

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 SUSAN PEARSON,

10 Plaintiff,

11 v.

12 DIRECTOR OF THE DEPARTMENT
13 OF LICENSING, a subdivision of the
14 State of Washington, in his/her official
15 capacity, *et al.*,

16 Defendants.

CASE NO. C15-0731-JCC

ORDER GRANTING MOTIONS
FOR SUMMARY JUDGMENT

17 This matter comes before the Court on the motions for summary judgment by Defendants
18 Director of the Department of Licensing (Dkt. No. 21) and Sergeant Andrew Thorne (Dkt. No.
19 24). Having thoroughly considered the parties' briefing and the relevant record, the Court finds
20 oral argument unnecessary and hereby GRANTS the motions for the reasons explained herein.

21 **I. BACKGROUND**

22 The relevant facts are not in dispute. On January 21, 2015, Swinomish Police Department
23 Officer Hans Kleinman pulled over Plaintiff Susan Pearson for failing to obey a stop sign. (Dkt.
24 No. 25-1 at 1.) Both the traffic violation and the traffic stop occurred on tribal trust land within
25 the external boundaries of the Swinomish Reservation. (*Id.*) Officer Kleinman ran Pearson's
26 name through a driver's check and learned that her license was suspended three days earlier for

1 unpaid tickets. (*Id.*) Officer Kleinman arrested Pearson. (*Id.*) During the search incident to arrest,
2 Officer Kleinman found evidence of controlled substances on Pearson's person. (*Id.*) The tribal
3 police officers subsequently seized Pearson's 1999 GMC S-10 pickup truck. (Dkt. No. 2-1 at 3;
4 Dkt. No. 25-2 at 2.)

5 Two days after Pearson's arrest, Defendant Andrew Thorne, a sergeant with the
6 Swinomish Police Department, received a call from Pearson. (Dkt. No. 26-1 at 2.) Pearson asked
7 where she should pick up her vehicle. (*Id.*) Sgt. Thorne responded that Pearson could not retrieve
8 her vehicle because the Swinomish Police Department was procuring a search warrant. (*Id.*)
9 Pearson then asked when her vehicle would be returned. (*Id.*) Sgt. Thorne responded that the
10 Tribe intended to initiate forfeiture proceedings because the vehicle was used to transport illegal
11 narcotics on tribal land. (*Id.*) Sgt. Thorne advised that Pearson would be receiving a seizure
12 notice from the Swinomish Tribal Court with a hearing date and that Pearson could retain an
13 attorney if she wished. (*Id.*)

14 Upon obtaining a warrant, the Swinomish Police Department searched Pearson's vehicle
15 and discovered evidence of controlled substances. (Dkt. No. 25-3 at 2.)

16 The Swinomish Tribe gave Pearson notice of the proceeding to forfeit her vehicle
17 pursuant to tribal law. (Dkt. No. 25-4 at 2; Dkt. No. 25-5 at 2; Dkt. No. 25-6 at 2.) Pearson
18 contacted the Swinomish Tribal Court and indicated that she was aware of the matter. (Dkt. No.
19 25-8 at 2.) Ultimately, though, no attorney entered an appearance on her behalf, and Pearson did
20 not file an answer. (*See id.* at 3.) After 20 days, the Swinomish Tribal Court entered an order
21 forfeiting Pearson's ownership pursuant to Swinomish tribal laws. (*Id.* at 2-3.)

22 Meanwhile, Pearson requested that the Washington State Department of Licensing
23 (Department) place a hold on her certificate of title. (Dkt. No. 23 at 2.) Based on this request, the
24 Department flagged Pearson's certificate of title, indicating to the Department that ownership of
25 the vehicle could not be transferred without a request by Pearson or a Washington State court
26 order. (*Id.*) The Department has no records indicating that the Swinomish Tribe has attempted to

1 transfer title to Pearson’s vehicle. (*Id.*) As of the time of filing of these motions, Pearson’s truck
2 was still in the custody of the Swinomish Police Department. (Dkt. No. 25 at 3.)

3 On March 14, 2015, Pearson filed a complaint for damages and declaratory and
4 injunctive relief against the Director of the Department in her official capacity and against
5 several Swinomish tribal police officers, including Sgt. Thorne. (Dkt. No. 2-1.) Pearson asks this
6 Court to enjoin the Department from transferring the certificate of ownership to itself pursuant to
7 the Swinomish Tribe’s forfeiture order, and to award judgment against the tribal police officers
8 for damages under 42 U.S.C. § 1983. (Dkt. No. 2-1 at 6.)

9 **II. DISCUSSION**

10 **A. Summary Judgment Standard**

11 The Court shall grant summary judgment if the moving party shows that there is no
12 genuine dispute as to any material fact and that the moving party is entitled to judgment as a
13 matter of law. Fed. R. Civ. P. 56(a). In making such a determination, the Court must view the
14 facts and justifiable inferences to be drawn therefrom in the light most favorable to the
15 nonmoving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 255 (1986). Once a motion for
16 summary judgment is properly made and supported, the opposing party must present specific
17 facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Matsushita Elec. Indus.*
18 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Material facts are those that may affect the
19 outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence
20 for a reasonable jury to return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248-49.
21 Ultimately, summary judgment is appropriate against a party who “fails to make a showing
22 sufficient to establish the existence of an element essential to that party’s case, and on which that
23 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

24 **B. Motion by Director of Department of Licensing**

25 Pearson alleges that the Department has a practice of transferring vehicle ownership to
26 itself pursuant to tribal forfeiture orders, which violates the law and the Department’s own

1 protocols. (Dkt. No. 2-1 at 4.) Pearson asks the Court to enjoin the Director of the Department
2 from changing the certificate of title of Pearson’s truck, because the Swinomish Tribe had no
3 authority to seize the vehicle. (*Id.*)

4 The Director moves for summary judgment, arguing that (1) Pearson lacks standing,
5 because she fails to show past injury or a significant possibility of future harm and (2) the
6 Director is immune from civil suits arising from actions in connection with vehicle registration.¹
7 (Dkt. No. 21 at 5.) The Court agrees on both counts.

8 1. Standing

9 The Director first argues that Pearson lacks standing to seek an injunction against transfer
10 of her vehicle title. (*Id.*) Article III requires all litigants to establish a case and controversy in
11 order to invoke this court’s jurisdiction. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37
12 (1976). Standing has three requirements: (1) an injury in fact, meaning “a harm suffered by the
13 plaintiff that is concrete and actual or imminent”; (2) causation, meaning “a fairly traceable
14 connection between the plaintiff’s injury and the complained-of conduct of the defendant”; and
15 (3) redressability, meaning “a likelihood that the requested relief will redress the alleged injury.”
16 *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 102-03 (1998) (internal quotations omitted).
17 Where a plaintiff seeks only declaratory and injunctive relief, he or she must also show a “very
18 significant possibility of future harm.” *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d
19 1121, 1126 (9th Cir. 1996).

20 Here, the future harm is the transfer of title from Pearson to the Department. But, Pearson
21 has not shown a “very significant possibility” that this harm will occur. The Tribe has not
22 attempted to transfer the title. The Department has flagged Pearson’s certificate of title, meaning
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25 ¹ The Director also argues that, to the extent Pearson alleges a § 1983 claim against her,
26 the complaint does not sufficiently plead a claim. (Dkt. No. 21 at 5.) Pearson’s response brief
acknowledges that she “only seeks a declaration or injunction against the Director,” not damages
under § 1983. (Dkt. No. 27 at 10.)

1 that the title cannot be transferred unless Pearson authorizes it or a Washington State court orders
2 it. These limitations are encapsulated in the Department policy requiring “that the tribal court
3 order be ‘converted to judgment’ in a Washington Superior Court that the tribal offer is
4 enforceable.” (Dkt. No. 23 at 2.) Factually speaking, it seems very unlikely that the Department
5 will unlawfully obtain title to Pearson’s truck.

6 Pearson protests that the Department has previously argued that its policy would prevent
7 transfer of title, yet it still assumed title to the subject vehicles. (Dkt. No. 27 at 4.) She cites two
8 cases as examples: *Candee Washington v. Director Skagit County*, Skagit County Cause No. 15-
9 2-00293-0 and *Jordynn Scott v. Director of Department of Licensing*, Whatcom County Cause
10 No. 15-2-00301-8. (Dkt. No. 27 at 2.) These cases involve the transfer of a certificate of title
11 pursuant to a tribal court order that was not converted to judgment in a Washington superior
12 court. But, as the Director explains, these cases triggered the Department to more stringently
13 enforce its policy and the corresponding regulations. (Dkt. No. 23 at 3; Dkt. No. 21 at 4.) This
14 further negates the likelihood that the same harm will befall Pearson.

15 Pearson also asserts that there is another case involving a non-Native American, Narin
16 Sin, whose vehicle was seized by the Tulalip Tribe and whose certificate of title was transferred
17 by the Department. (Dkt. No. 27 at 2.) Pearson provides no evidence of this occurrence, nor any
18 explanation of when the alleged seizure and transfer occurred. In response, the Department
19 submits an affidavit showing that Narin Sin had a vehicle forfeited by the Tulalip Tribe, but that
20 there is no record of the vehicle’s title being transferred pursuant to a tribal forfeiture. (Dkt. No.
21 31 at 2.) This fact does not make it significantly likely that Pearson’s title will be impermissibly
22 transferred. In sum, Pearson fails to demonstrate a sufficient possibility of future harm to
23 establish standing.

24 2. Immunity

25 The Director further argues that Pearson’s suit is barred by immunity established under
26 Washington State law. (Dkt. No. 21 at 5.) Wash. Rev. Code 46.01.310 states:

1 *No civil suit or action may ever be commenced or prosecuted against the director*
2 *[of the Department of Licensing], the state of Washington, any county auditor or*
3 *other agents appointed by the director, any other government officer or entity, or*
4 *against any other person, by reason of any act done or omitted to be done in*
5 *connection with the titling or registration of vehicles or vessels while*
6 *administering duties and responsibilities imposed on the director or as an agent of*
7 *the director, or as a subagent of the director.*

8 (Emphasis added.)

9 Pearson brought a civil suit against the Director based on the Department’s alleged
10 practice of improperly transferring titles—*i.e.*, acts “done . . . in connection with the titling or
11 registration of vehicles.” It is thus clear that the Director is immune from the present suit.

12 Pearson’s claims against the Director are DISMISSED with prejudice

13 **C. Motion by Sergeant Andrew Thorne**

14 Pearson alleges that Sgt. Thorne’s involvement in seizing and forfeiting her vehicle
15 violated her rights under the federal and Washington State constitutions. (Dkt. No. 2-1 at 5-6.)
16 She further asserts that Sgt. Thorne was acting under color of Washington State law and is thus
17 liable for damages under § 1983. (Dkt. No. 2-1 at 6.)

18 Sgt. Thorne argues that the Court should dismiss Pearson’s claims with prejudice,
19 because (1) Pearson’s claims is actually an official capacity suit that is foreclosed by sovereign
20 immunity; (2) Sgt. Thorne was acting under color of tribal law, not state law; and (3) Pearson
21 failed to exhaust her tribal remedies. (Dkt. No. 24 at 2-3.) Again, the Court agrees on all counts.

22 1. Sovereign Immunity

23 Sgt. Thorne first asserts that Pearson’s claim is barred by sovereign immunity. (*Id.*)
24 Tribal sovereign immunity bars suits against a tribe itself, as well as suits against the tribe’s
25 employees in their official capacities. *Miller v. Wright*, 705 F.3d 919, 927-28 (9th Cir. 20 13).
26 Tribal sovereign immunity generally does not protect tribal employees who are sued in their
individual capacities for money damages, even if the employees were acting in the course and
scope of their employment. *Maxwell v. County of San Diego*, 708 F.3d 1075, 1086-90 (9th Cir.
2013). However, a “plaintiff cannot circumvent tribal immunity by the simple expedient of

1 naming an officer of the Tribe as a defendant, rather than the sovereign entity.” *Miller*, 705 F.3d
2 at 928 (internal quotations omitted). In such cases, “the sovereign entity is the real, substantial
3 party in interest and is entitled to invoke its sovereign immunity from suit.” *See Cook v. AVI*
4 *Casino Enters., Inc.*, 548 F.3d 718, 727 (9th Cir. 2008).

5 Pearson’s suit rests solely on her argument that the Swinomish Tribe lacked jurisdiction
6 to seize and forfeit her truck. Thus, although she sued the tribal officers in their individual
7 capacity, it is clear that the true defendant is the Tribe itself. Because Pearson’s suit is “in reality
8 an official capacity suit,” it is barred by sovereign immunity. *See Maxwell*, 708 F.3d at 1089.

9 2. Acting Under Color of Tribal Law

10 Sgt. Thorne further argues that he was not acting under color of state law. (Dkt. No. 24 at
11 2-3.) To establish liability under § 1983, a plaintiff must demonstrate that (1) the defendant acted
12 under color of state law and (2) the defendant deprived the plaintiff of a right secured by the
13 Constitution or laws of the United States. *Learned v. City of Bellevue*, 860 F.2d 928, 933 (9th
14 Cir. 1988). The plaintiff bears the burden of showing that the defendant’s conduct was performed
15 under color of state law. *See id.* “[A]ctions taken under color of tribal law are beyond the reach
16 of § 1983.” *R.J. Williams Co. v. Fort Belknap Hous. Auth.*, 719 F.2d 979, 982 (9th Cir. 1983).

17 Pearson alleges that Sgt. Thorne “act[ed] beyond any authority [he] ha[s] as [a]
18 Swinomish tribal police officer” and was “acting under color of state law and as [a] General
19 Authority Washington State Police Officer.” (Dkt. No. 2-1 at 6.) However, she fails to support
20 this assertion. First, her argument that the tribal police officers exceeded their authority is based
21 on the Tribe’s alleged lack of jurisdiction, which again demonstrates that sovereign immunity
22 bars this suit. Moreover, the only evidence of Sgt. Thorne’s involvement in this matter shows
23 that he merely answered a phone call from Pearson and relayed information to her. Apart from
24 the fact that this conduct was related to the forfeiture—which, again, is challenged on grounds
25 barred by sovereign immunity—Pearson has not shown that Sgt. Thorne’s actions exceeded his
26 authority as a tribal officer.

1 3. Exhaustion of Tribal Remedies

2 Finally, Sgt. Thorne asserts that Pearson’s suit is precluded by her failure to exhaust her
3 tribal remedies. (Dkt. No. 24 at 2-3.) A party may not challenge tribal court jurisdiction in
4 federal court until he or she has first exhausted its remedies in tribal court. *National Farmers*
5 *Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 855-56 (1985); *Allstate Indem. Co. v.*
6 *Stump*, 191 F.3d 1071, 1073 (9th Cir. 1999). This requirement is “mandatory,” not discretionary.
7 *Marceau v. Blackfeet Hous. Auth.*, 540 F.3d 916, 920 (9th Cir. 2008) (internal quotation
8 omitted); *see also Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir.
9 2008) (“Under the doctrine of exhaustion of tribal court remedies, relief may not be sought in
10 federal court until appellate review of a pending matter in a tribal court is complete.”).

11 As discussed above, Pearson’s suit is unquestionably a challenge to tribal court
12 jurisdiction. It is also undisputed that Pearson was aware of the forfeiture proceeding, but never
13 filed an answer or otherwise responded. She has not appealed the forfeiture order. She thus has
14 failed to exhaust her tribal remedies and cannot bring this challenge in federal court.

15 4. Pearson’s Response

16 As a final note, the Court acknowledges Pearson’s lackluster—and very late—response to
17 Sgt. Thorne’s motion. Pearson did not directly acknowledge Sgt. Thorne’s arguments, instead
18 reiterating her blanket statement that Sgt. Thorne “is a Washington State police officer” and
19 confusingly citing a Washington insurance statute. (Dkt. No. 32 at 2-3.) This was far from
20 sufficient to survive summary judgment.

21 Pearson’s claims against Sgt. Thorne are DISMISSED with prejudice.

22 **III. CONCLUSION**

23 For the foregoing reasons, Defendants’ motions for summary judgment (Dkt. Nos. 21,
24 24) are GRANTED. Pearson’s claims against the Director of the Department of Licensing and
25 Sergeant Andrew Thorne are DISMISSED with prejudice.

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1 DATED this 20th day of June 2016.

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8 John C. Coughenour
9 UNITED STATES DISTRICT JUDGE

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