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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSEPH MIZZONI,)	3:11-cv-00358-HDM-WGC
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
STATE OF NEVADA, et al.,)	
)	
Defendants.)	
_____)	

Before the court is the report and recommendation of the United States Magistrate Judge (#27). In the report and recommendation, the magistrate judge recommends that this court enter an order granting in part and denying in part, the defendants' motion to dismiss (#14). Both plaintiff and defendants objected (## 28, 29).

The court has considered the pleadings and memoranda of the parties and other relevant matters of record. It has made a review and determination in accordance with the requirements of 28 U.S.C. § 636 and applicable case law. Based on this review, the court

1 hereby adopts and modifies the report and recommendation as
2 follows:

3 Defendant Dr. Robert Bannister's motion to dismiss for failure
4 to state a claim is **DENIED**;

5 Defendant E.K. McDaniel's motion to dismiss for failure to
6 state a claim is **GRANTED WITH LEAVE TO AMEND**;

7 Defendant Bannister's motion to dismiss on qualified immunity
8 grounds is **DENIED**;

9 Defendant Bannister's motion to dismiss plaintiff's official
10 capacity claim for monetary damages is **GRANTED**;

11 Finally, the magistrate judge's recommendation that defendant
12 Dr. Kent Robertson, improperly named as Mr. Robinson, be dismissed
13 pursuant to Rule 4(m) is **DENIED**. The court granted the plaintiff's
14 oral application to amend the complaint to correct the spelling of
15 defendant Robertson's name. (#50). Defendant Robertson was served
16 with a copy of the summons and the complaint, and has accepted
17 service and filed an answer (#48).

18 **IT IS SO ORDERED.**

19 DATED: This 23rd day of August, 2012.

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UNITED STATES DISTRICT JUDGE

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