

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELENA PORTNOY,

Plaintiff,

v.

ROSA MEZA, et al.,

Defendants.

No. 2:24-cv-03456 DJC CKD (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se and in forma pauperis. On May 15, 2025, the undersigned screened plaintiff's original complaint and found that it failed to state a cognizable federal claim. (ECF No. 3.) Before the court for screening is plaintiff's First Amended Complaint (FAC). (ECF No. 4.) For the reasons set forth below, the undersigned will recommend that the FAC be dismissed without leave to amend, as it fails to cure the deficiencies of the original complaint.

Plaintiff alleges that in January 2024, she was unlawfully fired from her job at Cache Creek Casino Resort. She names Tribal Gaming Agency (TGA) officer Rose Meza, TGA director Ray Patterson, and one other individual as defendants.¹ Plaintiff alleges that she had no criminal history such as would warrant suspension of her gaming license and dismissal from her

¹ The alleged role of defendant Leland Kinter is not clear from the body of the complaint.

1 job. (FAC at 3.) A copy of a January 18, 2024 letter on TGA letterhead from defendant Meza to
2 plaintiff is attached to the complaint. (FAC at 4.) In the letter, Meza states in part:

3 Your gaming license was suspended on January 9, 2024 for
4 dishonesty; failure to disclose and/or provide false statement or
omission on your gaming license application.

5 The Yocha Dehe Tribal Gaming Agency (“YDTGA”) is the tribal
6 regulatory agency . . . with authority and responsibility under federal
and tribal law to issue, renew . . . , suspend and revoke tribal gaming
7 licenses in accordance with the Yocha Dehe Wintun Nation’s Tribal
Gaming Ordinance and the YDTGA’s regulations pertaining to the
8 licensing of Cache Creek Casino Resort employees. Tribal gaming
regulations require that tribal licenses be revoked when their actions
9 could cause disrepute on the Tribe.

10 (FAC at 14.) The letter states that plaintiff had “an opportunity to explain the findings resulting
11 from your background check” and that the TGA had considered all the facts and was suspending
12 plaintiff’s gaming license indefinitely. (*Id.*) As result of the suspended license, plaintiff lost her
13 job. (FAC at 4.)

14 Plaintiff asserts two federal due process claims pursuant to 42 U.S.C. § 1983. First,
15 plaintiff claims she was unlawfully deprived of her “property interest in employment” without
16 due process guaranteed by the Fourteenth Amendment. (FAC at 4.) While the Ninth Circuit has
17 recognized a substantive right for a generalized right to employment, there is no right to a specific
18 job.” Watson v. City of Henderson, 2024 WL 1514983, *13 (D. Nev. April 5, 2024) (citing
19 Armstrong v. Reynolds, 22 F.4th 1058, 1079–80 (9th Cir. 2022)).

20 Second, plaintiff claims that she was unlawfully deprived of her gaming license and/or job
21 without a hearing, violating her right to procedural due process. (FAC at 7.) Plaintiff cites 25
22 C.F.R. § 558.4, which provides a procedure for the suspension of a tribal gaming license. She
23 alleges that defendants violated this regulation by depriving her of her job without the proper
24 process. (FAC at 6-7.)

25 To the extent plaintiff seeks to hold tribal officers liable in their official capacity for
26 allegedly violating her constitutional rights, they are entitled to immunity from money damages.
27 See Ferguson v. Hittle, 2023 WL 7095104, *3 (S.D. Cal. 2023), citing Pistor v. Garcia, 791 F.3d
28 1104, 1110 (9th Cir. 2015) (tribal sovereign immunity protects tribal employees sued in their

official capacities). Absent a waiver of sovereign immunity, plaintiff cannot sue TGA officers “based on acts taken within the scope of their delegated tribal authority in federal court.” Ferguson, 2023 WL 7095104, *3, citing Kennerly v. United States, 721 F.2d 1252, 1258-59 (9th Cir. 1983) (holding that, because “there has been no express waiver [of sovereign immunity] or consent to suit, nor any congressional authorization for such a suit against the Tribe, [the federal courts] are without jurisdiction”); Hardin v. White Mountain Apache Tribe, 779 F.2d 476, 479–80 (9th Cir. 1985).

Additionally, the FAC does not state a § 1983 claim against any defendant because plaintiff has failed to allege facts showing they were acting “under color of state law.” To prevail in a civil action under 42 U.S.C. § 1983, a plaintiff must show that “(1) acts by the defendants (2) under color of state law (3) deprived him of federal rights, privileges or immunities and (4) caused him damage.” Thornton v. City of St. Helens, 425 F.3d 1158, 1163-64 (9th Cir. 2005). “Actions under section 1983 cannot be maintained in federal court for persons alleging a deprivation of constitutional rights under color of tribal law.” Evans v. McKay, 869 F.2d 1341, 1347 (9th Cir. 1989). Here, defendants are identified as TGA officials acting under color of tribal law. Moreover, “[t]o the extent this dispute at its core pertains to an internal tribal dispute . . . , [plaintiff] fail[s] to demonstrate this Court has jurisdiction over such matter.” Hardwick v. USA, 2025 WL 1696594, *3 (N.D. Cal. June 17, 2025), citing Hammond v. Jewell, 139 F. Supp. 3d 1134, 1137 (E.D. Cal. 2015) (“A district court thus generally lacks jurisdiction to resolve matters of internal tribal governance.”).

Because plaintiff fails to state a cognizable federal claim, this court lacks jurisdiction over her related state claims. Moreover, it does not appear the complaint can be cured by a second opportunity to amend.

Accordingly, IT IS HEREBY RECOMMENDED THAT:

1. The First Amended Complaint (ECF No. 4) be dismissed with prejudice; and
2. The Clerk of Court be directed to close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
4 within the specified time may waive the right to appeal the District Court’s order. Martinez v.
5 Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: September 24, 2025

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8 CAROLYN K. DELANEY
9 UNITED STATES MAGISTRATE JUDGE
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