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1 2 3 4 5 UNITED STATES DISTRICT COURT 6 EASTERN DISTRICT OF CALIFORNIA 7 8 CHRISTOPHER N. WASHINGTON, CASE NO. 1:09-cv-01666-AWI-SKO PC 9 Plaintiff, ORDER (1) ADOPTING FINDINGS AND RECOMMENDATIONS, (2) DENYING 10 PLAINTIFF'S MOTION TO STRIKE AND v. DISREGARDING SURREPLY, (3) DENYING DERRAL G. ADAMS, 11 IN PART AND GRANTING DEFENDANT'S MOTION TO DISMISS, AND (4) DISMISSING Defendant. 12 CLAIM FOR DAMAGES BASED ON **QUALIFIED IMMUNITY** 13 (Docs. 38, 51, 54, and 55) 14 ORDER REQUIRING DEFENDANT TO 15 RESPOND WITHIN THIRTY DAYS TO PLAINTIFF'S MOTION TO SET ASIDE THE 16 DISMISSAL OF HIS CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF 17 (Docs. 65-70) 18 19 Plaintiff Christopher N. Washington, a state prisoner proceeding pro se and in forma 20 pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 21, 2009. The 21 22 matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 23 This action is currently proceeding on Plaintiff's second amended complaint, filed on March 24 24, 2011, against Defendant Adams on Plaintiff's claim for damages arising from Defendant's 25 26 alleged violation of Plaintiff's rights under the Free Exercise Clause of the First Amendment of the

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United States Constitution. Defendant was Warden of California State Prison-Corcoran (CSP-

Corcoran) during the relevant time period, and Plaintiff's claim arises from Defendant's denial of his written request for a religious name change.

On August 24, 2011, Defendant filed a <u>motion to dismiss</u> for failure to state a claim and on qualified immunity grounds. Fed. R. Civ. P. 12(b)(6). Plaintiff filed an <u>opposition</u> on September 6, 2011, and after obtaining an extension of time, Defendant filed a <u>reply</u> on September 19, 2011. Local Rule 230(l). Plaintiff then filed a <u>surreply</u> and a <u>motion to strike</u> Defendant's reply on September 29, 2011. Fed. R. Civ. P. 12(f).

On November 29, 2011, the Magistrate Judge issued a <u>finding and recommendations</u> recommending that Plaintiff's motion to strike be denied and his surreply be disregarded, and a <u>findings and recommendations</u> recommending that Defendant's motion to dismiss for failure to state a claim be denied but Defendant's motion for dismissal on qualified immunity grounds be granted.

On February 6, 2012, after obtaining two extensions of time, Plaintiff filed objections and a motion seeking relief from the screening order dismissing his claims for declaratory and injunctive relief.¹ (Docs. 65-70.) Defendant file not file a response to the objections or to the motion for relief from the screening order. Local Rules 230(l), 304(d).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a <u>de novo</u> review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis. Plaintiff has presented no grounds for the non-adoption of the Magistrate Judge's findings and recommendation, and they shall be adopted in full.

However, Plaintiff also seeks to set aside the screening order dismissing his claims for declaratory and injunctive relief. At the time, Plaintiff was no longer incarcerated at California State Prison-Corcoran and his claims were properly dismissed. Since that time, Plaintiff has been transferred back to CSP-Corcoran and he seeks reinstatement of his claims, pointing out that he sued

¹ Plaintiff's appeal of the screening order is currently pending at the Ninth Circuit. However, because the screening order is not yet final and appealable, Plaintiff's notice of appeal did not divest the Court of jurisdiction. Nascimento v. Dummer, 508 F.3d 905, 908 (9th Cir. 2007).

1	Defendant Adams in his personal and official capacities. Defendant did not file a response to	
2	Plaintiff's motion and he shall now be directed to do so.	
3	Accordingly, IT IS HEREBY ORDERED that:	
4	1.	The Court adopts the findings and recommendations filed on November 29, 2011,
5		in full;
6	2.	Plaintiff's motion to strike Defendant's reply, filed on September 29, 2011, is denied
7		and Plaintiff's surreply is disregarded;
8	3.	Defendant's motion to dismiss, filed on August 24, 2011, is denied in part and
9		granted in part as follows:
10		a. Defendant's motion to dismiss for failure to state a claim is denied; and
11		b. Defendant's motion to dismiss Plaintiff's First Amendment damages claim
12		on the ground of qualified immunity is granted; and
13	4.	Within thirty (30) days from the date of service of this order, Defendant shall file
14		a response to Plaintiff's motion to set aside the order dismissing his claims for
15		declaratory and injunctive relief.
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17	IT IS SO ORDERED.	
18	Dated: March 26, 2012 CHIEF UNITED STATES DISTRICT JUDGE	
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