

1 Court's order filed on March 27, 2012, Defendant timely filed a statement of non-opposition on
2 April 27, 2012, and Defendant filed an answer on May 18, 2012, following which the discovery and
3 scheduling order was issued. (Docs. 74, 79, 83, 84.) Plaintiff has not filed a reply and his motions
4 have been submitted upon the record. Local Rule 230(l).

5 **B. Legal Standard**

6 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order
7 for any reason that justifies relief. Rule 60(b)(6) is to be used sparingly as an equitable remedy to
8 prevent manifest injustice and is to be utilized only where extraordinary circumstances exist.
9 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (quotation marks and citation omitted). The
10 moving party must demonstrate both injury and circumstances beyond his control. Id. (quotation
11 marks and citation omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show
12 "what new or different facts or circumstances are claimed to exist which did not exist or were not
13 shown upon such prior motion, or what other grounds exist for the motion," and "why the facts or
14 circumstances were not shown at the time of the prior motion."

15 **C. Discussion**

16 At the time Plaintiff's second amended complaint was screened on May 27, 2011, Plaintiff
17 was no longer incarcerated at California State Prison-Corcoran and his claims for declaratory and
18 injunctive relief were dismissed. (Doc. 21.) However, Plaintiff was subsequently transferred back
19 to CSP-Corcoran and he seeks reinstatement of his claims, a request which is unopposed by
20 Defendant. (Docs. 59, 66, 67, 79.) Based on this change in circumstance, Plaintiff's claims for
21 equitable relief are no longer moot and relief from the screening order is justified. Fed. R. Civ. P.
22 60(b)(6). Therefore, the Court recommends Plaintiff's motions be granted and this action proceed
23 on Plaintiff's First Amendment claim for declaratory and injunctive relief.

24 **II. Motion for Default Judgment**

25 The Court further recommends that Plaintiff's second motion for default judgment, filed on
26 April 30, 2012, be denied. Plaintiff's previous motion for default judgment, filed on April 4, 2012,
27 was denied on April 24, 2012. It appears Plaintiff filed his second motion before receiving the ruling
28 on his first motion, but the grounds for denial are the same: Defendant Adams is not in default, Fed.

1 R. Civ. P. 55, nor has he engaged in conduct which would subject him to terminating sanctions under
2 the Court's inherent power, Chambers v. NASCO, Inc., 501 U.S. 32, 43-45, 111 S.Ct. 2123 (1991);
3 Roadway Express, Inc. v. Piper, 447 U.S. 752, 767, 100 S.Ct. 2455 (1980); Gomez v. Vernon, 255
4 F.3d 1118, 1134 (9th Cir. 2001); Fink v. Gomez, 239 F.3d 989, 993-94 (9th Cir. 2001).

5 **III. Recommendation**

6 Accordingly, IT IS HEREBY RECOMMENDED that:

- 7 1. Plaintiff's motions to set aside the dismissal of his claims for declaratory and
8 injunctive relief, filed on February 6, 2012, be GRANTED;
- 9 2. This action proceed on Plaintiff's declaratory and injunctive relief claims arising
10 from the alleged violation of his rights under the Free Exercise Clause of the First
11 Amendment of the United States Constitution; and
- 12 3. Plaintiff's second motion for default judgment, filed on April 30, 2012, be DENIED.

13 These Findings and Recommendations will be submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20)**
15 **days** after being served with these Findings and Recommendations, the parties may file written
16 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
17 Findings and Recommendations." The parties are advised that failure to file objections within the
18 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
19 1153 (9th Cir. 1991).

20
21 IT IS SO ORDERED.

22 **Dated: June 5, 2012**

23 /s/ Sheila K. Oberto
24 UNITED STATES MAGISTRATE JUDGE
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