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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MITCHELL LEE VARNELL,

9 Plaintiff,

10 v.

11 WASHINGTON DEPARTMENT OF
CORRECTIONS,

12 Defendant.

CASE NO. C15-5443BHS-DWC

ORDER ADOPTING REPORT
AND RECOMMENDATION

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14 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 106), the Court’s order adopting the R&R (Dkt. 115), Plaintiff Mitchell Lee Varnell’s (“Varnell”) motion for reconsideration, and Varnell’s objections to the R&R (Dkt. 119).

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18 On October 28, 2016, Judge Christel issued the R&R recommending that the Court deny Varnell’s motion for a preliminary injunction. Dkt. 106. On December 7, 2016, the Court adopted the R&R stating that no objections had been filed. Dkt. 115. On December 13, 2016, Varnell filed objections. Dkt. 119. On December 20, 2016, Varnell filed a motion for reconsideration of the Court order. Dkt. 120.

1 **A. Reconsideration**

2 In his motion, Varnell asserts that he did not receive the R&R in a timely fashion
3 because of a mistake at his institution. Dkt. 120. Varnell requests that the Court
4 reconsider its order adopting the R&R in light of the objections he has filed as promptly
5 as possible. *Id.* The Court finds that the interests of justice and due process comport
6 with considering Varnell's objections. Therefore, the Court grants Varnell's motion for
7 reconsideration and vacates its previous order.

8 **B. Objections**

9 The district judge must determine de novo any part of the magistrate judge's
10 disposition that has been properly objected to. The district judge may accept, reject, or
11 modify the recommended disposition; receive further evidence; or return the matter to the
12 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

13 In this motion, the issue is whether Defendants must transport Varnell to medical
14 appointments in a vehicle with cushioned seats or with prescribed medical cushions. The
15 record shows that Varnell's provider initially authorized a vehicle with cushioned seats,
16 but then rescinded that order and prescribed two medical cushions for transport in
17 vehicles with hard plastic seats. Dkt. 106 at 7. To the extent that Varnell claims this is a
18 violation of his Eight Amendment right, the Court agrees with Judge Christel that, at
19 most, Varnell has shown a difference of medical opinion and not the required deliberate
20 indifference. *Id.* Thus, Varnell has failed to show a likelihood of success on the merits
21 of his claim and the motion for a preliminary injunction fails. To the extent that Varnell
22 argues that Defendants are violating his rights under the Americans with Disabilities Act,

1 the Court agrees with Judge Christel that the argument is beyond the scope of the
2 operative complaint. *Id.* at 9–11.

3 Therefore, the Court having considered the R&R, Varnell’s objections, and the
4 remaining record, does hereby find and order as follows:

- 5 (1) The Court **GRANTS** Varnell’s motion for reconsideration (Dkt. 120)
- 6 (2) The Court **VACATES** its previous order (Dkt. 115);
- 7 (3) The R&R is **ADOPTED**; and
- 8 (4) The Court **DENIES** Varnell’s motion for a preliminary injunction (Dkt.
9 32).

10 Dated this 24th day of January, 2017.

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BENJAMIN H. SETTLE
13 United States District Judge