

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 24, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDREA D. GEORGE,
Plaintiff,

v.

THE COLVILLE CONFEDERATED
TRIBES; RODNEY CAWSTON; ANDREW
JOSEPH, JR.; JACK FERGUSON;
RICHARD SWAN, SR.; MARVIN KHEEL;
JOSEPH SOMDAY; JOEL BOYD;
RICHARD MOSES; ALICE KOSKELA;
SHANNON THOMAS; JASON
D'AVIGNON; PETER ERBLAND;
EDWARD JURSEK; CARMEL MCCURDY;
CHARISSA EICHMAN; MARTY RAAP;
NICHELLE BARNABY; SABRINA
DESAUTEL; RANDAL STECKEL, DEBRA
WULFF; THOMAS MILLER; and SOPHIE
NOMEE,
Defendants.

No. 2:24-CV-00123-SAB

**ORDER GRANTING
MOTIONS TO DISMISS
CONSOLIDATED
COMPLAINT; DISMISSING
ACTION WITH
PREJUDICE**

1 Before the Court are the Colville Defendants’ Renewed Motion to Dismiss
2 Consolidated Complaint, ECF No. 48, and Defendants Peter Erbland and Thomas
3 Miller’s Motion to Dismiss Consolidated Complaint, ECF No. 50. The motions
4 were heard without oral argument.¹ Plaintiff is representing herself in this matter.
5 The Colville Defendants are represented by Thomas Nedderman and William
6 Dow. Defendants Erbland and Miller are represented by Christopher Kerley.

7 After the Court granted her Motion to Consolidate, ECF No. 46, Plaintiff
8 filed a Consolidated Complaint, ECF No. 47. Defendants now move to dismiss the
9 Consolidated Complaint, with prejudice.

10 **Motion Standard**

11 Fed. R. Civ. P. 12(b)(1) is the proper vehicle for invoking sovereign
12 immunity from suit. *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015). In the
13 context of a Rule 12(b)(1) motion to dismiss on the basis of sovereign immunity,
14 “the party asserting subject matter jurisdiction has the burden of proving its
15 existence, *i.e.* that immunity does not bar the suit.” *Id.* (internal citations and
16 quotations omitted). Moreover, when subject matter jurisdiction is challenged, the
17 court does not presume the truthfulness of the plaintiff’s allegations. *Id.*

18 To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege
19 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp.*
20 *v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when “the
21 plaintiff pleads factual content that allows the court to draw the reasonable
22 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,
23 556 U.S. 662, 678 (2009). As the Ninth Circuit explained:

24 To be entitled to the presumption of truth, allegations in a complaint
25 or counterclaim may not simply recite the elements of a cause of
26 action but must contain sufficient allegations of underlying facts to

27 ¹ The Court has determined that oral argument is not necessary. *See* Local Civ.
28 Rule 7(i)(3)(B)(iii).

1 give fair notice and to enable the opposing party to defend itself
2 effectively. The factual allegations that are taken as true must
3 plausibly suggest an entitlement to relief, such that it is not unfair to
4 require the opposing party to be subjected to the expense of discovery
and continued litigation.

5 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). When evaluating a Rule
6 12(b)(6) motion, the court must draw all reasonable inferences in favor of the non-
7 moving party. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).
8 However, the court is not required to accept conclusory allegations as true or to
9 accept any unreasonable inferences in a complaint. *In re Gilead Scis. Sec. Litig.*,
10 536 F.3d 1049, 1054 (9th Cir. 2008).

11 **Plaintiff's Complaint**

12 Plaintiff is suing Colville Confederate Tribes (CCT), as well as various
13 individuals who were employees of CCT. Some of the Defendants were also
14 members of the Colville Business Counsel (CBC). Defendant Peter Erbland and
15 Thomas Miller were outside counsel for the CCT and CBC. Plaintiff's allegations
16 are set forth in a 63-page Consolidated Complaint. She is seeking monetary
17 damages in the amount of \$1,000,000, including damages for violations of the
18 CCT Constitution and applicable laws; 16.5 months of salary and benefits;
19 damages for the denial of Plaintiff's certification for the 2019 CBC Election, as
20 well as damages for Defendants' unethical conduct in violation of tribal law and
21 the Washington State Bar Association Rules of Professional Conduct and for
22 malpractice. She is also asking the Court to make declaratory rulings and findings.

23 Plaintiff alleges Defendants refused to certify her candidacy in March of
24 2019 due to her February 2019 expulsion from the CBC. Plaintiff alleges that she
25 experienced harassment and a hostile work environment and was harassed,
26 mistreated, and targeted by Defendants while serving on the CBC from July 2018-
27 February 2019. She alleges while at the CBC retreat in October 2018, she felt
28 disrespected, targeted, and attacked, and she asserts certain Defendants's conduct

1 violated their Oath of Office.

2 She alleged that Defendants Jursek, Steckel, Nomee, Desautel, and Wulff
3 caused harm to her reputation and character, wrongfully terminated her, and caused
4 her mental distress, and emotional harm by scheduling and allowing a hearing on
5 February 1, 2018, and failing to notify Plaintiff, Plaintiff’s staff, or the general
6 public that Defendant Jursek was not an authorized judge of the CCT Tribal Court.

7 Plaintiff alleges at the retreat, Defendants Ferguson and Moses engaged in
8 inappropriate and sexually motivated communication aimed at Plaintiff with
9 nefarious and evil intent. She asserts Defendants should have been aware that she
10 is a sexual assault survivor. Plaintiff asked to leave the meeting, and her request
11 was refused. She asserts she felt disrespected, targeted, and attacked during the
12 retreat.

13 Plaintiff asserts that when leaving the retreat, she “vomited, as she felt
14 verbally gang raped by Ferguson and Moses, and other participants did nothing to
15 intervene.”

16 Plaintiff alleges the Office of Reservation Attorney (ORA) Defendants
17 Ferguson, Steckel, Wulff, Desautel, Erbland and Nomee were aware that she was
18 particularly susceptible to emotional distress. She asserts Defendants knew that
19 their actions “to cause Plaintiff to resign as Associate Judge, frivolous ethics
20 charges, expulsion from the CBC, denying candidacy for CBC despite meeting
21 constitutional requirements and/or contacting potential future employers to prevent
22 or impede gainful employment would cause severe emotional distress and
23 Defendant engaged in breach of contract, tortious conduct, misconduct, unethical
24 actions, malpractice, and other illegal or inappropriate actions against Plaintiff
25 regardless.”

26 Plaintiff alleges Barnaby and the ORA Defendants initiated an action against
27 her on February 7, 2019, even though the ORA Defendants should have known she
28 did not pose a threat to Barnaby or her children. Additionally, the press release and

1 EAO were issued due to exaggerated allegations by Barnaby and CBC support
2 staff Tricia Timentwa. Plaintiff alleges that Defendant Miller should have included
3 information from Anna Vargas in his written report to Defendant D’Avignon.

4 Plaintiff alleges Defendants maliciously prosecuted Plaintiff with ethics
5 violation charges before the CBC Rules Committee. She asserts ORA Defendants
6 prosecuted Swan’s charges, concealed information, failed to respond to Plaintiff’s
7 inquiries or communicate with Plaintiff, drafted a transcript without CBC
8 direction, failed to properly advise CBC dismissal was required on both charges,
9 and drafted subpoenas for witnesses and records not required by Swan or Kheel
10 and then failed to do the same for Plaintiff. Plaintiff also asserts Barnaby and ORA
11 Defendants maliciously prosecuted Plaintiff in filing a civil suit in February 2019
12 against her in Colville Tribal Court. Specifically, Barnaby filed a civil protection
13 order suit against Plaintiff with the assistance of ORA Defendants.

14 Plaintiff asserts that by engaging in breach of contract, defamation, outrage,
15 malicious prosecution, misrepresentations or omissions, misconduct and unethical
16 behavior, Defendants negligently breached their duties and/or intentionally or
17 recklessly engaged in extreme or outrageous conduct towards Plaintiff.

18 Plaintiff alleges that Defendants failed to provide insurance defense counsel
19 and/or representation for the alleged misconduct occurring during her working
20 hours and within her official scope of duties. She maintains that despite insurance
21 coverage was available to Plaintiff for Barnaby’s claims, Defendants and their
22 insurance carrier denied any assistance.

23 Plaintiff asserts Defendants colluded and conspired to harm her. She alleges
24 violations of Colville Tribal Code. Plaintiff asserts Defendants violated their duty
25 of confidentiality related to her employment records. Specifically, she asserts that
26 Defendants Wulff and Steckel disclosed confidential information related to
27 Plaintiff and her employment with the CCT to the CBC outside of an official
28 session brought before the CBC requiring access to records governing tribal law.

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1 She asserts Wulff and Steckel disclosed confidential information related to
2 Plaintiff and her employment with the CCT to Desautel, Nomee, Boyd, CBC, and
3 Meyring, in violation of tribal law. Defendants Nomee and Steckel disclosed
4 confidential information related to Plaintiff and her employment to Jamie Edmonds
5 in violation of tribal law. She alleges “Defendant blackballed Plaintiff from CCT.”

6 Plaintiff asserts that in addition to express contractual covenants,
7 obligations, and duties, Defendant Steckel, Jursek, CCT, Koskela, D’Avignon,
8 Eichman, Desautel, Wulff, Raap, McCurdy, Thomas, Erbland, Nomee, Barnaby,
9 and Miller are in breach of the implied covenant of good faith and fair dealing by
10 failing to perform their contractual obligations in good faith.

11 Plaintiff alleges her constitutional rights for equal protection, freedom of
12 speech, and due process were violated, and she also asserts violations of the CCT
13 Constitution and Tribal codes. She maintains that Thomas, Barnaby and Koskela
14 made false statements, embellished or exaggerated or patently lied about Plaintiff’s
15 actions or words, refused to testify or provide a written statement and/or provided
16 untimely allegations to cause Plaintiff harm, including expulsion and removal from
17 the CBC.

18 Plaintiff asserts Defendants Jursek, Wulff, Ferguson, Caston, Kheel,
19 Somday, Swan, Moses, Joseph, Boyd, Erbland, Barnaby, and Miller engaged in
20 defamation against Plaintiff through written and electronic correspondence within
21 and amongst themselves, CBC, CCT employees and members. She maintains the
22 EAO and press releases were defamatory to Plaintiff. She asserts Defendants made
23 intentional and negligent material misrepresents or omissions to cause Plaintiff
24 adverse employment consequences.

25 Plaintiff alleges Defendants Steckel, Jursek and Miller committed legal
26 malpractice, breach of contract and failure to communicate with a claim. She
27 maintains Defendants had a duty to represent, advise, and assist her as a program
28 manager, and they failed to advise, represent, assist, or otherwise provide good and

1 factual legal representation to Plaintiff.

2 **Prior Lawsuits**

3 This lawsuit is a consolidation of two cases that Plaintiff previously filed in
4 the Colville Tribal Court.

5 Plaintiff filed a civil lawsuit in the Colville Tribal Court in January 2019
6 against CCT, thirteen CBC members, past and current, three attorney employees,
7 past and current, of the ORA and Peter Erbland, a contract attorney who had done
8 work for the Council. *George v. Colville Conf. Tribes*, 2022 WL 2124428 (Colville
9 C.A. Apr. 12, 2022). She sought an injunction, declaratory relief and money
10 damages. She alleged four counts: (1) sexual harassment; (2) intentional infliction
11 of emotional harm; (3) retaliation; and (4) defamation. The tribal court dismissed
12 the case with prejudice on October 18, 2021. ECF No. 49, Ex. 2.

13 Plaintiff appealed that decision. The Colville Tribal Court of Appeals found
14 actions regarding CBC members’ ethics and ability to remain a CBC member lies
15 exclusively within the constitutional and statutory powers and authority of the
16 CBC itself. 2022 WL 2124428 at **1. Additionally, it held Plaintiff’s claims
17 against Peter Erbland were not actionable because Mr. Erbland merely gave legal
18 advice to the CBC; he did not cause any of the allegations against the other
19 defendants.

20 Plaintiff filed a second civil lawsuit in the Colville Tribal Court in January
21 2021. ECF No. 49, Ex. 3. The tribal court dismissed the action. The Colville Tribal
22 Court of Appeals denied and dismissed her appeal on May 17, 2024.

23 **Legal Framework**

24 Indian tribes are ‘distinct, independent political communities, retaining
25 their original natural rights’ in matters of local self-government . . .
26 Although no longer ‘possessed of the full attributes of sovereignty,’
27 they remain a ‘separate people, with the power of regulating their
28 internal and social relations.’ . . . They have the power to make their
own substantive law in internal matters . . . and to enforce that law in

1 their own forums. . .
2 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (citation
3 omitted).

4 **A. Federal Court Jurisdiction**

5 Federal courts are courts of limited jurisdiction. The cases a federal court
6 may decide are limited to those authorized by the Constitution and federal statutes.
7 *Coeur d’Alene Tribe v. Hawks*, 933 F.3d 1052, 1054 (9th Cir. 2019). Courts are to
8 presume that the cause of action lies outside its limited jurisdiction. *Id.* Once a
9 party has moved to dismiss for lack of subject matter jurisdiction under Rule
10 12(b)(1), the opposing party bears the burden of establishing the Court’s
11 jurisdiction. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

12 The mere presence of an Indian tribe as a party does not create a controversy
13 that arises under federal law. *Id.*

14 **B. Comity**

15 As a general rule, federal courts must recognize and enforce tribal court
16 judgments under principles of comity. *AT & T Corp. v. Coeur d’Alene Tribe*, 295
17 F.3d 899, 903 (9th Cir. 2002). Two exceptions exist that would preclude
18 recognition: (1) when the tribal court lacked jurisdiction; or (2) when the tribal
19 court denied the losing party due process of law. *Id.* “Unless a federal court
20 determines that the Tribal Court lacked jurisdiction . . . proper deference to the
21 tribal court system precludes relitigation of issues . . . resolved in the Tribal
22 Courts.” *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 19 (1987).

23 **C. Tribal Sovereign Immunity**

24 Tribal sovereign immunity protects Indian tribes from suit absent express
25 authorization by Congress or clear waiver by the tribe. *Pistor*, 791 F.3d at 1110. It
26 also protects tribal employees from suit in certain circumstances, that is, when a
27 tribe’s officials are sued in their official capacities. *Id.* If Defendants are entitled to
28 tribal immunity from suit, the Court lacks jurisdiction over the claims against them

1 and it would be required to dismiss them from the litigation. *Id.* at 1111.

2 Official capacity suits ultimately seek to hold the entity of which the officer
3 is an agent liable, rather than the official himself. Courts view these claims as
4 representing another way of pleading an action against an entity of which an
5 officer is an agent. *Id.* For this reason, an officer sued in his official capacity is
6 entitled to the same sovereign immunity that the tribe may possess. *Id.* at 1112. As
7 explained by the Ninth Circuit, “tribal officials are immunized from suits brought
8 against them because of their official capacities—that is because the powers they
9 possess in those capacities enable them to grant the plaintiffs relief on behalf of the
10 tribe.” *Id.* (citation omitted).

11 On the other hand, tribal defendants sued in their individual capacities
12 arising out of actions they took in their official capacities for money damages are
13 not entitled to sovereign immunity because the plaintiff is seeking money damages
14 not from the state treasury but the tribal official personally. *Id.* In this case, due to
15 the essential nature and effect of the relief sought, the sovereign is not the real
16 party in interest. *Id.* Thus, “so long as any remedy will operate against the officers
17 individually, and not against the sovereign, there is no reason to give tribal officers
18 broader sovereign immunity protections than state or federal officers.” *Id.* at 1113.

19 As an example, in *Hardin v. White Mountain Apache Tribe*, sovereign
20 immunity barred the plaintiff from litigating a case against high-ranking tribal
21 council members and seeking to hold them individually liable for voting to eject
22 the plaintiff from tribal land. 779 F.2d 476 (9th Cir. 1985). As the Ninth Circuit
23 reasoned, to hold otherwise would interfere with the tribe’s internal governance.
24 *Id.* at 478.

25 In *Lewis v. Clarke*, addressing a negligence claim against a tribal employee,
26 the U.S. Supreme Court emphasized that courts should consider individual
27 capacity claims independent of tribal sovereign immunity. 581 U.S. 155, 162
28 (2017). It held that “in a suit brought against a tribal employee in his individual

1 capacity, the employee, not the tribe, is the real party in interest and the tribe’s
2 sovereign immunity is not implicated.” *Id.* at 158. “That an employee was acting
3 within the scope of his employment at the time the tort was committed is not, on its
4 own, sufficient to bar a suit against that employee on the basis of tribal sovereign
5 immunity.” *Id.* Accordingly, a court “must determine in the first instance whether
6 the remedy sought is truly against the sovereign. . .” *Id.* at 162 (citation omitted).
7 “An officer in an individual-capacity action. . . may be able to assert personal
8 immunity defenses. . . But sovereign immunity does not erect a barrier against suits
9 to impose individual and personal liability.” *Id.* at 163 (citations and internal
10 quotation marks omitted).

11 **D. Indian Civil Rights Act**

12 In 1968, Congress passed the Indian Civil Rights Act (ICRA) to provide
13 certain protections for Indians as against their tribal governments. These
14 protections roughly parallel the protections afforded by the Bill of Rights.

15 25 U.S.C. § 1302 of the Indian Civil Rights Act (ICRA) states:

16 (a) In general

17 No Indian tribe in exercising powers of self-government shall--

18 (1) make or enforce any law prohibiting the free exercise of religion,
19 or abridging the freedom of speech, or of the press, or the right of the people
20 peaceably to assemble and to petition for a redress of grievances;

21 (2) violate the right of the people to be secure in their persons, houses,
22 papers, and effects against unreasonable search and seizures, nor issue
23 warrants, but upon probable cause, supported by oath or affirmation, and
particularly describing the place to be searched and the person or thing to be
seized;

24 (3) subject any person for the same offense to be twice put in
jeopardy;

25 (4) compel any person in any criminal case to be a witness against
26 himself;

27 (5) take any private property for a public use without just
28 compensation

1 (8) deny to any person within its jurisdiction the equal protection of its
2 laws or deprive any person of liberty or property without due process of law;

3
4 However, the ICRA does not provide a private cause of action in federal
5 court for enforcement either in its own right, or in conjunction with 28 U.S.C. §
6 1343(a)(4)². *Trans-Canada Enterprises, Ltd. v. Muckleshoot Indian Tribe*, 634
7 F.2d 474, 477 (9th Cir. 1980). Rather, the sole remedy for an alleged violation in
8 federal court is habeas relief under 25 U.S.C. § 1303. *Id.* Thus, claims under the
9 ICRA must be brought in tribal court. *Tavares v. Whitehouse*, 851 F.3d 863, 866
10 (9th Cir. 2017).

11 **E. Violations of the CCT Constitution and Tribal Codes**

12 Under § 16 of the Indian Reorganization Act of 1934 (“IRA”), a tribe may
13 adopt a constitution and bylaws, which become effective upon ratification by a
14 majority of adult members of the tribe and approval by the Secretary of the
15 Interior. *See* 25 U.S.C. § 476(a). A federal court does not have jurisdiction over the
16 internal affairs of a tribe. Notably, the court does not have subject matter
17 jurisdiction to entertain a suit against any defendant based on the alleged violation
18 of tribal election procedures, which is “an internal controversy among Indians over
19 tribal government.” *Motah v. United States*, 402 F.2d 1, 2 (10th Cir. 1968).

20 The Colville Tribal Code specifically authorizes civil actions, noting that the
21 tribal courts “shall have jurisdiction of all suits involving persons residing within
22 the Tribal jurisdiction as defined by this Code and all other suits in which a party is
23 deemed to have consented to the jurisdiction of the Court, or in which the events
24 giving rise to the action occurred within the Tribal jurisdiction as defined by this

25 ² 28 U.S.C. § 1343 states:

26 (a) the district courts shall have original jurisdiction of any civil action
authorized by law to be commenced by an person:

27 (4) To recover damages or to secure equitable or other relief under any
28 Act of Congress providing for the protection of civil rights, including the
right to vote.

1 Code.” CTC § 2-2-1.³

2 **F. Exhaustion of Tribal Remedies**

3 In the Consolidated Complaint, Plaintiff identifies exhaustion of tribal court
4 remedies as the basis of federal subject matter jurisdiction. Under the doctrine of
5 exhaustion of tribal court remedies, relief may not be sought in federal court until
6 appellate review of a pending matter in a tribal court is complete. *Atwood v. Fort*
7 *Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir. 2008).

8 The U.S. Supreme Court has crafted narrow exceptions to the exhaustion
9 rule. Such exceptions include where “an assertion of tribal jurisdiction is motivated
10 by a desire to harass or is conducted in bad faith, . . . or where the action is patently
11 violative of express jurisdictions prohibitions, or where exhaustion would be futile
12 because of the lack of an adequate opportunity to challenge the court’s
13 jurisdiction.” *Nat’l Farmers Union Ins. Cos.*, 471 U.S. at 856 n.21 (internal
14 quotation marks omitted).

15 **G. 42 U.S.C. § 1983**

16 In the Consolidated Complaint, it appears that Plaintiff may be asserting
17 claims under the Equal Protection Clause, the Due Process Clause, and the Free
18 Speech Clause of the U.S. Constitution.

19 Section 1983 “provides a cause of action for the deprivation of any rights,
20 privileges, or immunities secured by the Constitution and laws of the United
21 States.” 42 U.S.C. § 1983. Section 1983 is not itself a source of substantive rights,
22 but merely provides a method for vindicating federal rights conferred elsewhere.
23 *Graham v. Connor*, 490 U.S. 386, 393–94 (1989).

24 To state a claim under § 1983, a plaintiff must allege two essential elements:
25 (1) that a right secured by the Constitution or laws of the United States was
26 violated and (2) that the alleged violation was committed by a person acting under
27

28 ³ The Colville Tribal Code is located at <https://www.cct-cbc.com/current-code/>.

1 the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

2 Under § 1983, Plaintiff must demonstrate that each named defendant
3 personally participated in the deprivation of their rights. *Ewing v. City of Stockton*,
4 588 F.3d 1218, 1235 (9th Cir. 2009). Tribal courts do not have authority to hear
5 federal claims under 42 U.S.C. § 1983. *Nevada v. Hicks*, 533 U.S. 353, 369 (2001).

6 **Analysis**

7 **1. Tribal governance and internal affairs disputes**

8 Here, it is clear from the Consolidated Complaint that the underlying
9 disputes involve Colville tribal law, governance, and internal affairs over which the
10 Court does not have subject matter jurisdiction. *See In re Sac & Fox Tribe of*
11 *Mississippi in Iowa / Meskwaki Casino Litigation*, 340 F.3d 749, 763 (8th Cir.
12 2003) (“Jurisdiction to resolve internal tribal disputes, interpret tribal constitutions
13 and laws, and issue tribal membership determinations lies with Indian tribes and
14 not in the district courts.”).

15 As such, the Court declines to intervene in what appears to be an inter-Tribal
16 dispute between Colville tribal members or employees. *See LaPlante*, 480 U.S. at
17 16 (holding adjudications of reservation affairs by nontribal courts infringe upon
18 tribal lawmaking authority, because tribal courts are best qualified to interpret and
19 apply tribal law).

20 Moreover, the doctrine of comity counsels this Court to defer to the
21 decisions and judgments of the Colville Tribal Courts, and not allow the re-
22 litigation of the claims.

23 **2. Exhaustion of Tribal Remedies**

24 While Plaintiff cited to the exhaustion of tribal remedies doctrine, it does not
25 appear to provide the Court with subject matter jurisdiction. Although not clear, it
26 appears that Plaintiff may have cited to the doctrine to argue that the tribal court
27 exceeded the lawful limits of its jurisdiction. Plaintiff is precluded from bringing
28 that argument now, especially since she expressly conceded in her tribal courts

1 suits that the Colville Tribal Court had jurisdiction over her claims. Even so, it
2 does not appear to be an applicable doctrine with which to assert federal subject
3 matter jurisdiction in this case.

4 **3. Tribal Sovereign Immunity**

5 Plaintiff's claims against the CCT are barred by sovereign immunity.
6 Contrary to Plaintiff's assertions, the Colville Tribal Civil Rights Act does not
7 waive the CCT's sovereign immunity outside the scope of the Colville Tribal
8 Courts. *See* CTC § 1-5-4 ("Actions brought under CTC §1-5-3 shall be brought
9 only in the Courts of the Confederated Tribes of the Colville Reservation;
10 notwithstanding the fact that a court of another jurisdiction may have concurrent
11 jurisdiction"). Plaintiff has not shown that CCT waived its immunity to be sued in
12 federal court.

13 Whether the individually-named Defendants are entitled to sovereign
14 immunity cannot be determined from the allegations contained in the
15 Consolidated Complaint. The Complaint does not expressly differentiate between
16 "official capacity" and "individual capacity" claims. At first glance, it appears her
17 claims for monetary damages generally arise from the individual defendants'
18 alleged acts/omissions taken on behalf of the Tribe, including expulsion from and
19 lack of election certification for CBC elections. Moreover, Plaintiff has not
20 alleged sufficient facts for the Court to conclude that the individually-named
21 Defendants are *not* entitled to sovereign immunity. As such, the Court dismisses
22 the claims asserted against the individually-named Defendants. *See Pistor*, 791
23 F.3d at 1111 ("In the context of a Rule 12(b)(1) motion to dismiss on the basis of
24 tribal sovereign immunity, the party asserting subject matter jurisdiction has the
25 burden of proving its existence, *i.e.* that immunity does not bar the suit.").

26 **4. Res Judicata**

27 In addition to the Court's lack of subject matter jurisdiction, *res judicata* bars
28 Plaintiff's Consolidated Complaint. *See Miller v. Wright*, 705 F.3d 919, 928 (9th

1 Cir. 2013). Res judicata applies only where there is (1) an identity of claims, (2) a
2 final judgment on the merits, and (3) privity between parties. *Id.* (quotation
3 omitted). Here, it appears that Plaintiff is seeking a do-over of her claims that were
4 already brought in tribal court. Moreover, even if Plaintiff is asserting additional
5 claims, those claims would be subject to res judicata as well because they would be
6 based on the same nucleus of facts. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe*
7 *Reg'l Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003).

8 **5. Section 1983 claims**

9 As an initial matter, because tribes retain their sovereignty generally, and
10 because this sovereignty predates the Constitution and does not depend upon it, the
11 Constitution does not bind tribal governments with respect to their members.
12 *Talton v. Mayes*, 163 U.S. 376, 382–84 (1896). Plaintiff's constitutional claims
13 against CCT fail as a matter of law.

14 Moreover, the Consolidated Complaint does not allege facts that show the
15 individually-named Defendants were acting under color of state law. *See Pistor*,
16 791 F.3d at 1115 (noting that actions under § 1983 cannot be maintained in federal
17 court for person alleging a deprivation of constitutional rights under color of tribal
18 law).

19 Finally, the Consolidated Complaint fails to allege sufficient facts to show
20 violations of the Equal Protection Clause, the Due Process Clause and the Free
21 Speech Clause of the U.S. Constitution. While Plaintiff has inundated the Court
22 with factual allegations that she believes shows she was treated unfairly, she has
23 failed to plead sufficient facts that allows the Court to draw the reasonable
24 inference that Defendants are liable for the alleged *constitutional* violations.

25 **6. Supplemental Jurisdiction**

26 Plaintiff is asserting several state law claims. Because the Court does not
27 have jurisdiction over the claims asserted against the Tribe or claims involving
28 Colville tribal law, governance, and internal affairs, and Plaintiff has failed to

1 adequately allege any claim under § 1983, the Court declines to exercise
2 supplemental jurisdiction over the remaining state law claims. *See United Mine*
3 *Workers of Am. v. Gibbs*, 383 U.S 715, 726 (1966) (instructing that federal courts
4 should hesitate to exercise jurisdiction over state claims if it has dismissed all
5 claims over which it had original jurisdiction).

6 **7. Leave to Amend**

7 Although Fed. R. Civ. P 15 instructs that leave to amend should be freely
8 granted, the Court declines to do so in this instance. Plaintiff has already been
9 given an opportunity to amend her complaint after Defendants filed their first
10 motion to dismiss. Plaintiff has demonstrated that she is unable to comply with
11 Fed. R. Civ. P. 8 (requiring a short and plain statement of the claim showing the
12 pleader is entitled to relief). Defendants would be unduly prejudiced if Plaintiff
13 were granted leave to amend. Moreover, allowing Plaintiff to file another amended
14 complaint would be futile, given that Plaintiff is bringing claims that are clearly
15 barred by sovereign immunity or that should be (and were) brought in Tribal
16 Court.

17 **8. Conclusion**

18 The Court dismisses the Consolidated Complaint, ECF No. 47, with
19 prejudice because it does not have subject matter jurisdiction to hear this matter.
20 Plaintiff properly raised her claims in two prior tribal court lawsuits given that
21 court's exclusive jurisdiction over tribal statutory and governmental disputes.
22 Federal courts are courts of limited jurisdiction and do not exist to give tribal
23 members a do-over in federal court if they are not happy with the outcome of the
24 tribal court proceedings.

25 Accordingly, **IT IS HEREBY ORDERED:**

- 26 1. The Colville Defendants' Renewed Motion to Dismiss Consolidated
27 Complaint, ECF No. 48, is **GRANTED**.
- 28 2. Defendants Peter Erbland and Thomas Miller's Motion to Dismiss

**ORDER GRANTING MOTIONS TO DISMISS CONSOLIDATED
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1 Consolidated Complaint, ECF No. 50, is **GRANTED**.

2 3. The Consolidated Complaint, ECF No. 47, is **DISMISSED**, with
3 prejudice.

4 4. The Clerk of Court is directed to enter judgment in favor of
5 Defendants and against Plaintiff.

6 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
7 this Order, provide copies to Plaintiff and counsel, and **close** the file.

8 **DATED** this 24th day of February 2025.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

14 Stanley A. Bastian
15 Chief United States District Judge
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