

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Stephen Rudisill,

Plaintiff,

v.

Charles Ryan, et al.,

Defendants.

No. CV-13-01149-TUC-CKJ

ORDER

Plaintiff Stephen Louis Rudisill, who is confined in the Arizona State Prison Complex, Santa Rita Unit, in Tucson, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983. (Doc. 1). Subsequently, counsel appeared in the case on Plaintiff's behalf. (Docs. 8, 9, 12- 14). On January 23, 2014, after screening Plaintiff's Complaint, the Court ordered Defendants Ryan, Patton, Schroeder, and Lundberg to answer Count I of the Complaint. (Doc. 15).

Prior to service of Plaintiff's Complaint, Plaintiff's counsel filed a First Amended Complaint in which Janice Brewer was added as a Defendant. (Doc. 19). On March 13, 2014, Defendants filed a Request for Screening, requesting that the Court screen Plaintiff's First Amended Complaint. (Doc. 31). However, on March 13, 2014, before the Court had an opportunity to address Defendants' request, Defendants Ryan and Brewer filed Motions to Dismiss Plaintiff's First Amended Complaint. (Docs. 32, 33). Then, on March 17, 2014, Defendants Lundberg and Schroeder filed a Motion to Dismiss Plaintiff's First Amended Complaint. (Doc. 37).

On April 3, 2014, Plaintiff filed a Response to Defendants Ryan, Lundberg and

1 Schroeder's Motions to Dismiss. (Doc. 41). In addition, Plaintiff filed a motion to
2 substitute Todd Hood in place of Robert Patton and filed Notice of Dismissals for Robert
3 Patton and Janice Brewer. (Docs. 42, 43, and 44). On April 14, 2014, Defendants
4 Lundberg, Ryan and Schroeder filed a Reply to Plaintiff's Response to their Motions to
5 Dismiss. (Doc. 45). Defendant Ryan filed a Response to Plaintiff's Motion to Substitute
6 Party on April 21, 2014, (Doc. 46), and Plaintiff filed his Reply on April 29, 2014. (Doc.
7 47).

8 The Court will address Defendant Ryan, Schroeder and Lundberg's Motions to
9 Dismiss in a subsequent Order.

10
11 *Motion for Substitution of Public Offer (sic) (Doc. 42)*

12 Plaintiff requests that the Court substitute Mr. Patton's successor Carson
13 McWilliams as a Defendant in this action pursuant to Fed.R.Civ.P. 25(d).¹

14 Defendant Ryan argues that naming another defendant in his or her official
15 capacity is superfluous in this case because Plaintiff has already named several
16 individuals in their official capacities.

17 Pursuant to Rule 25(d):

18 **(d) Public Officers; Death or Separation from Office.** An
19 action does not abate when a public officer who is a party in
20 an official capacity dies, resigns, or otherwise ceases to hold
21 office while the action is pending. The officer's successor is
22 automatically substituted as a party. Later proceedings should
23 be in the substituted party's name, but any misnomer not
24 affecting the parties' substantial rights must be disregarded.
25 The court may order substitution at any time, but the absence
26 of such an order does not affect the substitution.

23 Fed.R.Civ.P. 25(d). Generally, suits brought against individuals in their official
24 capacities are redundant where the plaintiff also brings suit against the individuals'
25 employer. *Contreras, ex rel. Contreras v. County of Glenn*, 725 F.Supp.2d 1157, 1159-
26

27 ¹ Plaintiff initially alleged that Todd Hood was the current Division Director of
28 Offender Operations for the Arizona Department of Corrections, the position previously
held by Robert Patton. However, Defendant Ryan explained that Carson McWilliams is
the individual that replaced Robert Patton and not Mr. Hood. (Doc. 46).

1 1160 (E.D. Cal. 2010). However, Plaintiff has not named Defendants' employer as a
2 Defendant in this case. Accordingly, since Mr. Patton has resigned from his position, his
3 successor, Carson McWilliams is automatically substituted into this action, in his official
4 capacity only, pursuant to Fed.R.Civ.P. 25(d).

5 Accordingly, IT IS ORDERED:

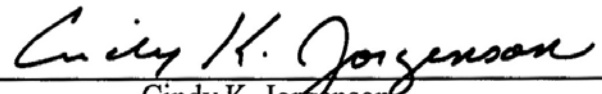
6 1. Defendant Robert Patton is dismissed from this action in his individual
7 capacity without prejudice.

8 2. Plaintiff's Motion for Substitution of Public Offer (sic) is GRANTED.
9 (Doc. 42). Carson McWilliams is automatically substituted as a party in this action for
10 Robert Patton in his official capacity only.

11 3. Defendant Janice Brewer is dismissed from this action in her official and
12 individual capacities without prejudice.

13 4. Defendant Brewer's Motion to Dismiss is DENIED AS MOOT. (Doc. 33).

14 Dated this 8th day of May, 2014.

15
16
17 

18 _____
19 Cindy K. Jorgenson
20 United States District Judge
21
22
23
24
25
26
27
28