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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SAMUEL FLORES,
Petitioner,
vs.
STATE OF NEVADA, et al.,
Respondents.

Case No. 3:11-CV-00236-HDM- (VPC)

ORDER

Defendants have removed this action from the Seventh Judicial District Court of the State of Nevada. Before the court is plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff is a prisoner in the custody of the Nevada Department of Corrections. The court has reviewed the complaint pursuant to 28 U.S.C. § 1915A, and the court will dismiss the State of Nevada in relation to the Nevada Department of Correction from this action.

Plaintiff has sued the State of Nevada in relation to the Nevada Department of Correction and Eldon K. McDaniel, warden of Ely State Prison, in his individual and official capacities. A suit against a prison officer in his official capacity is another way of suing "an entity of which an officer is an agent." Kentucky v. Graham, 473 U.S. 159, 165 (1984) the Section 1983 states, in relevant part:

1 Every person who, under color of any statute, ordinance,
2 regulation, custom, or usage, of any State or Territory
3 or the District of Columbia, subjects, or causes to be
4 subjected, any citizen of the United States or other
5 person within the jurisdiction thereof to the deprivation
6 of any rights, privileges, or immunities secured by the
7 Constitution and laws, shall be liable to the party
8 injured in an action at law, suit in equity, or other
9 proper proceeding for redress (emphasis added)

10 “[N]either a State nor its officials acting in their official
11 capacities are ‘persons’ under § 1983.” Will v. Michigan Dept. of
12 State Police, 491 U.S. 58, 71 (1989). The same rule applies to
13 agencies that are arms of the state, such as the Nevada Department
14 of Corrections. Doe v. Lawrence Livermore Nat. Laboratory, 131
15 F.3d 836 (9th Cir. 1997). The court will dismiss the State of
16 Nevada and McDaniel in his official capacity. Furthermore,
17 plaintiff has filed two motions to strike the State of Nevada and
18 the Nevada Department of Corrections from this action (#4, #8), and
19 the court will grant these motions.

20 Plaintiff claims that he was charged twice in prison
21 disciplinary proceedings for only one event of use of intoxicants,
22 that no evidence exists to support the second charge, and that
23 defendant McDaniel upheld the two sanctions. That part of the
24 complaint states a claim upon which relief can be granted, and the
25 court will direct defendant McDaniel to respond to the complaint.

26 IT IS THEREFORE ORDERED that plaintiff’s motions to
27 strike the State of Nevada and the Nevada Department of Corrections
28 from this action (#4, #8) are **GRANTED**. The State of Nevada in
relation to the Nevada Department of Corrections, and defendant
McDaniel in his official capacity, are **DISMISSED** from this action.

