Case 2:19-cv-00658-KJM-KJN Document 45 Filed 09/08/20 Page 1 of 2 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 GLENN O'CONNOR, No. 2:19-cv-0658 KJM KJN P 12 Plaintiff. 13 **ORDER** v. 14 CALIFORNIA DEPARTMENT OF CORRECTIONS AND 15 REHABILITATION, et al., 16 Defendants. 17 18 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief 19 under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided 20 by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 21 On November 1, 2019, the magistrate judge filed findings and recommendations, which 22 were served on all parties and which contained notice to all parties that any objections to the 23 findings and recommendations were to be filed within fourteen days. (ECF Nos. 39, 40.) 24 Plaintiff has filed objections to the findings and recommendations. (ECF No. 41.) 25 Plaintiff asserts prison officials moved him between correctional facilities in a deliberate 26 attempt to moot his claim for injunctive relief. Obj. at 5. He faults the magistrate judge for 27 failing to address the possibility that his need for an injunction mandating continuous electricity 28 for his CPAP machine is state-wide, as opposed to specific to Mule Creek State Prison. Plaintiff 1

## has made out only a possibility, as opposed to a "reasonable expectation or demonstrated probability" that he will suffer the same deprivation of electricity for his CPAP elsewhere, let alone be moved back to Mule Creek. Murphy v. Hunt, 455 U.S. 478, 482 (1982). In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. Accordingly, IT IS HEREBY ORDERED that: 1. The findings and recommendations filed November 1, 2019 (ECF Nos. 39, 40) are adopted in full: 2. Plaintiff's motion for injunctive relief (ECF No. 10) is denied as moot; 3. Defendants' motion to dismiss (ECF No. 30) is granted; and 4. Defendants Brockenborough, Boyd, Holmes, Lizarraga, Manning and Weiss shall file a response to plaintiff's Eighth Amendment claim for damages raised in the amended complaint within twenty-one days of service of this order. DATED: September 7, 2020.

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