UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, et al.,

Plaintiffs,

v.

ORDER

ROBERT W. FOX, et al.,

Defendants.

Plaintiff Alford, the only remaining plaintiff in this action, is proceeding on a claim for injunctive relief under the Eighth Amendment for exposure to harmful substances, including asbestos, against defendant Fox in his official capacity as the Warden of the California Medical Facility. Defendant Fox has answered. Discovery commenced some time ago but was never completed.

A review of the court's record reveals that defendant Alford no longer resides at the California Medical facility. This being the case, defendant will be granted 21 days within which to file a motion to dismiss Alford's remaining claim as moot. See Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007) (prisoner's claims for injunctive relief generally become moot upon transfer) citing Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam) (holding claims for injunctive relief "relating to [a prison's] policies are moot" when the prisoner has been moved and "he has demonstrated no reasonable expectation of returning to [the prison]"). If

defendant does not file a motion to dismiss, the court will set a schedule for discovery and the filing of pretrial motions. Accordingly, IT IS HEREBY ORDERED that defendant is granted 21 days within which to file a motion to dismiss plaintiff's remaining claim as moot. Dated: June 21, 2023 UNITED STATES MAGISTRATE JUDGE birr1818.mtdm