

1 Second, he argues that dismissal of certain defendants at the screening stage was improper. *Id.*
2 Third, he argues that “the court did not . . . explain how the drug testing program was utilized
3 to[] reduce my drug use, hold me accountable for any actions pertaining to drugs, provide[] an
4 opportunity for recover from drug addiction[,] or[] increase institutional security and public
5 safety.” *Id.* at 2. Fourth, he argues that “the 602 administrative process has no [bearing] in a[]
6 motion for summary judgment.” *Id.* at 4.

7 Plaintiff’s arguments lack merit. First, the magistrate judge did not find that
8 “administrative remedies were not sought.” ECF No. 79 at 1. Instead, the magistrate found
9 that plaintiff filed a grievance, but by failing to mention defendant Stinson or sexual
10 harassment, the grievance did not exhaust his claim. ECF No. 75 at 9-10. Second, the
11 screening order is not before the court, so any objections to it are irrelevant. Third, the
12 magistrate judge was under no obligation to opine on the utility of CDCR’s drug testing
13 program. Fourth, contrary to plaintiff’s assertions, the 602-administrative grievance process
14 does bear on the instant motion for summary judgment, because the basis for defendant’s
15 motion is failure to exhaust administrative remedies.

16 Finally, plaintiff attaches a new 602 grievance that was not included in the summary
17 judgment record. ECF No. 79 at 8-11. Unlike his previous grievance, the new grievance
18 specifically describes the alleged sexual misconduct by Stinson. While this grievance may
19 exhaust his administrative remedies for a subsequent lawsuit, it cannot exhaust his remedies for
20 the instant lawsuit because exhaustion must occur prior to filing. *See* 42 U.S.C. § 1997e(a)
21 (“No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any
22 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility *until*
23 *such administrative remedies as are available are exhausted.*” (emphasis added)). There is no
24 evidence to suggest that plaintiff has submitted this new grievance through the third level of
25 review.

26 In conclusion, the court has reviewed the file and finds the findings and recommendations
27 to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS
28 HEREBY ORDERED that:

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1. the findings and recommendations filed December 7, 2018, ECF No. 75, are adopted in full;
2. the defendant's April 2, 2018, motion for summary judgment, ECF No. 59, is granted;
3. all other pending motions, ECF Nos. 60, 65, 68, 69, 73, and 74, are denied as moot; and
4. this case is dismissed without prejudice.

IT IS SO ORDERED.

Dated: January 28, 2019

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