civil Action
5 and the UD Action back to the Superior Court of California, County of Riverside.

6 On August 18, 2023, following Plaintiff’s appeal of the UD Action Court’s
7 Ruling on the issue of subject matter jurisdiction, the Superior Court of California,
8 County of Riverside, Appellate Division issued its Per Curiam Opinion dated August
9 18, 2023 (“Opinion”), a copy of which is attached as Exhibit 8 to the Complaint
10 [DOC 1], wherein the Superior Court of California, County of Riverside ruled that it
11 “has no subject matter jurisdiction.”

12 Following the Opinion, on September 15, 2023, this instant Complaint for
13 Ejectment and Trespass and for Unpaid Rent was filed against Defendant.

14 On November 7, 2023, Defendant filed his Motion to Dismiss for Lack of
15 Subject Matter Jurisdiction.

16 On December 1, 2023, the Court, on its own motion, dismissed Defendant’s
17 Motion to Dismiss for Lack of Subject Matter Jurisdiction for Defendant failing to
18 meet and confer pursuant to L.R. 7-3 [DOC 22].

19 On December 6, 2023, Defendant filed the instant Second Amended Motion to
20 Dismiss for Lack of Subject Matter Jurisdiction [DOC 23].

21 **III.**

22 **ARGUMENT**

23 **A. The Federal Court Has Subject Matter Jurisdiction Over the**
24 **Possessory Interest to the Subject Property.**

25 25 U.S.C.A. § 349 provides, in pertinent part, “That until the issuance of fee-
26 simple patents all allottees to whom trust patents shall be issued shall be subject to
27 the exclusive jurisdiction of the United States...”

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1 “The district courts shall have original jurisdiction of all civil actions arising
2 under the Constitution, laws, or treaties of the United States.” 28 U.S.C.A. § 1331
3 (West).

4 28 U.S.C.A. § 1346 provides, in pertinent part, “(f) The district courts shall
5 have exclusive original jurisdiction of civil actions under section 2409a to quiet title
6 to an estate or interest in real property in which an interest is claimed by the United
7 States.”

8 “Even though state law creates appellant's causes of action, its case might still
9 ‘arise under’ the laws of the United States if a well-pleaded complaint established
10 that its right to relief under state law requires resolution of a substantial question of
11 federal law in dispute between the parties.” *Franchise Tax Bd. of State of Cal. v.*
12 *Construction Laborers Vacation Trust for Southern California* (1983) 463 U.S. 1,
13 13.

14 In his Second Amended Motion to Dismiss, Defendant attempts to impose a
15 pleading requirement on Plaintiff regarding the assertion of jurisdiction in its
16 Complaint by including a provision of the Constitution, a federal statute, or a treaty
17 of the United States. Even in the one Ninth Circuit case relied upon by Defendant,
18 *K2 America Corp. v. Roland Oil & Gas, LLC* (9th Cir. 2011) 653 F.3d 1024 (“K2”),
19 which provides, in pertinent part, “If facts giving the court jurisdiction are set forth in
20 the complaint, the provision conferring jurisdiction need not be specifically pleaded.”
21 *Id.* at 1027. Here, when reviewing Plaintiff’s Complaint on file herein, it provides the
22 basis for jurisdiction in Paragraphs 3 and 22 therein. These paragraphs, coupled with
23 the references to the Subject Property being Indian Trust property, are sufficient to
24 establish this Court’s subject matter jurisdiction over Defendant and the Subject
25 Property. Moreover, 25 U.S.C.A. § 349 provides, in pertinent part, “That until the
26 issuance of fee-simple patents all allottees to whom trust patents shall be issued shall
27 be subject to the exclusive jurisdiction of the United States...” Here, no issuance of a
28 fee-simple patent to Defendant has occurred. Therefore, pursuant to 25 U.S.C.A. §

1 349, this matter “shall be subject to the exclusive jurisdiction of the United States...”

2 Furthermore, it is important to note that *K2* is distinguishable to the case at bar
3 on several grounds. *K2* involves claims brought between two legal entities for tort,
4 contract, and state statutory claims over an oil and gas lease on allotted land in
5 Montana. *Id.* at 1026. Plaintiff is not asserting tort claims in its instant complaint – it
6 is seeking possession of the Subject Property, which is indisputably held in trust by
7 the U.S. Government, and subject to the subject matter jurisdiction of the Federal
8 Court. Accordingly, there is no basis to dismiss this action for lack of subject matter
9 jurisdiction.

10 **B. Defendant’s Reliance on *Safari Park, Inc. v. Southridge Prop. Owners***
11 ***Ass’n of Palm Springs Is Misplaced.***

12 In his Second Amended Motion to Dismiss, Defendant heavily relies on the
13 Court analysis in the unreported case of *Safari Park, Inc. v. Southridge Prop. Owners*
14 *Ass’n of Palm Springs* (“*Safari*”) 2018 U.S. Dist. LEXIS 223715*; 2018 WL
15 6843667 (U.S.D.C. Central Dist. 2018). However, *Safari* is distinguishable on
16 several grounds, and the analysis and conclusion in *Safari* is not a “one-size-fits-all.
17 Firstly, *Safari* involved trespass claims between nontribal members regarding a
18 sublease. *Id.* In the instant case, Defendant, a tribal member, pledged his possessory
19 interest in the Subject Property as collateral for a loan. Following Defendant’s
20 default on the loan, Plaintiff acquired the possessory interest in the Subject Property
21 at a non-judicial foreclosure sale. At the nonjudicial foreclosure sale, Defendant was
22 dispossessed of his possessory interest in the Subject Property. The trespass claims
23 asserted in *Safari* related to expiration of a right-of-way, and construction of a guard
24 shack and gate without permission. The facts in *Safari* are clearly different than the
25 case at bar. The analysis and facts in *Safari*, an unreported case, are inapplicable, are
26 not controlling on the case at bar, and should be disregarded by this Court.

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C. Defendant’s Second Amended Motion to Dismiss is Contrary to His Prior Arguments on the Issue of Federal Subject Matter Jurisdiction.

Interestingly, in the two (2) Notice of Removals Defendant filed, a copy of each are attached as **Exhibits A and B** to the concomitant Request for Judicial Notice filed concurrently herewith, Defendant asserted that both Plaintiff’s Civil Action and UD Action must be removed to Federal Court because the Federal Court has “exclusive federal jurisdiction.” In reliance on this argument that removal to Federal Court is based on “exclusive federal jurisdiction,” Defendant cited to 25 U.S.C. § 349, 28 U.S.C. § 1346(f), 28 U.S.C. § 1441(f), 28 U.S.C. § 1360. In his Notice of Removal, Defendant states, “by defining the limits of the jurisdiction to California, 28 USCS § 1360 necessarily preempts and reserves to the federal government or the tribe any and all jurisdiction not so granted.” (Exhibit A to Request for Judicial Notice, p. 3, l. 4-5.) Furthermore, in Defendant’s same Notice of Removal he acknowledges and admits that “Because Defendant is an allottee to a trust patent and has not been issued a fee patent, he is subject to the exclusive jurisdiction of the United States for the claims asserted by Plaintiff in the Action.” (Exhibit A to Request for Judicial Notice, p. 3, l. 22-24.) In no uncertain terms Defendant states, “This Court has personal jurisdiction over the parties.” (*Id.* at p. 4, l. 16.) Now, suddenly, when forced to answer to Plaintiff’s instant Federal Action, Defendant has a change of heart. Such change in position is contrary to every argument made by Defendant in both the Civil Action and the UD Action, and should be disallowed by this Court.

D. There is No Tribal Court Available to Determine the Parties’ Possessory Interests to the Subject Property.

Plaintiff is not aware of, and has not been able to locate, a Tribal Court for the Agua Caliente Band of Cahuilla Indians to adjudicate the respective possessory rights of the parties related to the Subject Property. Nor is Plaintiff aware of any tribal foreclosure laws for this particular tribe. Parenthetically, Defendant has not

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1 mentioned that a Tribal Court exists for the Agua Caliente Band of Cahuilla Indians,
2 nor that tribal foreclosure laws exist for this tribe. Should the Federal Court
3 determine it does not have jurisdiction over Defendant and the Subject Property,
4 Plaintiff is left with no recourse to gain possession of the Subject Property.
5 Accordingly, Plaintiff respectfully requests that the Court deny Defendant's Second
6 Amended Motion to Dismiss.

7 **IV.**
8 **CONCLUSION**

9 Based on the foregoing, Plaintiff respectfully requests that Defendant's Second
10 Amended Motion to Dismiss Pursuant for Lack of Subject Matter Jurisdiction be
11 denied it its entirety.

12 Dated: January 10, 2024

REID & HELLYER APC

13
14
15 By: 
16 Daniel E. Katz
17 Kiki Manti Engel
18 Attorneys for Plaintiff THE
19 TAMARISK RD. TRUST UDT
20 8/19/2020, PROPER T VIEW INC.,
21 as trustee

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CERTIFICATE OF SERVICE

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is Post Office Box 1300, Riverside, California 92502-1300, 3685 Main Street, Suite 300, Riverside, California 92501.

On January 10, 2024, I hereby certify that I electronically filed the foregoing with the Clerk of the United States District Court for the Central District of California by using the CM/ECF system and served the foregoing document described as

PLAINTIFF'S THE TAMARISK RD. TRUST UDT 08/19/2020, PROPER T VIEW INC. AS TRUSTEE OPPOSITION TO DEFENDANT'S SECOND AMENDED MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [RULE 12(B)(1)]

on all interested parties in this action as follows:

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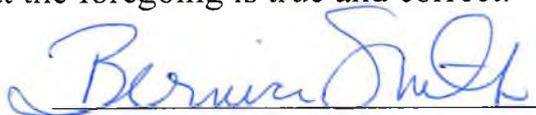
(BY ELECTRONIC MAIL) I am personally and readily familiar with the business practice of the firm for the preparation and processing of documents by electronic transmission using the CM/ECF system.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 10, 2024, at Riverside, California.

I declare under penalty of perjury that the foregoing is true and correct.

Bernice Smith
(Type or print name)


(Signature)

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