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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OSCEOLA BLACKWOOD IVORY
GAMING GROUP, LLC,

Plaintiff,

v.

PICAYUNE RANCHERIA OF
CHUKCHANSI INDIANS, et al.,

Defendants.

No. 1:17-cv-00394-DAD-BAM

ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS

(Doc. No. 8)

This matter came before the court on June 20, 2017, for hearing of defendants’ motion to dismiss pursuant to Federal Civil Procedure Rule 12(b)(1) for lack of subject matter jurisdiction. (Doc. No. 8.) Attorney Kimberly Klinsport appeared telephonically on behalf of plaintiff Osceola Blackwood Ivory Gaming Group, LLC. Attorney Michael Robinson appeared telephonically on behalf of defendants Picayune Rancheria of Chukchansi Indians and Chukchansi Economic Development Authority. For the reasons stated below, defendants’ motion to dismiss will be granted.

FACTUAL BACKGROUND

On March 16, 2017, plaintiff Osceola Blackwood Ivory Gaming Group, LLC (“OBIG”), commenced this action against defendants Picayune Rancheria of Chukchansi Indians (“Chukansi Tribe”) and Chukchansi Economic Development Authority (“CEDA”). (Doc. No. 1.) Plaintiff

1 alleges the following claims: (i) breach of contract; (ii) breach of the covenant of good faith and
2 fair dealing; (iii) breach of oral contract; (iv) breach of implied contract; (v) fraud; (vi) violation
3 of the California Business and Professions Code § 17200, et seq.; (vii) intentional interference
4 with prospective economic advantage; and (viii) negligent interference with prospective
5 economic advantage. (*Id.*) Plaintiff seeks an award of compensatory damages, restitutionary
6 damages, punitive damages, and attorneys’ fees and costs. (*Id.* at 27.) In the complaint, plaintiff
7 alleges the following.

8 Plaintiff OBIG is a Florida-based corporation that provides management and consulting
9 services for Native American hospitality and gaming projects. (*Id.* at 2, ¶ 1.) Defendant
10 Chukchansi Tribe is a federally recognized Native American tribe located in California, and
11 defendant CEDA is a wholly-owned unincorporated arm of the Chukchansi Tribe that operates
12 the tribe’s gaming facility, the Chukchansi Gold Resort & Casino (“Casino”). (*Id.* at 5, ¶¶ 10–
13 11.)

14 In October 2014, the Casino closed. (*Id.* at 11, ¶ 28.) Defendants subsequently began
15 working to reopen the facility. (*Id.* at 6, ¶¶ 15–16.) On July 8, 2015, defendants contracted with
16 plaintiff for “business consulting advice and services” related to the reopening of its casino (“the
17 Consulting Contract”). (*Id.*) The Consulting Contract provided that the agreement would take
18 effect upon execution, and would be effective for a term of twenty-four months or until the
19 “facility becomes managed pursuant to a Management Agreement approved by the National
20 Indian Gaming Commission” (“NIGC”). (*Id.* at 7, ¶ 18.) The contract also provided that
21 defendants “expressly, unequivocally and irrevocably waive their sovereign immunity” for “any
22 legal proceeding with respect to the Consulting Agreement, or any of the transactions
23 contemplated in the Consulting Agreement.” (*Id.* at 7, ¶ 19.) The Tribal Council for the
24 Chukchansi Tribe approved the agreement by adopting Resolution No. 2015-31. (*Id.* at 6, ¶ 15.)

25 On the same day the parties entered into the Consulting Contract, the parties also orally
26 agreed to enter into a Management Agreement, and defendants promised to promptly submit the
27 Management Agreement to the NIGC for approval. (*Id.* at 7–8, ¶¶ 20–21.)

28 //

1 On July 29, 2015, defendants entered into the Management Agreement with plaintiff,
2 which agreement the Chukchansi Tribal Council approved by adopting Resolution No. 2015-46.
3 (*Id.* at 8, ¶ 21.) The contract stated that it had a term of five years, and would take effect five
4 days after the following conditions were met: (i) the Chairman of the NIGC granted written
5 approval of the contract; (ii) the Chukchansi Tribe and NIGC concluded background
6 investigations of plaintiff; and (iii) plaintiff received all applicable licenses and permits for the
7 facility. (*Id.* at 8, ¶¶ 22–23.) Additionally, the contract provided that the Chukchansi Tribe
8 would waive sovereign immunity for any actions filed by plaintiff to enforce the terms of the
9 contract, and that the Chukchansi Tribal Council would enact a resolution adopting this waiver.
10 (*Id.* at 8, ¶ 24.)

11 From July to December 2015, plaintiff provided management and consulting services to
12 defendants. (*Id.* at 9–10, ¶ 26.) The Casino reopened on December 31, 2015. (*Id.* at 10, ¶ 27.)
13 In April 2016, the parties agreed to amend the Management Agreement to adjust plaintiff’s
14 compensation rate and to extend the term of the agreement from five to seven years. (*Id.* at 11,
15 ¶ 29.) Defendants also agreed to submit a revised version of the agreement to the NIGC for
16 approval. (*Id.* at 11, ¶ 29.) To date, defendants have failed to submit either the original
17 Management Agreement or the proposed amended agreement to the NIGC. (*Id.* at 12, ¶ 30.) As
18 a result of defendants’ failure to submit either the agreement or the revised agreement to the
19 NIGC for approval, plaintiff has experienced financial loss. (*Id.* at 12, ¶¶ 30–31.)

20 On May 10, 2017, defendants filed the instant motion to dismiss plaintiff’s complaint in
21 its entirety based on this court’s lack of subject matter jurisdiction. (Doc. No. 8.) Plaintiff filed
22 its opposition on June 6, 2017, together with a request for judicial notice. (Doc. Nos. 12–13.) On
23 June 13, 2017, defendants filed a reply. (Doc. No. 14.)

24 **LEGAL STANDARD**

25 Defendants move to dismiss plaintiff’s complaint for lack of subject matter jurisdiction
26 pursuant to Federal Rule of Civil Procedure Rule 12(b)(1).

27 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise the defense, by
28 motion, that the court lacks jurisdiction over the subject matter of an entire action or of specific

1 claims alleged in the action. *See* Fed. R. Civ. P. 12(b)(1); *see generally* Fed. R. Civ. P. 12(h)(3)
2 (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must
3 dismiss the action.”). Federal district courts generally have subject matter jurisdiction over civil
4 cases through diversity jurisdiction, 28 U.S.C. § 1332, or federal question jurisdiction, 28 U.S.C.
5 § 1331. *See Peralta v. Hispanic Bus., Inc.*, 419 F.3d 1068 (9th Cir. 2005). In a motion to dismiss
6 for lack of subject jurisdiction, a defendant may either attack the allegations of the complaint or
7 the existence of subject matter jurisdiction in fact. *Thornhill Publ’g Co. v. Gen. Tel. & Elecs.*
8 *Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

9 Here, defendants argue that the allegations of the complaint are insufficient to support
10 federal subject matter jurisdiction. (Doc. No. 8.) When a party brings a facial attack to subject
11 matter jurisdiction, that party contends that the allegations of jurisdiction contained in the
12 complaint are insufficient on their face to demonstrate the existence of jurisdiction. *Safe Air for*
13 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a Rule 12(b)(1) motion of this type,
14 the plaintiff is entitled to safeguards similar to those applicable when a Rule 12(b)(6) motion is
15 made. *See Sea Vessel Inc. v. Reyes*, 23 F.3d 345, 347 (11th Cir. 1994); *Osborn v. United States*,
16 918 F.2d 724, 729 n.6 (8th Cir. 1990). Accordingly, the factual allegations of the complaint are
17 presumed to be true, and the motion may be granted only if the plaintiff fails to allege an element
18 necessary for subject matter jurisdiction. *Savage v. Glendale Union High Sch. Dist.*, No. 205,
19 343 F.3d 1036, 1039 n.1 (9th Cir. 2003); *Miranda v. Reno*, 238 F.3d 1156, 1157 n.1 (9th Cir.
20 2001). Nonetheless, district courts “may review evidence beyond the complaint without
21 converting the motion to dismiss into a motion for summary judgment” when resolving a facial
22 attack. *Safe Air for Everyone*, 373 F.3d at 1039.

23 ANALYSIS

24 As indicated, defendants move to dismiss plaintiff’s complaint in its entirety, arguing that
25 this court lacks original jurisdiction over any of plaintiff’s claims, and that there are no grounds
26 for the exercise of supplemental jurisdiction absent original jurisdiction. (Doc. No. 8 at 11.)
27 Below, the court will address the parties’ requests for judicial notice before analyzing defendants’
28 arguments in support of their motion to dismiss.

1 **A. Requests for Judicial Notice**

2 In the motion to dismiss, defendants request that the court take judicial notice of the
3 following: (i) the Chukchansi Tribe’s Constitution (Doc. No. 9-1); (ii) Tribal Resolution No.
4 2001-11 creating the CEDA (Doc. No. 9-2); (iii) the Gaming Compact between the Chukchansi
5 tribe and the State of California, establishing requirements for tribal agreements with suppliers of
6 “Gaming Resources,” and requiring any gaming resource suppliers to be licensed by the Tribal
7 Gaming Agency (Doc. No. 9-3); and (iv) the list of gaming suppliers authorized by the Tribal
8 Gaming Agency to contract with the tribe (Doc. No. 8 at 15 n.2). In its opposition to the pending
9 motion to dismiss, plaintiff also requests that the court take judicial notice of a document
10 published by the NIGC, Regulation 533 Checklist for New Management Contracts. (Doc. No. 13
11 at 2.) Because the court need not and does not rely on any of these documents in resolving
12 defendants’ motion to dismiss, the court declines to take judicial notice of them items at this time.
13 *See City of Royal Oak Retirement Sys. v. Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1050
14 (N.D. Cal. 2012); *see generally* Fed. R. Civ. P. 201.

15 **B. Subject Matter Jurisdiction**

16 Defendants move to dismiss plaintiff’s complaint for lack of subject matter jurisdiction.

17 As noted above, federal district courts generally have subject matter jurisdiction over civil
18 cases through diversity jurisdiction, 28 U.S.C. § 1332, or federal question jurisdiction, 28 U.S.C.
19 § 1331. *See Peralta v. Hispanic Bus., Inc.*, 419 F.3d 1068 (9th Cir. 2005). District courts have
20 “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the
21 United States.” 28 U.S.C. § 1331. An action “arises under” federal law pursuant to § 1331 if the
22 cause of action (i) is created by federal law, or (ii) necessarily requires resolution of a substantial
23 question of federal law. *See Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S.
24 308, 314 (2005); *see also Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699
25 (2006); *Peabody Coal Co. v. Navajo Nation*, 373 F.3d 945, 949 (9th Cir. 2004).

26 To determine whether a cause of action is created by federal law, courts typically apply
27 the “well-pleaded complaint” rule. *Rainero v. Archon Corporation*, 844 F.3d 832, 836-37 (9th
28 Cir. 2016); *California v. United States*, 215 F.3d 1005, 1014 (9th Cir. 2000). The “well-pleaded

1 complaint” rule establishes that federal jurisdiction exists only when a federal question is
2 presented on the face of the plaintiff’s properly pleaded complaint. *Id.*; *see also California ex.*
3 *Rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004). “A defense is not part of a
4 plaintiff’s pleaded statement of his or her own claim.” *Dynegy, Inc.*, 375 F.3d at 838 (quoting
5 *Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998)); *see also Provincial Gov’t of Marinduque v.*
6 *Placer Dome, Inc.*, 582 F.3d 1083, 1091 (9th Cir. 2009).

7 The “well-pleaded complaint” rule is subject to several exceptions. *See Hall v. N. Am.*
8 *Van Lines, Inc.*, 476 F.3d 683, 687 (9th Cir. 2007) (citing *Holman v. Laulo-Rowe Agency*, 994
9 F.2d 666, 668 (9th Cir. 1993). One exception is the “artful pleading doctrine.” *See Smallwood v.*
10 *Allied Van Lines, Inc.*, 660 F.3d 1115, 1120 (9th Cir. 2011); *Hall*, 476 F.3d at 687. Under the
11 “artful pleading” doctrine, “a well-pleaded state law claim nonetheless presents a federal question
12 when a federal statute has completely preempted that particular area of law.”¹ *Hall*, 476 F.3d at
13 687; *see also Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003);
14 *Losel Chase Bank USA, NA*, No. CIV–S–11–1999 KJM–DAD, 2012 WL 3778960, at *3 (E.D.
15 Cal. Aug. 31, 2012) (citing *Lippitt*, 340 F.3d at 1041). The rationale for this doctrine is that “any
16 claim purportedly based on that preempted state law is considered, from its inception, a federal
17 claim, and therefore arises under federal law.” *Hall*, 476 F.3d at 687; *see also Balcorta v.*

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19 ¹ Complete preemption is distinguishable from ordinary defensive preemption. *See Sullivan v.*
20 *American Airlines, Inc.*, 424 F.3d 267, 272–73 (2d Cir. 2005). Where there is ordinary defensive
21 preemption, the substantive law to be applied in the action is federal law, and state law is
22 displaced. *See id.* (“Ordinary defensive preemption comes in three familiar forms: express
23 preemption, conflict preemption, and field preemption.”). Where there is complete preemption,
24 an action commenced in state court may be removed on the basis of federal question jurisdiction,
25 and is considered to arise under federal law. *See id.* Complete preemption occurs when a federal
26 law both (i) conflicts with state law, and (ii) provides remedies that displace state law remedies.
27 *See Botsford v. Blue Cross and Blue Shield of Mont., Inc.*, 314 F.3d 390, 393 (9th Cir. 2002).
28 “Complete preemption is rare.” *ARCO Env’t Remediation, L.L.C., v. Dep’t of Health & Env’t Quality*, 213 F.3d 1108, 1115 (9th Cir. 2000). The Supreme Court has identified only three federal statutes that completely preempt well-pleaded state law claims: Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185; Section 502(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a); and Sections 85 and 86 of the National Bank Act of 1864, as amended, 12 U.S.C. §§ 85, 86. *See Hall*, 476 F.3d at 687 n.3 (citing *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003)); *see also Coyle v. O’Rourke*, No. LA CV14–07121 JAK (FFMx), 2015 WL 58700, at *6 (C.D. Cal. Jan. 5, 2015).

1 *Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1107 (9th Cir. 2000). Thus, “a plaintiff may
2 not defeat removal by omitting to plead necessary federal questions in a complaint.” *Lippitt*, 340
3 F.3d at 1041 (quoting *Franchise Tax Board of Cal. v. Constr. Laborers Vacation Trust*, 463 U.S.
4 1, 22 (1983)).

5 As noted above, federal question jurisdiction may also exist if a claim necessarily requires
6 resolution of a substantial question of federal law. *See Peabody Coal Co.*, 373 F.3d at 949. A
7 state law claim implicates substantial questions of federal law if the federal issue is (i) necessarily
8 raised, (ii) actually disputed, (iii) substantial, and (iv) capable of resolution in a federal court
9 without disrupting the federal-state balance of power. *See Gunn v. Minton*, 568 U.S. 251, 251
10 (2013); *see also Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 674 (9th Cir. 2012).

11 In their motion to dismiss, defendants argue that the court lacks subject matter jurisdiction
12 because the parties are not diverse, and because the complaint does not present a federal question.
13 (Doc. No. 8 at 11–15.) In its opposition, plaintiff argues that the complaint presents a federal
14 question because: (i) plaintiff’s claims are subject to complete preemption by the Indian Gaming
15 Regulatory Act, 25 U.S.C. § 2701 (“IGRA”), a federal law that regulates the operation of gaming
16 by Native American tribes; and (ii) plaintiff’s claims necessarily require resolution of substantial
17 questions of federal law, since they hinge on whether failure to submit a Management Agreement
18 to the NIGC as required by the IGRA constitutes breach of contract and fraud. (Doc. No. 12 at
19 7.)

20 The parties do not dispute that diversity jurisdiction is inapplicable. (Doc. No. 12 at 17,
21 n.4.) The court will therefore focus its analysis on whether the plaintiff’s claims arise under
22 federal law pursuant to 28 U.S.C. § 1331.

23 Plaintiff does not assert any federal causes of action in its FAC but rather alleges only
24 claims under California state law. (Doc. No. 1.) As such, the FAC is only subject to federal court
25 jurisdiction if it presents state law claims subject to complete preemption, or if resolution of the
26 state law claims implicates a substantial question of federal law. *See Hall*, 476 F.3d at 687.

27 Contrary to plaintiff’s contentions, there is little guidance from the Ninth Circuit as to
28 whether the doctrine of complete preemption applies to the IGRA. *See Runyan v. River Rock*

1 *Entm't Auth.*, No. C 08-1924 VRW, 2008 WL 3382783, at *4 (N.D. Cal. Aug. 8, 2008) (“[T]he
2 Ninth Circuit has not held that the IGRA completely preempts state law and it is not clear that the
3 Ninth Circuit would do so.”). While the Ninth Circuit has considered the doctrine of ordinary
4 defensive preemption under the IGRA, it has not directly addressed whether the statute has
5 complete preemptive effect over state law claims. *See, e.g., Confederated Tribes of Siletz Indians*
6 *of Or. v. Oregon*, 143 F.3d 481, 486 n.7 (9th Cir. 1998); *Cabazon Band of Mission Indians v.*
7 *Wilson*, 37 F.3d 430 (9th Cir. 1994).²

8 The Eighth Circuit and a number of district courts have found that the IGRA completely
9 preempts state law claims, but only in certain circumstances. *See Gaming Corp. of Am. v. Dorsey*
10 *& Whitney*, 88 F.3d 536, 543 (8th Cir. 1996) (“The term ‘complete preemption’ is somewhat
11 misleading because even when it applies, all claims are not necessarily covered.”); *see also*
12 *Missouri ex rel Nixon v. Coeur D’Alene Tribe*, 164 F.3d 1102, 1105 (8th Cir. 1999). Specifically,
13 these courts have found that complete preemption applies in this context only if state law claims
14 interfere with processes mandated and regulated by the IGRA—i.e., tribal governance of gaming
15 on Native lands, or tribal decisions as to which gaming activities are allowed on Native territories.
16 *See Missouri ex rel Nixon v. Coeur D’Alene Tribe*, 164 F.3d 1102, 1105 (8th Cir. 1999)
17 (explaining that state law claims are only preempted if they interfere with processes mandated
18 and regulated by the IGRA); *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 543 & 549
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20 ² Some district courts in this circuit have suggested that Ninth Circuit precedent implicitly rejects
21 the applicability of complete preemption to the IGRA. *See Runyan*, 2008 WL 3382783, at *4
22 (“[The Ninth Circuit has] analyzed the question whether IGRA preempts state taxation of offtrack
23 betting on Indian reservations by balancing federal, tribal and state interests. . . . [but] such
24 balancing would not have been necessary if the court had concluded that IGRA completely
25 preempted state law”); *see also Keim v. Harrah’s Operating Co.*, No. 09cv1732 BTM (AJB),
26 2010 WL 28536, at *1–2 (S.D. Cal. Jan. 5, 2010); *Kersten v. Harrah’s Casino-Valley Ctr.*, No.
27 07cv0103 BTM(JMA), 2007 WL 951342, at *2 (S.D. Cal. Feb. 27, 2007). These courts have
28 relied on Ninth Circuit decisions addressing ordinary defensive preemption. However, because
the doctrines of complete preemption and ordinary preemption are distinct, the Ninth Circuit’s
past analysis of ordinary preemption under the IGRA does not provide clear guidance on the issue
of complete preemption. *See Sullivan*, 424 F.3d at 274 (warning against conflation of these two
doctrines); *see generally* 14B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper,
Federal Practice & Procedure: Jurisdiction § 3722.1 (3d ed. 1998) (describing the difference
between complete and ordinary preemption as “a difference in kind”).

1 (8th Cir. 1996) (stating that complete preemption is limited to “[a]ny claim which would directly
2 affect or interfere with a tribe’s ability to conduct its own [gaming] licensing process”); *Alabama*
3 *v. PCI Gaming Auth.*, 15 F. Supp. 3d 1161, 1171 (N.D. Ala. 2014) (“IGRA completely preempts
4 the state law claim in Count One if that claim interferes with the Poarch Band’s governance of
5 gaming on Indian lands.”); *First Am. Casino Corp. v. E. Pequot Nation*, 175 F. Supp. 2d 205, 209
6 (D. Conn. 2000); *see generally County of Madera v. Picayune Rancheria of the Chukchansi*
7 *Indians*, 467 F. Supp. 2d 993, 1001–1002 (E.D. Cal. 2006) (“[G]aming activity’ would seem to
8 be the actual playing or provision of the games identified [in the IGRA] and/or the necessary
9 conduct associated with playing or providing the identified games.”).³

10 Here, even assuming that the doctrine of complete preemption applies to the IGRA,
11 plaintiff has not met its burden to show that its claims fall within the statute’s preemptive scope.
12 In its complaint, plaintiff alleges state law claims based on breach of contract, fraud, violation of
13 the California Business and Professions Code § 17200, and tortious interference with prospective
14 economic advantage. (Doc. No. 1.) The basis of plaintiff’s state law claims is that defendants
15 failed to submit a casino management contract to the NIGC for approval despite having agreed to
16 do so. (Doc. No. 1 at 12, ¶ 30.) Plaintiff asserts that resolution of these claims involves fact-

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18 ³ District courts in the Ninth Circuit have looked to Eighth Circuit decisions when considering
19 challenges to subject matter jurisdiction based on complete preemption under the IGRA. *See,*
20 *e.g., Runyan v. River Rock Entm’t Auth.*, No. C 08-1924 VRW, 2008 WL 3382783, at *4 (N.D.
21 Cal. Aug. 8, 2008). These district courts have declined to directly address the nature of the
22 IGRA’s preemptive force, and have found that even if the IGRA has complete preemptive effect
23 over certain state law claims, the claims at issue would not fall within the scope of that doctrine.
24 *See Runyan*, 2008 WL 3382783, at *4; *see also Keim*, 2010 WL 28536, at *1–2; *Kersten*, 2007
25 WL 951342, at *2; *County of Madera*, 467 F. Supp. 2d at 1001–1002. In contrast, a number of
26 decisions from California courts have concluded that the IGRA completely preempts state law
27 claims based on Eighth Circuit precedent. *See Hotel Emps. and Rests. Emps. Intern. Union v.*
28 *Davis*, 21 Cal. 4th 585, 621 (1999) (“[T]he Legislature would not otherwise have the power to
authorize or prohibit lotteries or gambling casinos because federal law completely preempts the
field of Indian gambling.”); *Am. Vantage Cos. v. Table Mountain Rancheria*, 103 Cal. App. 4th
590, 596 (2002); *Great Western Casinos, Inc. v. Morongo Band of Mission Indians*, 74 Cal. App.
4th 1407, 1426 (1999). These state court decisions, however, do not control here because federal
law as determined by federal courts governs questions of federal preemption. *See Mackey v.*
Lanier Collection Agency, 486 U.S. 825, 830–31 (1988); *see also Board of Trustees of Cement*
Masons & Plasterers Health & Welfare Trust v. GBC Northwest, LLC, No. C06-1715 C, 2007
WL 1521220, at *2 (W.D. Wash. May 22, 2007).

1 intensive inquiries into the formation and construction of the Management Agreement, which will
2 necessarily involve analysis of the federal IGRA. (Doc. No. 12 at 7.) However, based on the
3 allegations of the complaint, it does not appear that plaintiff's claims "interfere[] with or [are]
4 incompatible with IGRA." *Manoukian v. Harrah's Entm't, Inc.*, No. 11cv503-L(JMA), 2011
5 WL 1343009, at *2 (S.D. Cal. Apr. 7, 2011). Plaintiff does not articulate how its claims would
6 affect the tribe's ability to govern gaming on Native territory, or interfere with its decisions about
7 which gaming activities to permit in the Casino. *See County of Madera*, 467 F. Supp. 2d at 1002-
8 1002. Unlike those cases where courts have found state law claims completely preempted by the
9 IGRA, plaintiff's claims in this action do not challenge the validity of a contract under the IGRA
10 or the scope of tribal authority to conduct gaming on Native territory.⁴ *See, e.g., Gaming Corp.*
11 *of Am.*, 88 F.3d at 549-50 ("[C]laims based on [a private law firm's] duty to the nation during the
12 [casino management] licensing process would appear to fall within the scope of IGRA's complete
13 preemption doctrine"); *Alabama v. PCI Gaming Auth.*, 15 F. Supp. 3d 1161, 1171 (N.D. Ala.
14 2014) (finding complete preemption of plaintiff's state law nuisance claims seeking to enjoin
15 allegedly illegal gaming on Native American lands).

16 Accordingly, to the extent that the doctrine of complete preemption applies to the IGRA,
17 plaintiff's claims do not fall within the statute's preemptive scope. *Kersten*, 2007 WL 951342, at
18 *2; *see also Seely v. Harrah's Rincon Casino*, No. 11 CV 0594 MMA (MDD), 2011 WL
19 2601019, at *2 (S.D. Cal. June 30, 2011) (finding that plaintiff's state law claims for property
20 damage and loss of use were not completely preempted by the IGRA because they did not

21 ⁴ To the extent that the defendant Tribe disputes the validity of the management contract absent
22 NIGC approval, this is a defense to plaintiff's claims, which cannot form the basis for subject
23 matter jurisdiction. *See Iowa Mgmt. & Consultants, Inc. v. Sac & Fox Tribe of Miss. in Iowa*, 207
24 F.3d 488, 489 (8th Cir. 2000) ("IMCI's anticipatory contention that the Tribe may invoke the
25 provisions of IGRA as a defense is insufficient to confer federal question jurisdiction on this
26 court."); *see also Rumsey Indian Rancheria of Wintun Indians of Cal. v. Dickstein*, No. 2:07-cv-
27 02412-GEB-EFB, 2008 WL 648451, at *4-6 (E.D. Cal. Mar. 5, 2008) (rejecting plaintiff's
28 arguments that the IGRA completely preempted plaintiff's claims for breach of fiduciary duties,
breach of contract, and violation of § 17200, because "[t]his argument concerns fact-bound
questions regarding the nature of the agreements at issue . . . but it does not establish that these
determinations interfere with the Tribe's ability to govern gaming."); *see generally K2 Am. Corp.*
v. Roland Oil & Gas, LLC, 653 F.3d 1024, 1029 (9th Cir. 2011) ("Federal jurisdiction cannot
hinge upon defenses or counterclaims, whether actual or anticipated").

1 interfere with the tribe’s governance of gaming activities); *Keim*, 2010 WL 28536, at *2–3;
2 (explaining that even if complete preemption applied to the IGRA, plaintiff’s tort claims were not
3 subject to complete preemption because they did not “potentially infringe on [the] tribe’s
4 governance of gaming”); *Runyan*, 2008 WL 3382783, at *4 (“[I]t is far from clear that the state
5 law at issue here—generally applicable employment and contract claims—fall within the scope of
6 the complete preemption doctrine.”); *County of Madera*, 467 F. Supp. 2d at 1001–1002 (holding
7 that even if the Ninth Circuit agreed with the Eighth Circuit’s IGRA complete preemption
8 analysis, the County’s nuisance abatement claim against the Tribe was not completely preempted
9 because it did not interfere with the Tribe’s governance of gaming activities or interfere with the
10 Tribe’s decisions as to which gaming activities are allowed); *NGV Gaming, Ltd. v. Upstream
11 Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (rejecting defendant’s argument
12 that the IGRA completely preempted plaintiff’s claim for tortious interference with contract
13 because “Plaintiff could prove [the claim] without implicating the decision-making process of the
14 tribe”).

15 Having concluded that the FAC does not allege causes of action created by federal law,
16 the court next considers whether plaintiff’s claims implicate “a substantial question of federal
17 law” sufficient to trigger subject matter jurisdiction under 28 U.S.C. § 1331.

18 To determine whether a state law claim raises a substantial federal question, courts must
19 “examine the particular facts of the claim asserted.” *Peabody Coal Co.*, 373 F.3d at 949; *see also*
20 *Arizona Pub. Serv. Co. v. Aspaas*, 77 F.3d 1128, 1129–30 (9th Cir. 1995) (finding a federal
21 question was presented because the case involved a determination of whether a federal tribe
22 exceeded its authority by regulating the employment policies of a commercial entity doing
23 business on tribal lands). The Ninth Circuit has found that state law claims related to contracts
24 with Native American tribes raise substantial federal questions when they involve the following
25 issues: the scope of a tribal government’s authority, the applicability of tribal law to non-Native
26 entities, or the validity of federally-regulated contracts. *See Peabody Coal Co.*, 373 F.3d at 949
27 (“In cases from other jurisdictions involving contracts between Native sovereigns and non-
28 Natives, the federal question in each case was either a tribal government’s authority to apply

1 tribal law to the commercial activities of non-Indian companies, or the validity of mineral leases
2 themselves.”); *see also Comstock Oil & Gas, Inc. v. Ala. & Coushatta Indian Tribes of Tex.*, 261
3 F.3d 567, 569 (5th Cir. 2001) (identifying a federal question for subject matter jurisdiction
4 purposes when a tribe sought to have mineral lease agreement with an oil company declared void
5 in its tribal court); *Superior Oil Co. v. United States*, 798 F.2d 1324, 1328–29 (10th Cir. 1986)
6 (identifying a federal question under 28 U.S.C. § 1331 because plaintiff’s claims required
7 resolution of the question of whether the Navajo tribe exceeded its authority under the IMLA by
8 withholding approval of oil and gas lease assignments). However, a state law claim does not
9 raise a substantial federal question simply because it involves a contract that is subject to federal
10 regulation and approval. *See Peabody Coal Co.*, 373 F.3d at 949; *see also Harris v. San Manuel*
11 *Band of Mission Indians*, EDCV 14-02365 SJO (DTBx), 2015 WL 12791503, at *2 (C.D. Cal.
12 Apr. 29, 2015) (discussing an employment contract not governed by the IGRA). Thus, state law
13 claims that simply “center[] upon the contract and its construction rather than the [federal]
14 statutory basis for the contract” do not present federal questions. *Littell v. Nakai*, 344 F.2d 486,
15 487–88 (9th Cir. 1965).

16 As noted above, plaintiff here seeks to vindicate rights it claims exist under California
17 contract and tort law. Plaintiff’s claims are not based on a dispute concerning the validity of the
18 Management Agreement. *See Littell*, 344 F.2d at 487–88; *see also Niagara Mohawk Power*
19 *Corp. v. Tonawanda Band of Seneca Indians*, 94 F.3d 747, 752–53 (2d Cir. 1996) (“What
20 remains of the plaintiff’s complaint without the issue of the franchise agreement’s validity . . . is a
21 cause of action sounding in contract that arises solely under state law”); *Harris*, 2015 WL
22 12791503, at *2 (finding that plaintiff’s claims implicated federal questions when a contested
23 issue asserted in the complaint was whether the document was a management contract governed
24 by the IGRA). Moreover, plaintiff’s complaint does not allege an existing dispute about asserted
25 tribal court jurisdiction or authority. *See Peabody Coal Co.*, 323 F.3d at 949–50; *Jefferson State*
26 *Bank v. White Mountain Apache Tribe*, No. CV 11–8100–PCT–PGR, 2011 WL 5833831, at *2–3
27 (D. Ariz. Nov. 21, 2011); *cf. Comstock Oil & Gas, Inc.*, 261 F.3d at 569; *Superior Oil Co.*, 798
28 F.2d at 1328–29.

1 The court therefore concludes that the addressing of plaintiff's claims does not require
2 resolution of a substantial question of federal law, and that the court therefore lacks original
3 jurisdiction over any claims asserted in plaintiff's complaint. Absent original jurisdiction over
4 any claim, the court cannot assert supplemental jurisdiction over plaintiff's state law causes of
5 action. *See* 28 U.S.C. § 1367(a). Accordingly, defendants' motion to dismiss will be granted.⁵

6 **CONCLUSION**

7 For the reasons stated above:

- 8 1. Defendants' motion to dismiss (Doc. No. 8) is granted;
9 2. This action is dismissed;
10 3. All previously scheduled dates in this action are vacated; and
11 4. The Clerk of the Court is directed to close this case.

12 IT IS SO ORDERED.

13 Dated: July 27, 2017

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15 _____
16 UNITED STATES DISTRICT JUDGE

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25 _____
26 ⁵ In their motion to dismiss, defendants argue that even if federal question jurisdiction exists, the
27 complaint should be dismissed on tribal sovereign immunity grounds. (Doc. No. 8 at 17.)
28 Plaintiffs contend in their opposition that defendants waived sovereign immunity in the
Management Agreement. (Doc. No. 12 at 7.) Having found that subject matter jurisdiction is
lacking, the court need not address the issue of sovereign immunity and whether defendants
properly waived immunity in the Management Agreement.