

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3                   GREGORY WEST ENTSMINGER,  
4                   Plaintiff,  
5                   v.  
6                   ROMEO ARANAS, et al.,  
7                   Defendants.

Case No.: 3:16-cv-00555-MMD-WGC

**Order**

Re: ECF No. 124

9  
10           Before the court is Plaintiff's Motion to Correct Active Defendants under Federal Rule of  
11 Civil Procedure 25(d). (ECF No. 124.) Defendants filed a response. (ECF No. 146.)

12           Plaintiff is a prisoner incarcerated within the Nevada Department of Corrections (NDOC),  
13 proceeding pro se with this civil rights complaint under 42 U.S.C. § 1983. The court screened his  
14 second amended complaint (SAC) and allowed him to proceed with, among other claims and  
15 defendants, a claim that defendants Sandoval, Miller, Masto, Laxalt, Cegavske, Clinger, Willden,  
16 Aranas, Bannister, Jacobs, Keast, Nurse Sunshine, Reynolds, Haycock, Cox and Dzurenda acted  
17 as group to conspire and create systemic deficiencies within NDOC relative to dental care. (*See*  
18 ECF No. 21 at 15-16.)

19           On June 14, 2019, Plaintiff filed a motion stating that many of the parties named in their  
20 official capacities when his lawsuit was filed are no longer State officials and sought to substitute  
21 the new officials in as defendants under Federal Rule of Civil Procedure 25(d). (ECF No. 80.) At  
22 a hearing addressing many issues on June 25, 2019, the court advised Plaintiff of the process for  
23 substituting parties in their official capacities, and stated that it was Plaintiff's responsibility to

1 determine which parties were to be substituted under Rule 25. The court specifically stated in the  
2 minutes of the hearing: "Any party who was *also named in his/her individual capacity would*  
3 *remain a defendant in that respect, even if he/she might no longer be an official of the State.*" (ECF  
4 No. 84 at 5.) Therefore, the court denied Plaintiff's motion (ECF No. 80) without prejudice. (*Id.*)

5 Plaintiff filed a motion to substitute the new officials on July 31, 2019. He specified that  
6 the it applied *only to the official capacity claims* against Aranas, Sandoval, Laxalt, Willden and  
7 Clinger. (ECF No. 94.) He sought to substitute in their official capacities: Minev, Sisolak, Ford,  
8 White, and Cates, respectively. The court granted the motion on August 26, 2019, noting that the  
9 new officials would be substituted *in their official capacities only*. (ECF No. 97.)

10 On December 12, 2019, Plaintiff filed a notice with the court stating that the defendants  
11 who were no longer State officials were still being sued in their *individual capacities*. (ECF No.  
12 116.)

13 On January 9, 2020, Plaintiff filed this motion to correct the active defendants under  
14 Rule 25(d), stating again that the five former State officials should remain as defendants in their  
15 *individual capacities only*, and that the new State officials who took their places are sued in their  
16 *official capacities only*. (ECF No. 124.)

17 In their response, Defendants assert that the motion should be denied as moot because they  
18 acknowledge that the former State official defendants remain as parties in their *individual*  
19 *capacities*. They do argue, however, that they should not be defendants because there are  
20 insufficient allegations to support that these defendants were personally involved, and that they  
21 are entitled to qualified immunity. (ECF No. 146.)

22 Both parties are correct that the court's orders reflect that the new State officials (Minev,  
23 Sisolak, Ford, White, and Cates) are defendants in their *official capacities only*, and the former

1 State officials (Aranas, Sandoval, Laxalt, Wildden and Clinger) remain as defendants only in their  
2 *individual capacities*. To the extent Defendants have an argument that the allegations of the SAC  
3 are insufficient for the former State officials to remain as defendant, it should be raised in a  
4 properly noticed motion and not simply in an opposition to Plaintiff's motion. Moreover, it should  
5 be noted that if Defendants believed that the allegations against these former State officials in their  
6 individual capacities are insufficient, the argument should have been raised long ago as the  
7 screening order allowing the claims to proceed against them was entered back in *September of*  
8 *2018*.

9 Plaintiff's motion (ECF No. 124) is **GRANTED** to the extent that the court's CM/ECF  
10 docket currently only lists the new State officials. The Clerk shall **REVISE** the docket to reflect  
11 that Minev, Sisolak, Ford, White, and Cates are defendants in their *official capacities only*, and  
12 that Aranas, Sandoval, Laxalt, and Clinger remain defendants in their *individual capacities only*.

13 With respect to Wildden, the screening order allowed Plaintiff to proceed against Wildden  
14 in September of 2018, and the summons was returned unexecuted as to Wildden nearly a year later  
15 on August 16, 2019. To date, Plaintiff has not successfully served Wildden; therefore, Wildden will  
16 be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 4(m).

17 **IT IS SO ORDERED.**

18 Dated: February 24, 2020.

19 

20 William G. Cobb  
21 United States Magistrate Judge  
22  
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