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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 EDWARD T. FURNACE,

12 Plaintiff,

13 v.

14 CONNIE GIPSON, et al.,

15 Defendants.
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CASE NO. 1:14-cv-00814-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION TO:**

**(1) GRANT DEFENDANTS' MOTION TO
DISMISS; AND**

**(2) GRANT PLAINTIFF'S MOTION TO
AMEND**

(ECF No. 63)

**ORDER DIRECTING DEFENDANTS TO
RESPOND TO THIRD AMENDED
COMPLAINT**

TWENTY-ONE DAY DEADLINE
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Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. The case proceeded on Plaintiff's second amended complaint ("SAC") against Defendants Gipson, Kimbrell, Swift, Allen, Robicheaux, Graves, and Sexton for violating the free exercise clause of the First Amendment by

1 denying Plaintiff's requests for a religious name change and to purchase and possess
2 religious property. (ECF No. 24.)

3 On February 26, 2016, Defendants filed a motion to dismiss Plaintiff's SAC on the
4 grounds that Plaintiff's complaint, which sought only injunctive relief, had been rendered
5 moot by his transfer to a different institution. (ECF No. 51.) On May 18, 2016, Plaintiff
6 filed a motion seeking leave to amend and lodged a proposed Third Amended Complaint
7 ("TAC") with the Court. (ECF Nos. 57 & 58.) Plaintiff's proposed TAC was substantially
8 similar to his SAC, with the addition of a prayer for monetary relief.

9 On September 21, 2016, the Magistrate Judge assigned to the case issued
10 findings and recommendations to grant Defendants' motion to dismiss Plaintiff's SAC.
11 (ECF No. 63.) The Magistrate Judge also recommended granting Plaintiff's motion for
12 leave to amend and screened Plaintiff's TAC, finding it stated cognizable First
13 Amendment free exercise of religion claims against Defendants Gipson, Kimbrell, Swift,
14 and Allen for their denial of Plaintiff's name change request, and against Gipson,
15 Robicheaux, Graves, and Sexton for their denial of Plaintiff's religious property request.
16 Id. The Magistrate Judge thus ordered that Plaintiff's lodged TAC be filed. Id. The parties
17 were granted fourteen days to file their objections to the Magistrate Judge's findings and
18 recommendations. No objections were filed and the time for doing so has passed.

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,
20 the Court has conducted a de novo review of this case. Having carefully reviewed the
21 entire file, the Court finds the findings and recommendations to be supported by the
22 record and by proper analysis.

23 Accordingly, it is HEREBY ORDERED THAT:

- 24 1. The Findings and Recommendations filed September 21, 2016 (ECF No.
25 63) are adopted in full;
- 26 2. Defendants' motion to dismiss Plaintiff's Second Amended Complaint (ECF
27 No. 51) is GRANTED;
- 28 3. Plaintiff's motion for leave to file a Third Amended Complaint (ECF No. 57)

1 is GRANTED;

2 4. Plaintiff shall be permitted to proceed on his Third Amended Complaint's
3 First Amendment free exercise of religion claims against Defendants
4 Gipson, Kimbrell, Swift, and Allen for their denial of Plaintiff's name change
5 request, and against Gipson, Robicheaux, Graves, and Sexton for their
6 denial of Plaintiff's religious property request (ECF No. 58);

7 5. The remaining non-cognizable claims in Plaintiff's Third Amended
8 Complaint are DISMISSED with prejudice; and

9 6. The above-named Defendants are DIRECTED to file a responsive pleading
10 or motion to Plaintiff's Third Amended Complaint within twenty-one (21)
11 days of this Court's order.

12 IT IS SO ORDERED.

13 Dated: November 17, 2016

14 /s/ Lawrence J. O'Neill
15 UNITED STATES CHIEF DISTRICT JUDGE
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