

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 LAWSON G. STEVE,

4 Plaintiff

5 v.

6 TUNI, et al.,

7 Defendants

Case No.: 3:22-cv-00506-MMD-CSD

**Order and
Report & Recommendation of
U.S. Magistrate Judge**

Re: ECF Nos. 11, 4, 4-1

8
9 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 11), a
10 motion to amend and proposed amended complaint (ECF No. 4-1). The court grants the IFP
11 application and motion for leave to amend. In addition, the court has screened the proposed
12 amended complaint, and for the reasons set forth below, recommends that certain claims and
13 defendants be dismissed and that others be dismissed with leave to amend.

14 **I. IFP APPLICATION**

15 A person may be granted permission to proceed IFP if the person “submits an affidavit
16 that includes a statement of all assets such [person] possesses [and] that the person is unable to
17 pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense
18 or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez*
19 *v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to
20 all actions filed IFP, not just prisoner actions).

21 The Local Rules of Practice for the District of Nevada provide: “Any person who is
22 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].
23

1 The application must be made on the form provided by the court and must include a financial
2 affidavit disclosing the applicant’s income, assets, expenses, and liabilities.” LSR 1-1.

3 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some
4 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
5 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the
6 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;
8 therefore, the application is granted.

9 II. SCREENING

10 A. Standard

11 “[T]he court shall dismiss the case at any time if the court determines that-- (A) the
12 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails
13 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a
14 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

15 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
16 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)
17 tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the
18 court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668
19 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to
20 state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the
21 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under
22 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*,
23 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

1 The court must accept as true the allegations, construe the pleadings in the light most
2 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,
3 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less
4 stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9
5 (1980) (internal quotation marks and citation omitted).

6 A complaint must contain more than a "formulaic recitation of the elements of a cause of
7 action," it must contain factual allegations sufficient to "raise a right to relief above the
8 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading
9 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
10 a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a
11 plaintiff should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at
12 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 A dismissal should not be without leave to amend unless it is clear from the face of the
14 complaint that the action is frivolous and could not be amended to state a federal claim, or the
15 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
16 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

17 **B. Motion to Amend**

18 Plaintiff filed a motion for leave to amend and proposed amended complaint before filing
19 a completed IFP application. The motion for leave to amend (ECF No. 4) is **GRANTED**, and the
20 court will now screen the proposed amended complaint.

21 **C. Plaintiff's Proposed Amended Complaint**

22 The proposed amended complaint names as defendants: Cathy Tuni, Chairwoman of the
23 Fallon Paiute-Shoshone Tribe (FPST); Andrew Hicks, Councilperson for the FPST; Jane/John

1 Does 1-3, councilpersons for the FPST; Acosta, Tribal Judge for the FPST; Jane Doe 4 Tribal
2 Prosecutor for the FPST; Robert Greggs, FPST Public Safety Tribal Police; Shasta Juarez, FPST
3 Public Safety Tribal Police; John Doe 5 FPST Public Safety Tribal Police; Ty Morely, Nevada
4 Legal Services, Public Safety Tribal Court, Defense Public Defender for FPST; John Doe 6
5 Director of Nevada Legal Services, Public Safety Tribal Court, Public Defender for FPST; John
6 Doe 7 Churchill County Sheriff Elect; John Doe 8 Churchill County Sheriff Deputy Dispatcher;
7 Frank Honeywell, Lyon County Sheriff Elect; E. Castaneda, Lyon County Booking Deputy;
8 Darrin Balaam, Washoe County Sheriff elect.

9 Plaintiff alleges that he was living ten miles out of town on a private residential property
10 not owned by the FPST. There was an accidental fire at the home due to a faulty electrical circuit
11 on September 5, 2022. Then, on October 4, 2022, a 911 emergency fire incident call was made
12 by the FPST police that went to the Churchill County Sheriff's Office regarding another fire at
13 the home.

14 Greggs and Juarez of the FPST Tribal Police entered the back yard of the property and
15 *Mirandized* Plaintiff, arrested him, put him in restraints and transported him to the Lyon County
16 Sheriff's Office jail, and would not let him speak to the Churchill County Volunteer Fire
17 Department Fire Marshall to notify him of the cause of the fire.

18 Plaintiff alleges that Lyon County Sheriff Frank Honeywell and booking deputy
19 Castaneda illegally incarcerated Plaintiff pursuant to a "mutual agreement contract" (also
20 referred to as a "MOU," presumably referring to a Memorandum of Understanding). Plaintiff
21 characterizes the MOU as a document made by the FPST tribal councilmembers to have FPST
22 Public Safety enforce State of Nevada authority in federal jurisdiction. He claims this agreement
23 is unconstitutional.

1 Plaintiff goes on to allege that on October 11, 2022, Tribal Judge Acosta knew or should
2 have known that Ty Morely of Nevada Legal Services is not a licensed attorney, but he was
3 appointed to represent Plaintiff in his criminal case. In addition, he avers that Plaintiff was not
4 permitted to be present at his initial appearance, and Tribal Judge Acosta refused to provide
5 Plaintiff a copy of his criminal complaint.

6 Then, on November 29, Plaintiff was transported by FPST Tribal Police from the Lyon
7 County Sheriff's Office to the Washoe County Sheriff's Office (Darrin Balaam is the Washoe
8 County Sheriff). Plaintiff claims this was also done pursuant to an illegal MOU to enforce State
9 laws and authority in federal jurisdiction.

10 Plaintiff's proposed amended complaint contains two counts.

11 In Count I, Plaintiff sues for violation of the First Amendment (retaliation); Fifth
12 Amendment (separation of powers/due process); the Sixth Amendment (denial of adequate
13 notice of criminal charges); the Fourteenth Amendment (racial discrimination), and for
14 conspiracy under 42 U.S.C. § 1983.

15 First, Plaintiff contends that the Defendants each illegally enforce State laws and/or
16 authority through the MOU between the FPST/Department of Public Safety and the Churchill
17 County Sheriff's Office, Lyon County Sheriff's Office, and Washoe County Sheriff's Office.
18 They did so when they targeted Plaintiff on October 4, 2022, for re-arrest, prosecution, and
19 incarceration for being a Native American who was previously arrested and imprisoned in
20 Nevada state court. He states the Defendants have been deliberately indifferent to his rights
21 under the Equal Protection Clause.

22 Next, he alleges the home that caught fire does not belong to the FPST, but was put there
23 by the FPST because the tribe destroyed Plaintiff's home in 2007 (that he inherited from Russell

1 Steve, Sr.). Plaintiff states that in 2007, FPST housing authority employees were embezzling,
2 and tribal members directed Plaintiff's brother, Russell Leon Steve, Jr., to tear down the home in
3 exchange for a promised five-bedroom home and an award in excess of \$300,000 that was never
4 paid. Plaintiff asserts that Defendants are causing Plaintiff to go homeless again. He claims this
5 is retaliation over the embezzlement scheme that was going on at the housing authority in the
6 FPST in 2007-2008.

7 Count II asserts the same constitutional provisions were violated. In this count, Plaintiff
8 alleges that each of the three sheriffs (Churchill County, Lyon County, and Washoe County)
9 knew or should have known that they do not have jurisdiction to enforce State laws in federal
10 jurisdiction without following proper notice requirements. He asserts that any contract to violate
11 his rights on private property is illegal.

12 Next, Plaintiff alleges Defendants carried out a policy with FPST councilmembers to
13 adopt state policies in their tribal constitution in 2022, such as allowing recreational and
14 medicinal marijuana, which Plaintiff claims is illegal because the FPST is in federal jurisdiction.

15 Plaintiff goes on to allege that Defendants are not federalized by an academy federally
16 recognized for enforcing federal law in federal jurisdiction pursuant to the treaty.

17 **D. Analysis**

18 **1. Tribal Defendants**

19 Plaintiff sues the following tribal defendants in their official and "unofficial" or
20 personal/individual capacities: Cathy Tuni (FPST Chairwoman), Andrew Hicks (FPST
21 Councilperson), Jane/John Does 1-3 (FPST Councilpersons), Acosta (FPST Tribal Judge), Jane
22 Doe 3 (FPST Tribal Prosecutor), Robert Greggs (FPST Public Safety Tribal Police), and Shasta
23 Juarez (Public Safety Tribal Police). He also sues Ty Morely, whom Plaintiff describes as

1 Nevada Legal Services FPST Tribal Court Public Defender, and John Doe 6 Nevada Legal
2 Services Director, FPST Tribal Court Public Defender. It is unclear whether the latter two
3 defendants are tribal or non-tribal defendants.

4 “Tribal sovereign immunity protects Indian tribes from suit absent express authorization
5 by Congress or clear waiver by the tribe.” *Pistor v. Garcia*, 791 F.3d 1104, 1110 (9th Cir. 2015)
6 (quotation marks and citation omitted). “Tribal sovereign immunity also protects tribal
7 employees in certain circumstances,’ ... namely, where a tribe’s officials are sued in their *official*
8 capacities.” *Id.* (emphasis added) (quoting *Maxwell v. County of San Diego*, 708 F.3d 1075, 1086
9 (9th Cir. 2013)). In other words, “[a] suit against ... [a tribe’s] officials in their official capacities
10 is a suit against the tribe [that] is barred by tribal sovereign immunity.” *Id.* (citation and
11 quotation marks omitted). Therefore, the court should dismiss the tribal defendants to the extent
12 they are sued in their official capacities. Any further amended pleading shall clarify whether Ty
13 Morely and the John Doe 6 Nevada Legal Services Director are being sued as tribal or non-tribal
14 defendants. If they are sued as tribal defendants, they may not be sued in their official capacities.

15 “[T]ribal defendants sued in their *individual* capacities for money damages are not
16 entitled to sovereign immunity, even though they are sued for actions taken in the course of their
17 official duties.” *Id.* (citing *Maxwell*, 708 F.3d at 1089).

18 The court must now address the intersection of tribal sovereign immunity principles and
19 section 1983. Even if a tribal official is sued in his individual capacity, whether the defendants
20 “were acting under color of state or tribal law” when they engaged in the conduct alleged to
21 violate the constitution “*is a necessary inquiry for purposes of establishing the essential elements*
22 of the [plaintiff’s] § 1983 claim[.]” *Id.* at 1114 (emphasis original). That is because “[t]o
23 maintain an action under section 1983 against ... individual defendants, [a plaintiff] must ...

1 show: (1) that the conduct complained of was committed by a person acting under the color of
2 *state law*; and (2) that this conduct deprived them of rights, privileges, or immunities secured by
3 the Constitution or laws of the United States.” *Id.* (citation and quotation marks omitted,
4 emphasis original). “[A]ctions under section 1983 cannot be maintained in federal court for
5 persons alleging a deprivation of constitutional rights under color of *tribal law*.” *Id.* (citations
6 omitted, emphasis added).

7 Here, Plaintiff does not include sufficient factual allegations to demonstrate that the tribal
8 defendants were acting under color of *state law* to maintain an action against them under section
9 1983. Therefore, the tribal defendants should also be dismissed insofar as they are sued in their
10 *individual capacities*. However, Plaintiff should be given leave to amend to attempt to allege, if
11 he can, that they were acting pursuant to *state law*.

12 **2. First Amendment Retaliation**

13 Plaintiff alleges he is a victim of retaliation by the FPST and the Department of Public
14 Safety for re-arrest, incarceration, and prosecution related to the second fire at the property.

15 If Plaintiff is only suing tribal defendants, it appears that unless he includes factual
16 allegations demonstrating that the tribal defendants were acting pursuant to *state law*, that
17 Plaintiff’s claim, if any, would arise under the Indian Civil Rights Act (ICRA), 25 U.S.C. §
18 1301-1303. ICRA “extended to tribes most (but not all) of the civil protections in the bill of
19 Rights.” *Tavares v. Whitehouse*, 851 F.3d 863, 866-67 (9th Cir. 2017). “Because § 1303 provides
20 the exclusive federal remedy for tribal violations of the ICRA, unless a petitioner is in “detention
21 by order of an Indian tribe,” the federal courts lack jurisdiction over an ICRA challenge and the
22 complaint must be brought in tribal court.” *Id.* at 867 (citing *Santa Clara Pueblo v. Martinez*,
23 436 U.S. 49 (1978)).

1 The Supreme Court explained: “[P]roviding a federal forum for issues arising under
2 § 1302 constitutes an interference with tribal autonomy and self-government beyond that created
3 by the change in substantive law itself.” *Santa Clara Pueblo*, 436 U.S. at 59. “Congress’ failure
4 to provide remedies other than habeas corpus [in Title I of ICRA] was a deliberate one.” *Id.* at 61
5 (citation omitted). “Creation of a federal cause of action for the enforcement of rights created in
6 Title I, however useful it might be in securing compliance with § 1302, plainly would be at odds
7 with the congressional goal of protecting tribal self-government.” *Id.* at 64. Instead, “[t]ribal
8 forums are available to vindicate rights created by the ICRA[.]” *Id.* at 65. “[E]fforts by the
9 federal judiciary to apply the statutory prohibitions of § 1302 in a civil context may substantially
10 interfere with a tribe’s ability to maintain itself as a culturally and politically distinct entity.” *Id.*
11 at 72.

12 According to the docket, Plaintiff is not currently in “detention by order of an Indian
13 tribe.” Therefore, his retaliation claim, insofar as the tribal defendants were acting pursuant to
14 tribal law, should be dismissed to be asserted, if appropriate, in tribal court.

15 To the extent Plaintiff intends this claim to apply to non-tribal defendants, and to the
16 extent he amends to add facts to demonstrate the tribal defendants were acting pursuant to *state*
17 law, “as a general matter the First Amendment prohibits government officials from subjecting
18 an individual to retaliatory actions’ for engaging in protected speech.” *Nieves v. Bartlett*, 139
19 S.Ct. 1715, 1722 (2019) (quoting *Hartman v. Moore*, 547 U.S. 250, 256 (2006)). The plaintiff
20 must allege a “causal connection” between the “government defendant’s ‘retaliatory animus’ and
21 the plaintiff’s ‘subsequent injury.’” *Id.* (citing *Hartman*, 547 U.S. at 259). The retaliatory motive
22 “must *cause* the injury.” *Id.* In a claim of retaliatory prosecution, the Plaintiff must “plead and
23

1 prove the absence of probable cause for the underlying criminal charge.” *Id.* (citing *Hartman*,
2 547 U.S. at 265-66).

3 In *Nieves*, the Supreme Court held that a plaintiff asserting a retaliatory arrest claim must
4 likewise “plead and prove the absence of probable cause for the arrest.” *Nieves*, 139 S.Ct. at
5 1724. Although that requirement “should not apply when a plaintiff presents objective evidence
6 that he was arrested when otherwise similarly situated individuals not engaged in the same sort
7 of protected speech had not been.” *Id.* at 1727.

8 It is not clear from the complaint exactly how Plaintiff claims he was retaliated against or
9 whom specifically was responsible for the retaliation, or even the source of such a right in this
10 context. Again, for the tribal defendants, Plaintiff must also include factual allegations to
11 demonstrate they were acting pursuant to *state* law. Therefore, this claim should be dismissed,
12 but with leave to amend as to the *non-tribal* defendants (if Plaintiff seeks to pursue this claim
13 against any of them), and as to the *tribal* defendants *if* he can allege facts demonstrating they
14 were acting pursuant to *state* law.

15 **3. Fifth Amendment Separation of Powers/Due Process**

16 Plaintiff alleges that he was illegally targeted by the Churchill County Sheriff’s Office
17 and then incarcerated in Lyon County (by Lyon County Sheriff Honeywell and Booking Deputy
18 Castaneda), and then in Washoe County (through Sheriff Balam and the Doe booking deputy)
19 pursuant to the MOU made by the FPST tribal council members and Public Safety in order to
20 enforce State of Nevada authority in federal jurisdiction. He avers the Defendants are violating
21 federal law because they are not federalized by an academy federally recognized to enforce
22 federal law.
23

1 Plaintiff includes no *factual* allegations about the MOU or *how* it violates the
2 Constitution. Moreover, it appears that Plaintiff’s claim may be foreclosed by the Ninth Circuit’s
3 decision in *United States v. Fowler*, 48 F.4th 1022 (9th Cir. 2022) (finding that entering into a
4 cross-deputization agreement with state and local law enforcement was a permissible exercise of
5 the tribe’s sovereign authority). However, because the parameters of the agreement at issue here
6 are not clear from the face of the complaint, Plaintiff should be given leave to amend for this
7 claim.

8 Plaintiff also alleges that Defendants carried out a policy with the FPST council members
9 to adopt state laws into their tribal constitution in 2022, such as adopting recreational and
10 medicinal marijuana laws that the State enjoys. Plaintiff claims this is illegal because FPST is in
11 federal jurisdiction (and marijuana is still criminalized federally).

12 With respect to this portion of his claim, Plaintiff does not include sufficient *facts* for the
13 court to determine if he states a valid claim. Plaintiff should be given leave to amend to include
14 additional *factual* allegations regarding the alleged policy and laws regarding recreational and
15 medicinal marijuana that Plaintiff claims tribal officials adopted, and the impact of these alleged
16 policies. Plaintiff must also allege what defendants were involved in the alleged constitutional
17 violation and what each defendant did to violate Plaintiff’s rights. Plaintiff should note that it is
18 up to the federal government to decide whether and how to *criminally* enforce federal laws
19 regarding marijuana.

20 **4. Sixth Amendment Denial of Adequate Notice of Criminal Charges**

21 The Sixth Amendment of the United States Constitution provides the accused the right
22 “to be informed of the nature and cause of the accusation[.]” U.S. Const. amend VI. Plaintiff’s
23 allegations indicate that he was facing criminal proceedings in *tribal court*, and the U.S.

1 Supreme Court has held that “the Sixth Amendment does not apply to tribal-court proceedings.”
2 *U.S. v. Bryant*, 579 U.S. 140, 143 (2016) (citing *Plains Commerce Bank v. Long Family Land &*
3 *Cattle Co.*, 554 U.S. 316, 337 (2008). ICRA governs criminal proceedings in tribal courts. “In
4 addition to other enumerated protections, ICRA guarantees ‘due process of law,’ 25 U.S.C. §
5 1302(a)(8), and allows tribal-court defendants to seek habeas corpus review in federal court to
6 test the legality of their imprisonment, § 1303.” *Id.* ICRA includes the right of a person in a
7 criminal proceeding “to be informed of the nature and cause of the accusation.” 25 U.S.C. §
8 1302(a)(6).

9 By allowing the tribal court defendant to seek habeas review in federal court, the
10 defendant “may challenge the fundamental fairness of the proceedings in tribal court.” *Bryant*,
11 579 U.S. at 157.

12 As noted above, because Plaintiff is not currently in “detention by order of an Indian
13 tribe,” the federal court lacks jurisdiction over his ICRA challenge. *Tavares*, 851 F.3d at 866. As
14 such, his Sixth Amendment claim should be dismissed so that he may bring it in tribal court.

15 **5. Fourteenth Amendment Equal Protection (Racial Discrimination)**

16 Plaintiff alleges that he was targeted, re-arrested, incarcerated, and prosecuted because he
17 is Native American with a previous state conviction.

18 To the extent Plaintiff’s claim is brought against *tribal* members acting pursuant to *tribal*
19 law, Plaintiff’s claim would be governed by ICRA, 25 U.S.C. § 1302(a)(8), which prohibits a
20 tribe from denying “any person within its jurisdiction the equal protection of the laws.” Since
21 Plaintiff is not in detention by order of a tribe, he must bring such a claim in tribal court. *See*
22 *Santa Clara Pueblo*, 436 U.S. 49 (Indian brought claim in federal court based on equal
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1 protection provision in ICRA and the Court rejected the argument that ICRA impliedly
2 authorized civil suits against the tribe and its officers in federal court).

3 Insofar as Plaintiff brings this claim against non-tribal members, and potentially against
4 tribal members acting pursuant to *State* law, the Fourteenth Amendment provides that no state
5 shall “deny to any person .. the equal protection of the laws.” U.S Const. amend 14, § 1.
6 Classifications based on race are subject to strict scrutiny. *Students for Fair Admissions, Inc. v.*
7 *President and Fellows of Harvard College*, 143 S.Ct. 2141, 2162 (2023). That requires the court
8 to determine whether the race-based classification is used to “further compelling government
9 interests,” and if so, “whether the government’s use of race is ‘narrowly tailored’—meaning
10 ‘necessary’—to achieve that interest.” *Id.* (quoting *Fisher v. Univ. of Texas at Austin*, 570 U.S.
11 297, 311-12 (2013)).

12 Plaintiff provides a conclusory statement that he suffered alleged adverse action because
13 he is Native American, but he fails to include any *factual* allegations to support this conclusion.
14 Nor does he connect the alleged racial discrimination the conduct of any particular defendant.
15 Therefore, Plaintiff’s equal protection clause claim should be dismissed. However, he should be
16 given leave to amend to attempt to cure these deficiencies as to the *non-tribal* defendants, and
17 any *tribal* defendants he alleges were acting pursuant to *state* law.

18 **6. Conspiracy**

19 To prevail on a claim for conspiracy to violate one’s constitutional rights under 42 U.S.C.
20 § 1983, the plaintiff must show specific facts to support the existence of the claimed conspiracy.
21 *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir. 1988). The elements of
22 a conspiracy claim brought under section 1983 are: (1) an agreement or meeting of the minds to
23 violate constitutional rights, and (2) an actual deprivation of those rights resulting from the

1 alleged conspiracy. *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002); *see also Hart v. Parks*,
2 450 F.3d 1059, 1071 (9th Cir. 2006).

3 Plaintiff includes no *factual* allegations to support his conspiracy claim. Therefore, this
4 claim should also be dismissed with leave to amend.

5 **III. ORDER**

6 (1) Plaintiff's IFP application (ECF No. 11) is **GRANTED**.

7 (2) Plaintiff's motion for leave to amend (ECF No. 4) is **GRANTED** and the Clerk shall
8 **FILE** the amended complaint (ECF No. 4-1).

9 **IV. RECOMMENDATION**

10 IT IS HEREBY RECOMMENDED that the District Judge enter an order as follows:

11 (1) **DISMISSING** the *tribal* defendants insofar as they are sued in their *official*
12 capacities. Plaintiff should be required to clarify in any amended pleading whether Ty Morely
13 and the John Doe 6 Nevada Legal Services Director are being sued as tribal or non-tribal
14 defendants; and if they are being sued as tribal defendants, Plaintiff may not proceed against
15 them in their official capacities.

16 (2) **DISMISSING** the tribal defendants **WITH LEAVE TO AMEND** insofar as he sues
17 them in their *individual* capacities, so that Plaintiff can attempt to allege, if appropriate, that they
18 were acting pursuant to *state* law.

19 (3) **DISMISSING** the First Amendment retaliation claim against the *tribal* defendants
20 who are alleged to have acted pursuant to *tribal law* so that Plaintiff can raise such claim in *tribal*
21 court; however, to the extent he intends to pursue his First Amendment retaliation claim against
22 *non-tribal* defendants or *tribal defendants* acting pursuant to *state* law, the claim should be
23 **DISMISSED WITH LEAVE TO AMEND**.

1 (4) **DISMISSING** the Fifth Amendment separation of powers claim **WITH LEAVE TO**
2 **AMEND**.

3 (5) **DISMISSING** the Sixth Amendment adequate notice of charges claim so that
4 Plaintiff may raise that claim in *tribal* court.

5 (6) **DISMISSING** the Fourteenth Amendment equal protection claim against *tribal*
6 defendants acting pursuant to *tribal* law so that he may raise the claim in *tribal* court; however,
7 to the extent he intends to proceed with this claim against *non-tribal* defendants and/or *tribal*
8 defendants acting pursuant to *state* law, the claim should be **DISMISSED WITH LEAVE TO**
9 **AMEND**.

10 (7) **DISMISSING** the conspiracy claim **WITH LEAVE TO AMEND**.

11 (8) Plaintiff should be given **30 DAYS** from the date of any order adopting this report and
12 recommendation to file a second amended complaint correcting the deficiencies noted above.

13 The second amended complaint must be complete in and of itself without referring or
14 incorporating by reference any previous complaint. Any allegations, parties, or requests for relief
15 from a prior complaint that are not carried forwarded in the amended complaint will no longer be
16 before the court. Plaintiff shall clearly title the amended pleading as the second amended
17 complaint. Plaintiff should be cautioned that if he fails to timely file his second amended
18 complaint, his action may be dismissed.

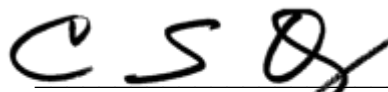
19 Plaintiff should be aware of the following:

20 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
21 this Report and Recommendation within fourteen days of being served with a copy of the Report
22 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s
23

1 Report and Recommendation” and should be accompanied by points and authorities for
2 consideration by the district judge.

3 2. That this Report and Recommendation is not an appealable order and that any notice of
4 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
5 until entry of judgment by the district court.

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7 Dated: August 28, 2023

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9 Craig S. Denney
10 United States Magistrate Judge
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