



1 Weber did not object or file a response to plaintiff's objections.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
3 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the  
4 magistrate judge's findings and recommendations are supported by the record and by proper  
5 analysis. The magistrate judge correctly concluded that defendant met his burden of establishing  
6 that there was an available administrative remedy and that plaintiff did not exhaust that available  
7 remedy prior to commencement of the instant lawsuit as is required. (Doc. No. 54 at 7.) Plaintiff  
8 indicated in his opposition to the motion that he indeed did submit an inmate grievance within  
9 one day of the incident in question but claims that CDCR misplaced that inmate grievance and  
10 did not respond to it. (Doc. No 48 at 1, 31.) However, as the magistrate judge correctly  
11 concluded, even assuming plaintiff's unsigned opposition may be considered,<sup>1</sup> plaintiff's  
12 conclusory assertion therein that he timely filed an inmate grievance lacks any detailed facts, nor  
13 is it supported by any evidence and is therefore insufficient to create a genuine issue of material  
14 fact. (*See* Doc. No 57 at 8 (reviewing cases).) In this regard, plaintiff did not provide a  
15 description of the contents of the purported inmate grievance, provide a copy of the inmate  
16 grievance, explain to whom he gave it, or detail any efforts he undertook to follow up on its  
17 purported submission. Finally, plaintiff failed to even mention the first inmate grievance he now  
18 claims to have submitted in his later, late-filed, inmate grievance. Plaintiff's objections fail to  
19 rebut with any specificity the pending findings and recommendations.

20 Accordingly,

- 21 1. The findings and recommendations issued on April 29, 2021, (Doc. No. 54), are  
22 adopted in full;

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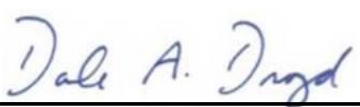
26 <sup>1</sup> Plaintiff's opposition was not signed by him and therefore cannot be considered as evidence in  
27 the context of summary judgment. (*See* Doc. No. 54 at 7.) However, plaintiff did make similar,  
28 general assertions in his scheduling conference statement, which was sworn to under the penalty  
of perjury. (Doc. No. 51 at 4.)

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2. Defendant Weber’s motion for summary judgment, (Doc. No. 21), is granted;
3. This action is dismissed without prejudice because plaintiff failed to exhaust his available administrative remedies before filing this action; and
4. The Clerk of Court is directed to assign a district judge to this case for the purpose of closing the case and then to close this case.

IT IS SO ORDERED.

Dated: July 14, 2021

  
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UNITED STATES DISTRICT JUDGE