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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHAEL ERWINE,

v.

CHURCHILL COUNTY, *et al.*,

Defendants.

Case No. 3:24-cv-00045-MMD-CSD

ORDER

I. SUMMARY

Plaintiff Michael Erwine sued Defendants Sheriff Benjamin Trotter and Churchill County, the United States of America, Michel Hall, John Leonard, Zachary Westbrook, and Gene Burke for alleged violations of his rights under the federal and state Constitution, and Nevada state law, generally arising out of his tenure and termination as a police officer with first Churchill County and later the Washoe Tribe of Nevada and California (“Washoe Tribe”). (ECF No. 59 (“FAC”).) Before the Court are: (1) Erwine’s motion to alter or amend the Court’s order dismissing his remaining claims against the United States (ECF No. 110);¹ (2) Defendants Michel Hall, John Leonard, and Zachary Westbrook’s (collectively, the “Washoe Tribe Defendants”) motion to dismiss Erwine’s claims against them (ECF No. 111-1 (the “Motion”));² and (3) the Washoe Tribe

¹The United States responded (ECF No. 112) and Erwine replied (ECF No. 113).

²Erwine responded (ECF No. 115) and the Washoe Tribe Defendants replied (ECF No. 117). *Pro se* Defendant Gene Burke joined the Motion (ECF No. 114) and the reply (ECF No. 116). Gene Burke, like Washoe Tribe Defendants, is sued in his individual capacity for actions he took while employed as the Washoe Tribe’s General Counsel. (ECF No. 59 at 5.) This makes him similarly situated to Washoe Tribe Defendants in all pertinent respects. (*Id.* (similarly suing Washoe Tribe Defendants in their individual capacities for actions they took while employed by the Washoe Tribe).) The Court

1 Defendants' motion for leave to file supplemental authority in support of their Motion (ECF
2 No. 118).³ As further explained below, the Court will deny Erwine's motion to alter or
3 amend the Court's prior order dismissing his remaining claims against the United States
4 because he merely rehashes arguments the Court has already rejected in it, and grant
5 Washoe Tribe Defendants' Motion because they are entitled to immunity and the Washoe
6 Tribe must—but cannot—be joined. Following this order, Erwine will be proceeding only
7 on his claims against Sheriff Benjamin Trotter and Churchill County.

8 **II. BACKGROUND**

9 The Court incorporates by reference its description of the allegations in both
10 Erwine's original complaint and operative FAC from its prior order granting Erwine's
11 motion for leave to file an amended complaint. (ECF No. 58 at 2-3.) Those factual
12 allegations remain the pertinent factual allegations before the Court.

13 Only Trotter and Churchill County opposed Erwine's motion to amend, arguing that
14 amendment would be futile. (*Id.* at 3-4.) Under the liberal standard governing motions to
15 amend, the Court found that amendment would not necessarily be futile and granted
16 Erwine leave to amend his complaint. (*Id.* at 4-6.) Because the Court granted Erwine
17 leave to file an amended complaint, it denied then-pending motions to dismiss filed by
18 Washoe Tribe Defendants and the United States as moot. (*Id.* at 7.)

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21 accordingly groups Burke in with the Washoe Tribe Defendants in addressing their
22 Motion.

23 ³Erwine responded (ECF No. 119) and the Washoe Tribe Defendants replied (ECF
24 No. 120). Erwine does not oppose the motion and instead argues the merits of why
25 *Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024) should not change
26 the Court's analysis or support the Court dismissing his claims against Washoe Tribe
27 Defendants. (ECF No. 119.) Both because Erwine does not oppose this motion, and
28 because *Maverick Gaming* is precedential as to the Fed. R. Civ. P. 19 argument that
Washoe Tribe Defendants make in their Motion, the Court grants the motion for leave to
file supplemental authority and considers the parties' arguments regarding *Maverick
Gaming* in the portion of its analysis discussing Washoe Tribe Defendants' Rule 19
argument.

1 Washoe Tribe Defendants and the United States subsequently stipulated with
2 Erwine to dismiss his tenth, eleventh, and thirteenth claims asserted in his FAC. (ECF
3 No. 88.) The Court granted that stipulation (ECF No. 89) and denied one of the United
4 States' motions to dismiss pending at that time as moot (ECF No. 91). Later, the Court
5 dismissed Erwine's remaining claims against the United States. (ECF No. 107.) Erwine
6 moves to alter or amend that order. (ECF No. 110.)

7 Meanwhile, Washoe Tribe Defendants had again moved to dismiss Erwine's
8 remaining claims asserted against them in the FAC, but subsequently moved for leave to
9 supplement that motion following an order from United States Magistrate Judge Craig S.
10 Denney rejecting one of the arguments they raised in their motion to dismiss while also
11 suggesting other arguments might be available to them. (ECF No. 108 (summarizing
12 this).) The Court exercised its discretion to deny both of Washoe Tribe Defendants'
13 motions pending at that time without prejudice and permitted them to re-file a motion to
14 dismiss that complied with the page limits set out in the Court's local rules and contained
15 all the arguments Washoe Tribe Defendants wanted to make. (*Id.*) The Motion followed.
16 (ECF No. 111-1.)

17 **III. DISCUSSION**

18 The Court first addresses Erwine's motion seeking reconsideration of the Court's
19 prior order dismissing his remaining claims against the United States, and then addresses
20 the Washoe Tribe Defendants' Motion.

21 **a. Motion to Alter or Amend**

22 Erwine argues that the Court clearly erred when it ruled he had not properly
23 exhausted his administrative remedies and accordingly dismissed his two remaining
24 claims against the United States because his administrative claim form stated that he had
25 been terminated, and that was enough. (ECF No. 110.) The United States counters that
26 Erwine has not shown clear error because the Court's ruling was at least debatably
27 correct, and he otherwise improperly rehashes old arguments he made in response to the
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1 United States' pertinent motion to dismiss that the Court implicitly or explicitly rejected.
2 (ECF No. 112.) The Court agrees with the United States.

3 The Court noted in its order that Erwine would like the Court to reconsider that
4 Erwine, "made several arguments and cited to several cases not discussed above[,]"
5 which the Court did not discuss because "they do not affect the outcome of the Motion
6 before the Court[.]" (ECF No. 107 at 4.) As the United States argues (ECF No. 112 at 2-
7 3), all Erwine does in his pending motion is rehash those same arguments the Court
8 already rejected (*Compare* ECF No. 72 at 3-5 *with* ECF No. 110 at 2-6 (citing generally
9 the same cases and making the same arguments)). "A motion for reconsideration is not
10 an avenue to re-litigate the same issues and arguments upon which the court already has
11 ruled." *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005) (citation
12 omitted). The Court will deny Erwine's motion. (ECF No. 110.)

13 **b. Washoe Tribe Defendants' Motion**

14 Because the Court alternatively agrees with Washoe Tribe Defendants' absolute
15 immunity and Rule 19 arguments, the Court addresses only those two arguments below,
16 and then explains why it will not grant Erwine leave to amend his claims against Washoe
17 Tribe Defendants and Burke.

18 *i. Absolute Immunity*

19 The Washoe Tribe Defendants first argue that they are entitled to absolute
20 immunity from Erwine's claims against them under tribal law because, "[t]ribal officials,
21 like federal and state officials, can invoke personal immunity defenses" *Acres Bonusing,*
22 *Inc v. Marston*, 17 F.4th 901, 915 (9th Cir. 2021). (ECF No. 111-1 at 2, 6-11.) Erwine
23 counters that Washoe Tribe Defendants misread the tribal law they proffer, a case
24 Washoe Tribe Defendants rely on only applies to Burke, and Washoe Tribe Defendants'
25 conduct as alleged in the FAC went beyond the scope of their official duties. (ECF No.
26 115 at 3-8.) Washoe Tribe Defendants reply in pertinent part that their motives are legally
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1 irrelevant, and Erwine alleges actions all within the scope of their authority. (ECF No. 116
2 at 4.) The Court agrees with Washoe Tribe Defendants.

3 Washoe Tribe Defendants make this argument with reference to Title 33 of the
4 Law & Order Code of the Washoe Tribe of Nevada and California, the Washoe Sovereign
5 Immunity Code. (ECF No. 111-1 at 7-8 (citing Washoe Tribal Code § 33, *available at*
6 <https://perma.cc/5EE6-8PFB>.) Generally, the Court may not consider materials outside
7 the pleadings when ruling on a Fed. R. Civ. P. 12(b)(6) motion to dismiss. *See Khoja v.*
8 *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). One exception to this
9 general rule is judicial notice under Fed. R. Evid. 201, which “permits a court to notice an
10 adjudicative fact if it is ‘not subject to reasonable dispute.’” *Id.* at 998-99. The words of
11 the Washoe Tribal Code are not subject to reasonable dispute. Erwine does not dispute
12 them or argue the Court should not consider Title 33 in ruling on the Motion. (ECF No.
13 115 at 3-8.) He instead argues for a different interpretation of Title 33. (*Id.*) But in so doing,
14 he does not appear to contest the legitimacy of the Court interpreting Title 33 in ruling on
15 the Motion. And indeed, other courts have taken judicial notice of laws and regulations
16 promulgated by sovereign tribes. *See, e.g., N. Cnty. Cmty. All., Inc. v. Salazar*, 573 F.3d
17 738, 740, 746 n.1 (9th Cir. 2009) (taking judicial notice of the Nooksack Indian Tribe’s
18 gaming ordinance and a letter interpreting it); *Rosales v. Dutschke*, 279 F. Supp. 3d 1084,
19 1088 n.2, 1092 n.4 (E.D. Cal. 2017) (taking judicial notice of the Jamul Indian Village’s
20 gaming ordinance and a compact between it and the State of California), *aff’d*, 787 F.
21 App’x 406 (9th Cir. 2019) (affirming dismissal of the case for failure to join a necessary
22 party, a tribe, which could not be joined because of tribal sovereign immunity). The Court
23 accordingly takes judicial notice of Title 33 of the Washoe Tribe’s Law & Order Code.

24 Section 33-30-010 of Title 33 provides that, “[t]he sovereign immunity of the Tribe
25 shall include but not be limited to any lawsuit, action, claim, controversy or process, in
26 any state, federal, or Tribal court, forum, or tribunal, unless such immunity is clearly,
27 explicitly and unequivocally waived in accordance with this Title.” Claim, “means any
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1 written demand to recover damages from the Tribe or Tribal Entity, or an officer or
2 employee of the Tribe or Tribal Entity, while engaged in work assigned or controlled by
3 the Tribe or Tribal Entity.” Washoe Tribal Code § 33-20(2). And “Employee” “means any
4 person who performs work assigned or controlled by the Tribe or Tribal Entity[,]” excluding
5 independent contractors. *Id.* § 33-20(3). Finally, an “Officer” “means a person serving at
6 the request or direction of the Tribe as a director, officer, or manager of a Tribal Entity
7 according to a Charter” that is not a member of the Tribal Council. *Id.* § 33-20(10).

8 Based on the allegations in the FAC, Washoe Tribe Defendants (and Burke) were
9 either officers or employees of the Washoe Tribe “at all times relevant to” it. (ECF No. 59
10 at 5.) Section 33-30-010 of Title 33 provides that the Washoe Tribe’s sovereign immunity
11 precludes any claim asserted against it in federal court, and “claim” is in turn defined to
12 mean in pertinent part any written demand to recover damages from officers or
13 employees while engaged in their work assigned or controlled by the Tribe. *See id.* § 33-
14 20(2). The FAC is a written demand that seeks damages against Washoe Tribe
15 Defendants and Burke, who, as noted, were officers or employees of the Washoe Tribe
16 during the pertinent time. (ECF No. 59 at 5 (specifying that pertinent defendants were
17 officers or employees), 15-27 (detailing factual allegations regarding Erwine’s
18 employment with the Washoe Tribe), 57 (seeking damages).) And while it is true that the
19 Washoe Tribe uses the phrasing “Sovereign Immunity” instead of “Absolute Immunity” in
20 describing the immunity it bestowed on Washoe Tribe Defendants and Burke through
21 Title 33, it unequivocally immunizes tribal officers and employees from demands to
22 recover damages arising from work they do for the Tribe in the pertinent section. *See* Title
23 33, § 33-20(2). This provision immunizes Washoe Tribe Defendants and Burke from
24 Erwine’s claims so long as his allegations reflect that they were performing their official
25 duties. The Court rejects Erwine’s contrary interpretation of the Washoe Tribe’s Title 33
26 as unsupported by its plain language.

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1 Moreover, it has long been established that the Washoe Tribe may, “accord
2 absolute privilege to its officers within the areas of tribal control.” *Davis v. Littell*, 398 F.2d
3 83, 84 (9th Cir. 1968). In *Davis*, unlike here, the United States Court of Appeals for the
4 Ninth Circuit found that the Navajo Nation had not bestowed such immunity on its General
5 Counsel through its tribal law, but nonetheless found that the general counsel sued in that
6 case was immunized from a defamation suit brought by a subordinate attorney who
7 reported to him because he was entitled to a similar sort of immunity to the absolute
8 immunity Washoe Tribe Defendants assert here. *See id.* at 84-86. The Ninth Circuit
9 further suggested in *Davis* that an important factor justifying its decision to extend
10 immunity to the general counsel—not a member of the Navajo Nation but employed by
11 it—was that he was sued for essentially giving a negative performance review, a task
12 within the scope of his official job duties. *See id.* at 85.

13 Erwine attempts to limit *Davis*, arguing that it only suggests shielding Burke from
14 liability because *Davis* is specifically about a tribal general counsel, has been effectively
15 overruled by *Lewis v. Clark*, 581 U.S. 155, 163 (2017), and does not apply to the conduct
16 Erwine alleges Washoe Tribe Defendants to have committed, which was outside the
17 scope of their official duties. (ECF No. 115 at 4-8.) Before addressing Erwine’s latter
18 arguments in more detail, the Court addresses the former. The Court does not read *Davis*
19 as necessarily limited to only those tribal employees or officers holding the specific job
20 title of general counsel. Indeed, the *Davis* court itself said that the key question in
21 determining whether immunity should extend to a particular tribal official’s role was,
22 “whether it encompasses public duties, official in character[.]” 398 F.2d at 85. Washoe
23 Tribe Defendants were sergeants and police chiefs during the pertinent times. (ECF No.
24 59 at 5.) These jobs encompass public duties that are official in character.

25 In addition, the Court’s research does not indicate that *Davis* has been overruled,
26 whether by *Lewis* or otherwise. *Lewis* did not discuss *Davis*, and it dealt with a car
27 accident, not the sort of employee discipline, hiring, and firing at issue both in *Davis* and
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1 in this case. See generally *Lewis*, 581 U.S. 155. And courts in other more recent cases
2 continue to rely on *Davis* and treat it as good law. For example, another court in this
3 District examined *Davis* in a 2015 decision ultimately determining that tribal sovereign
4 immunity did not shield a law firm that had performed work for a tribe from complying with
5 a subpoena. See *Grand Canyon Skywalk Dev., LLC v. Cieslak*, No. 2:13-cv-00596-JAD,
6 2015 WL 3551305, at *3 (D. Nev. June 5, 2015), *objections overruled*, No. 2:15-cv-00663-
7 JAD-GWF, 2016 WL 890921 (D. Nev. Mar. 7, 2016). That court similarly understood
8 *Davis* as supporting the application of absolute immunity to claims against higher-level
9 tribal employees who were engaged in the public affairs of the pertinent tribe. See *id.* And
10 nothing contained in the discussion in that case suggested that court understood *Davis*
11 had been overruled, whether by *Lewis* or otherwise. The Ninth Circuit distinguished *Davis*
12 in *Stock W. Corp. v. Taylor*, 942 F.2d 655, 665 (9th Cir. 1991), *on reh'g*, 964 F.2d 912
13 (9th Cir. 1992), but nonetheless treated it as good law and relied on it in part to distill out
14 the rule that, “tribe members, including officials, are amenable to suit if the subject of the
15 suit is not related to the officials’ performance of official duties.” *Id.* Finally, the Ninth
16 Circuit indicated that *Davis* was not overruled by *Lewis* in *Acres Bonusing*, in explaining
17 that *Davis* involved the personal defense of absolute immunity, which is a different
18 question than whether tribal sovereign immunity applies—and *Lewis* is a tribal sovereign
19 immunity decision. See *Acres Bonusing*, 17 F.4th at 913 n.4; see also *id.* at 908-11
20 (explaining *Lewis* provides the tribal sovereign immunity framework).

21 The Court accordingly finds that Washoe Tribe Defendants (and Burke) are entitled
22 to absolute immunity from Erwine’s claims so long as his claims against them,
23 appropriately construed, arise out their performance of their official duties. And the Court
24 additionally emphasizes that the facts here are stronger for Washoe Tribe Defendants
25 and Burke than those in *Davis* because—as the Court found above—the Washoe Tribe’s
26 law explicitly provides them immunity from written demands for damages arising out of
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1 their official duties. As mentioned, the *Davis* court found such immunity implied even in
2 the absence of the sort of statute pertinent here. See *generally* 398 F.2d 83.

3 That brings the Court to Erwine’s remaining argument, which is that he alleges
4 conduct going beyond defamation or routine personnel management, instead alleging a
5 pattern of discrimination and retaliation—and thus Title 33 immunity cannot shield
6 Washoe Tribe Defendants and Burke from his claims against them. (ECF No. 115 at 5-
7 7.) But even construing Erwine’s pertinent allegations in the light most favorable to him,
8 the Court does not find that Erwine plausibly alleges conduct outside the scope of Washoe
9 Tribe Defendants (and Burke)’s official duties. Erwine alleges that Hall attempted to
10 dissuade him from filing a report against another officer Erwine had gotten into a dispute
11 with. (ECF No. 59 at 18.) He alleges that Westbrook singled him out at a meeting, stated
12 he hired Erwine when nobody else would so Erwine owed Westbrook, and told Erwine he
13 could fire him. (*Id.*) Erwine otherwise alleges Westbook put him on a performance
14 improvement plan following another incident involving a different officer. (*Id.* at 18-19.)
15 While Erwine does allege that Westbrook was upset with him for ‘dragging’ him through
16 the grievance review process and threw some of his stuff off Westbrook’s desk, started
17 calling him ‘busdriver’ after a newspaper article featuring Erwine was published, and
18 otherwise was not nice to Erwine, Erwine’s allegations against Westbrook nonetheless
19 focus on Westbrook’s decision to fire him following several other incidents described in
20 the FAC where Erwine was at least arguably at fault. (*Id.* at 19-25.) Similarly, Erwine’s
21 allegations against Leonard, Hall, and Burke focus on their participation in the disciplinary
22 process concluding with his termination from the Washoe Tribe, and in Burke’s case,
23 Erwine’s attempts to contest his termination. (*Id.*) Overall, while some of the interactions
24 described in the FAC as part of this process sound unprofessional or salty, the gist of
25 Erwine’s allegations against Washoe Tribe Defendants and Burke is that they fired him
26 without proper cause. These actions all fall within the scope of their official duties, which,
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1 as supervisory police officers and the Washoe Tribe’s general counsel, logically include
2 disciplining and firing employees.

3 In sum, the Court finds that Title 33 of the Washoe Tribe’s Law and Order Code
4 bestowed absolute immunity on Washoe Tribe Defendants and Burke for their alleged
5 actions described in the FAC—disciplining and ultimately firing Erwine—falling within the
6 scope of their official duties. “[T]he rule of privilege is not founded on the need of the
7 individual officer, but on the public need for the performance of public duties untroubled
8 by the fear that some jury might find performance to have been maliciously inspired.”
9 *Davis*, 398 F.2d at 85. That need is operative here. The Court accordingly grants the
10 Motion and will dismiss Erwine’s claims against Washoe Tribe Defendants and Burke on
11 this basis.

12 *ii. Rule 19*

13 Washoe Tribe Defendants and Burke otherwise argue that the Washoe Tribe is a
14 necessary party to this case, but the Washoe Tribe cannot be joined because of its
15 sovereign immunity, so Erwine’s claims against Washoe Tribe Defendants and Burke
16 must be dismissed on this alternative basis as well. (ECF No. 111-1 at 21-24.) Erwine
17 counters that the Washoe Tribe is not a necessary party to this case because he seeks
18 only damages against Washoe Tribe Defendants and Burke in their individual capacities,
19 so the Court can accord complete relief between the parties without the Washoe Tribe’s
20 involvement. (ECF No. 115 at 18-20.) Washoe Tribe Defendants emphasize in pertinent
21 part in reply that the Washoe Tribe is not a required party because it has a financial stake
22 in this case, but instead because this case implicates its sovereign interests—control over
23 its police department. (ECF No. 117 at 11.) The Court again agrees with Washoe Tribe
24 Defendants.

25 Whether the Washoe Tribe is a necessary party under Rule 19(a) depends on
26 whether it, “has a legally protected interest in the lawsuit that may be impaired or impeded
27 in the Tribe’s absence.” *Maverick Gaming*, 123 F.4th at 972. The legally protected interest
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1 must be more than a financial stake, but there is no precise formula for determining
2 whether a particular nonparty should be joined under Rule 19(a), necessitating a practical
3 and fact-specific inquiry. See *id.* A legally protected interest may be one that impairs the
4 Washoe Tribe's sovereignty, such as its ability to govern itself. See *Dine Citizens Against*
5 *Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 852-53, 856 (9th Cir. 2019).

6 And indeed, that is what Washoe Tribe Defendants argue here. They argue the
7 Washoe Tribe is a necessary party because Erwine seeks to hold them personally liable
8 for actions they took as tribal officers and employees in response to complaints they
9 received about Erwine's professional conduct. (ECF No. 111-1 at 22-23.) They further
10 highlight how Erwine includes allegations against the Washoe Tribe's chairman but do
11 not name him as a defendant, and ultimately contests his firing by the Washoe Tribe—
12 neither the Washoe Tribe Defendants nor Burke employed Erwine. (*Id.*) They thus argue
13 Erwine's claims against them implicate the Washoe Tribe's sovereignty because Erwine's
14 claims implicate the Washoe Tribe's ability to control the operations of its police
15 department. (*Id.*) Erwine's primary response to these arguments is to reiterate that his
16 claims do not implicate the Washoe Tribe because he only seeks to recover damages
17 against Washoe Tribe Defendants and Burke in their individual capacities, though he also
18 argues requiring the Washoe Tribe's joinder here would undermine *Lewis*, which
19 emphasized the distinction between individual and official capacity suits, and let damages
20 claims proceed against an individual tribal employee who caused a car accident while
21 driving a limousine for his employer, the Mohegan Sun Casino. (ECF No. 115 at 19-20.)
22 See also *Lewis*, 581 U.S. at 160 (describing the specific facts of that case).

23 Erwine fails to really engage with Washoe Tribe Defendants' pertinent arguments,
24 but regardless, the Court finds Washoe Tribe Defendants' view more persuasive. Based
25 on the Court's review of the pertinent portion of the FAC, Erwine's claims against Washoe
26 Tribe Defendants and Burke are based on his discipline for potential violation of the
27 Washoe Tribe police department's policies, and termination by the Tribe. (ECF No. 59 at
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1 15-27.) Accepting Erwine’s view that he should not have been disciplined following the
2 various incidents he was involved in and not fired by the Washoe Tribe (including his
3 apparent allegation that the Tribal Chairman, who he did not name as a defendant, should
4 have intervened on his behalf to prevent his firing) would require the Court to evaluate
5 the Washoe Tribe’s employment policies at its police department and determine whether
6 or not they have been violated. The detailed review of the Washoe Tribe’s policies as
7 applied to the facts of Erwine’s termination this would require would impinge on the
8 Washoe Tribe’s ability to govern itself. See *Davis*, 398 F.2d at 84 (“the Navajo Tribe
9 enjoys sufficient independent status and control over its own laws and internal
10 relationships”). The Washoe Tribe is accordingly a necessary party to this case. See *Dine*
11 *Citizens*, 932 F.3d at 853 (finding the tribe was a necessary party in part because “the
12 litigation could affect already-negotiated lease agreements[,]” which the Court views as
13 analogous to preexisting employment policies); *Jamul Action Comm. v. Simermeyer*, 974
14 F.3d 984, 997 (9th Cir. 2020) (finding the tribe was a necessary party where its existing
15 sovereign and propriety interests—in the status of its land and recognition as a tribe—
16 would be impinged upon were the case permitted to proceed without the tribe as a party).

17 Indeed, and despite not being entirely factually analogous to this case, the Ninth
18 Circuit’s recent Opinion in *Maverick Gaming*, 123 F.4th 960, supports this view. There,
19 the Ninth Circuit found that the district court had properly dismissed a private gaming
20 company’s action seeking declaratory relief that would invalidate a tribal gaming compact
21 permitting the Shoalwater Bay Indian Tribe to offer sports betting on its reservation
22 because the Shoalwater Bay Tribe was a necessary party who could not be joined
23 because it possesses sovereign immunity. See *generally id.* “The district court correctly
24 concluded that, because of the importance of tribal gaming compacts and the revenue
25 that these compacts provide to Washington’s federally recognized tribes, as well as the
26 long history of tribal gaming and its associated benefits for the tribes and their surrounding
27 communities, *Maverick’s* suit implicates the Tribe’s legally protected economic and
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1 sovereign interests.” *Id.* at 972. Similarly, here, the investigation into the Washoe Tribe’s
2 employment policies and whether the Washoe Tribe complied with them in firing Erwine
3 that evaluating Erwine’s claims against Washoe Tribal Defendants and Burke would
4 require implicates the Washoe Tribe’s sovereign interest in setting and enforcing its own
5 employment policies. See *Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*,
6 276 F.3d 1150, 1157 (9th Cir. 2002) (finding that a suit challenging a hiring policy giving
7 preference to Navajo applicants embedded in a lease with the operator of a power plant
8 on the Navajo reservation could not proceed without the Navajo Nation as a party (but
9 then the case would be barred by sovereign immunity) because “a judgment rendered in
10 the Nation’s absence will impair its sovereign capacity to negotiate contracts and, in
11 general, to govern the Navajo reservation.”); see also *Knighton v. Cedarville Rancheria*
12 *of N. Paiute Indians*, 922 F.3d 892, 904 (9th Cir. 2019) (“[T]he Court has made clear that
13 a tribe also has sovereign authority to regulate nonmember conduct on tribal lands
14 independent of its authority to exclude if that conduct intrudes on a tribe’s inherent
15 sovereign power to preserve self-government or control internal relations.”) (citations
16 omitted). The Court accordingly finds that *Maverick Gaming*—as Washoe Tribe
17 Defendants argue—further supports their argument that the Washoe Tribe is a necessary
18 party to this case.

19 Having concluded that the Washoe Tribe, “is a party required to be joined if
20 feasible, the remaining steps of the Rule 19 analysis are straightforward.” *Jamul Action*
21 *Comm.*, 974 F.3d 984, 998. The Washoe Tribe is “protected by tribal sovereign immunity;
22 its joinder in this action is therefore infeasible.” *Id.*; see also *Indian Entities Recognized*
23 *by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 89
24 FR 944-02, 2024 WL 68476, at *946 (recognizing the Washoe Tribe of Nevada &
25 California). And “[t]he balancing of equitable factors under Rule 19(b) almost always
26 favors dismissal when a tribe cannot be joined due to tribal sovereign immunity.” *Jamul*
27 *Action Comm.*, 974 F.3d 984, 998 (citation omitted). The Court accordingly and
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1 alternatively finds that this case must be dismissed because the Washoe Tribe is a
2 necessary party who cannot be joined because of its sovereign immunity. Thus, the Court
3 also grants the Motion for this reason.

4 *iii. Leave to Amend*

5 Erwine concludes his response to the Motion with the sentence, “[i]n other
6 alternative, or grant leave to amend the Plaintiff’s Complaint as applicable.” (ECF No. 115
7 at 20.) The Court construes this sentence as a request for leave to amend if the Court
8 grants the Motion. Washoe Tribe Defendants do not specify whether they seek dismissal
9 of Erwine’s claims against them with or without prejudice. (ECF Nos. 111-1, 117.) The
10 Court nonetheless finds that dismissal with prejudice is appropriate here.

11 The Court has discretion to grant leave to amend and should freely do so “when
12 justice so requires.” Fed. R. Civ. P. 15(a); *see also Allen v. City of Beverly Hills*, 911 F.2d
13 367, 373 (9th Cir. 1990). Nonetheless, the Court may deny leave to amend if it will cause:
14 (1) undue delay; (2) undue prejudice to the opposing party; (3) the request is made in bad
15 faith; (4) the party has repeatedly failed to cure deficiencies; or (5) the amendment would
16 be futile. *See Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008).
17 Facts raised for the first time in a plaintiff’s opposition papers should be considered by
18 the Court in determining whether to grant leave to amend or to dismiss the complaint with
19 or without prejudice. *See Orion Tire Corp. v. Goodyear Tire & Rubber Co.*, 268 F.3d 1133,
20 1137-38 (9th Cir. 2001).

21 To start, Erwine does not raise any new facts in his opposition to the Motion that
22 would assist the Court in determining whether it should grant him leave to amend, nor
23 does he offer any argument suggesting amendment would be anything other than futile.
24 (ECF No. 115 at 20.) As noted, the Court may deny leave to amend where it would be
25 futile. And the Court finds that allowing amendment of Erwine’s claims against Washoe
26 Tribe Defendants and Burke would be futile. Neither of the two bases for Court’s
27 alternative rulings above—immunity and failure to join a necessary party who cannot be
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1 joined—can plausibly be amended around. Moreover, the Court has already granted
2 Erwine an opportunity to amend. (ECF No. 58.) The Court accordingly declines to grant
3 Erwine leave to amend his claims against Washoe Tribe Defendants and Burke.

4 **IV. CONCLUSION**

5 The Court notes that the parties made several arguments and cited to several
6 cases not discussed above. The Court has reviewed these arguments and cases and
7 determines that they do not warrant discussion as they do not affect the outcome of the
8 motions before the Court.


9 It is therefore ordered that Erwine’s motion to alter or amend (ECF No. 110) is
10 denied.

11 It is further ordered that Washoe Tribe Defendants’ motion to dismiss (ECF Nos.
12 111, 111-1) is granted.

13 It is further ordered that Erwine’s claims against Zachary Westbrook, John
14 Leonard, Michel Hall, and Gene Burke are dismissed, with prejudice.

15 It is further ordered that Washoe Tribe Defendants’ motion for leave to file
16 supplemental authority (ECF No. 118) is granted.

17 DATED THIS 13th Day of March 2025.

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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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