



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

3 On August 24, 2011, Defendant filed a [motion to dismiss](#) for failure to state a claim and on  
4 qualified immunity grounds. Fed. R. Civ. P. 12(b)(6). Plaintiff filed an [opposition](#) on September  
5 6, 2011, and after obtaining an extension of time, Defendant filed a [reply](#) on September 19, 2011.  
6 Local Rule 230(l). Plaintiff then filed a [surreply and a motion to strike](#) Defendant's reply on  
7 September 29, 2011. Fed. R. Civ. P. 12(f).

8 On November 29, 2011, the Magistrate Judge issued a [finding and recommendations](#)  
9 recommending that Plaintiff's motion to strike be denied and his surreply be disregarded, and a  
10 [findings and recommendations](#) recommending that Defendant's motion to dismiss for failure to state  
11 a claim be denied but Defendant's motion for dismissal on qualified immunity grounds be granted.

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

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

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

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27 <sup>1</sup> Plaintiff's appeal of the screening order is currently pending at the Ninth Circuit. However, because the  
28 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

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21 CHIEF UNITED STATES DISTRICT JUDGE  
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