

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THEON OWENS,

 Plaintiff,

 v.

JOSEPH DEGAZIO, et al.,

 Defendants.

No. 2: 16-cv-2750 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is defendants’ motion to strike. (ECF No. 60.)

For the reasons stated herein, defendants’ motion to strike is denied.

On October 3, 2017, the undersigned recommended that defendants’ motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) be granted in part and denied in part. (ECF No. 49.) On October 11, 2017, defendants filed objections to the findings and recommendations. (ECF No. 50.)

On November 27, 2017, plaintiff filed objections to the findings and recommendations and a reply to defendants’ objections. (ECF No. 55, 56.) On December 4, 2017, plaintiff filed amended objections, an amended reply to defendants’ objections and a declaration by inmate Sanchez. (ECF Nos. 57, 58, 59.)

Defendants move to strike the three pleadings filed by plaintiff on December 4, 2017, on

1 the grounds that they not authorized. (ECF No. 60.) Defendants are correct that amended
2 objections and an amended reply to objections are not permitted by the Federal Rules of Civil
3 Procedure and Local Rules. However, in the original objections, plaintiff states that he did not
4 receive the objections. Plaintiff states that his original objections were based on his review of
5 defendants' objections.

6 On December 14, 2017, the undersigned directed the Clerk of the Court to re-serve the
7 findings and recommendations on plaintiff. (ECF No. 61.) The undersigned granted plaintiff
8 thirty days to either file new objections or inform the court that he intended to stand on either the
9 original or amended objections. (ECF No. 61.)

10 On January 5, 2018, plaintiff filed a pleading stating that he intends to stand on the
11 amended objections. (ECF No. 63.) Plaintiff states that he prepared the amended findings and
12 recommendations after "finally" receiving the findings and recommendations from prison
13 officials. Accordingly, the undersigned will forward to the district court plaintiff's amended
14 objections as well as plaintiff's amended reply to defendants' objections. Defendants' motion to
15 strike these pleadings is denied. Defendants will be granted an opportunity to file a reply to the
16 amended objections.


17 In his January 5, 2018 pleading, plaintiff states that he did not intend the declaration of
18 inmate Sanchez to be filed in support of his objections. Plaintiff indicates that the declaration of
19 inmate Sanchez was filed in support of his claim. Because the declaration was not filed in
20 support of the objections, the motion to strike this pleading is denied.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Defendants' motion to strike (ECF No. 60) is denied;
- 23 2. Defendants are granted fourteen days from the date of this order to file a reply to
24 plaintiff's amended objections.

25 Dated: January 18, 2018

26
27 Owen2750.ord.kc

28

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE