

1 counsel under Federal Rule of Civil Procedure 11(b), based largely on the filing of the motion to
2 strike. (Doc. No. 30.)

3 On February 20, 2018, the assigned magistrate judge issued findings and
4 recommendations addressing all of these motions. (Doc. No. 39.) Therein, the magistrate judge
5 recommended striking and disregarding plaintiff's second response to defendant Stewart's motion
6 for summary judgment. (*Id.* at 3–4.) The magistrate judge also recommended that plaintiff's
7 motion for sanctions be denied, including plaintiff's request for an order requiring the California
8 Department of Corrections and Rehabilitation to provide inmates with tablets and email service
9 with the court. (*Id.* at 4–6.) Finally, the magistrate judge found that plaintiff had failed to
10 exhaust his available administrative remedies on his claim against defendant Stewart for the
11 alleged failure to decontaminate plaintiff's cell and, therefore, recommended that defendant
12 Stewart's motion for summary judgment be granted. (*Id.* at 7–15.) The parties were given
13 fourteen days to object to the findings and recommendations. (*Id.* at 15.) Plaintiff timely filed
14 objections on March 12, 2018. (Doc. No. 40.)

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has
16 conducted a *de novo* review of this case. Having carefully reviewed the entire file, including
17 plaintiff's objections, the undersigned concludes the findings and recommendations are supported
18 by the record and by proper analysis.

19 Plaintiff objects to the granting of the motion for summary judgment because he asserts
20 that he did not know defendant Stewart's name at the time he sought to exhaust his administrative
21 remedies, and therefore was not required by the prison's regulations to identify defendant Stewart
22 in his inmate grievance. (Doc. No. 40 at 6.) Plaintiff's inmate grievance, however, specifically
23 addressed only the alleged use of excessive force, not the failure of any prison official to
24 decontaminate plaintiff's cell. (Doc. No. 39 at 13.) Moreover, the only potential reference to
25 defendant Stewart in plaintiff's inmate grievance was his statement therein that he was "never
26 allowed to speak to the lieutenant to document the condition of my cell and the damage to my
27 personal property or to ISU for being assaulted by the sergeants." (*Id.*) Plaintiff's objections also
28 indicate that his claim against defendant Stewart is not that this defendant failed to decontaminate

1 his cell, but rather that he failed to appropriately supervise the defendant officers who searched
2 his cell and failed to appropriately document the condition of that cell. (*Id.* at 9–10.) In sum, it
3 appears that plaintiff’s inmate grievance—and possibly even his complaint in this case—was
4 simply that defendant Stewart failed to adequately document what had occurred. However, no
5 such claim was found by the court to be cognizable against defendant Stewart in this action.
6 Instead, this litigation is proceeding on an alleged Eighth Amendment claim asserting defendant
7 Stewart knew that pepper spray had been used in plaintiff’s cell, that the cell was not
8 decontaminated, and that plaintiff was returned to the cell. Plaintiff may not change the nature of
9 the claims found to be cognizable in the course of objecting to the pending findings and
10 recommendations. *See Arceo v. Salinas*, No. 2:11-cv-2396 MCE KJN P, 2016 WL 6897226, at
11 *2 (E.D. Cal. Nov. 23, 2016) (“Plaintiff cannot, through objections, change the nature of his
12 pleading.”); *Perkins v. Pfeiffer*, No. 1:08-cv-00516-AWI-GSA PC, 2008 WL 5220997, at *1
13 (E.D. Cal. Dec. 15, 2008) (same).

14 Meanwhile, plaintiff also objects to the recommendation that his second opposition to
15 defendant Stewart’s summary judgment motion be struck, suggesting that the magistrate judge
16 should have instead struck his first opposition because it was not filed by him and did not reflect
17 his signature. (*Id.* at 15–17.) In fact, the opposition considered by the magistrate judge did
18 reflect plaintiff’s signature. (Doc. No. 26 at 25.) Plaintiff has not presented any authority
19 demonstrating the magistrate judge erred in accepting his earliest filed opposition and considering
20 it in ruling on the pending motion. Plaintiff has likewise not explained how or why he would
21 have prevailed in opposing the motion for summary judgment, even if his second, unauthorized,
22 opposition were considered by the court. Therefore, the court will accept the magistrate judge’s
23 recommendation and strike plaintiff’s unauthorized second opposition to the pending motion for
24 summary judgment.

25 Finally, plaintiff objects to the magistrate’s recommendation that his motion for sanctions
26 be denied. The undersigned concludes that the objections provide no basis upon which this court
27 should decline to adopt the magistrate judge’s findings and recommendations in this regard.
28 Accordingly, plaintiff’s motion for sanctions will be denied.


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For all of these reasons:

1. The findings and recommendations issued on February 20, 2018 (Doc. No. 39), are adopted in full;
2. Defendant Stewart’s motion to strike plaintiff’s August 4, 2017, second and unauthorized, opposition to the motion for summary judgment (Doc. No. 29), is granted;
3. Plaintiff’s second, unauthorized, opposition, filed on August 4, 2017 (Doc. No. 28), is stricken;
4. Plaintiff’s motion for sanctions and for injunctive relief (Doc. No. 30) is denied in its entirety;
5. Defendant Stewart’s motion for summary judgment due to plaintiff’s failure to exhaust his available administrative remedies with respect to his claim against defendant Stewart (Doc. No. 24) is granted;
6. Defendant Stewart is dismissed from this action, without prejudice, due to plaintiff’s failure to exhaust his available administrative remedies with respect to his claim against defendant Stewart prior to filing suit as required; and
7. This action is referred back to the magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: March 21, 2018


UNITED STATES DISTRICT JUDGE