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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER GUSTARD,  
Plaintiff,  
v.  
KAMALA HARRIS, et al.,  
Defendants.

No. 2:17-cv-0012-TLN-EFB P

ORDER

Plaintiff is a federal inmate proceeding without counsel in this action brought under 42 U.S.C. § 1983. Following screening and the filing of an amended complaint, claims against three defendants remain in the action: Morazzini, McKinney, and McCauley. ECF No. 34. These claims include claims against McCauley in his official capacity as executive officer of a state agency and claims against McKinney in his individual capacity only. ECF No. 30 at 15-41. There is no dispute that McCauley and McKinney are no longer employed by the agency in question. ECF Nos. 43, 52 at 6. Plaintiff has therefore filed a motion to substitute parties. ECF No. 43. He seeks to substitute Laura Zuniga in place of defendant McCauley, and Stacy Townsend in place of defendant McKinney.

As to claims against the defendants in their official capacities, no such motion is necessary. The substitution of successor in office as to such claims is automatic by operation of law. As to individual capacity claims, plaintiff has shown no basis for substituting any defendant as to any such claims.

1 Federal Rule of Civil Procedure 25(d) provides for automatic substitution of parties  
2 when a public officer who is a party in an official capacity dies, resigns, or  
3 otherwise ceases to hold office while the action is pending. . . . Later proceedings  
4 should be in the substituted party's name, but any misnomer not affecting the  
parties' substantial rights must be disregarded. The court may order substitution  
at any time, but the absence of such an order does not affect the substitution.

5 Fed. R. Civ. P. 25(d).

6 McCauley has left office and was replaced by Laura Zuniga.<sup>1</sup> Accordingly, Laura Zuniga  
7 is automatically substituted in place of McCauley as to all claims plaintiff asserts against  
8 McCauley in his official capacity. However, McCauley remains as a defendant with regard to  
9 claims asserted against him in his individual capacity.

10 As to McKinney, contrary to plaintiff's assertions in his motion, the amended complaint  
11 asserts only individual capacity claims against McKinney. ECF No. 30 at 9 ("Matthew  
12 McKinney is sued in his individual capacity."); *see also id.* at 15-41 (asserting a variety of claims  
13 against McKinney, all in his individual capacity). Thus, Rule 25(d) does not apply to any claims  
14 asserted against McKinney and there is no basis to substitute Stacy Townsend.

15 Plaintiff has also filed a motion to extend the time for serving the complaint on  
16 defendants. ECF No. 42. All existing defendants have returned executed waivers of service.  
17 ECF Nos. 41, 54. As Zuniga's substitution is automatic and, having been sued in her official  
18 capacity, it appears that she will be represented by existing counsel (the state attorney general's  
19 office) and there is no need to serve the complaint on her. Thus, the request to extend time is  
20 denied as unnecessary.

21 Plaintiff also requests clarification of the docket. ECF No. 68. He states that several  
22 documents he recently filed with the court (a request for judicial notice, a declaration, and an  
23 opposition to a request for judicial notice filed by some defendants) do not appear on the docket.  
24 These documents were filed together with plaintiff's opposition to McKinney's and McCauley's  
25 motion to dismiss and they appear on the docket at ECF No. 64, pages 22, 27, and 32.

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26 <sup>1</sup> Plaintiff has identified Zuniga as McCauley's successor with an article published by the  
27 California Architect's Board. ECF No. 42 at 14. The court grants plaintiff's request for judicial  
28 notice of the article to the extent that it identifies Zuniga as the current Executive Officer of the  
Board's Landscape Architects Technical Committee, a fact not disputed by defendants.

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Accordingly, it is hereby ORDERED that:

1. Plaintiff's motion to substitute Laura Zuniga in place of McCauley (ECF No. 43) is DENIED as unnecessary. Pursuant to Rule 25(d) Laura Zuniga is automatically substituted in place of McCauley as to all official capacity claims asserted against McCauley. McCauley remains a defendant as to the individual capacity claims against him.
2. Plaintiff's motion to substitute Stacy Townsend in his official capacity for Matthew McKinney (ECF No. 43) is DENIED.
3. Plaintiff's motion to extend time for serving the complaint (ECF No. 42) is DENIED.

DATED: July 30, 2019.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE