



1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
2 *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's  
3 objections and Defendants' reply, the Court finds that the Findings and Recommendations are  
4 supported by the record and proper analysis.

5 In his objections, Plaintiff argues that he (1) filed an appeal; and (2) that prison officials  
6 should have forwarded the appeal to the correct institution, as stated in the CDC 602 Route Slip.  
7 Plaintiff contends that the Magistrate Judge did not discuss the route slip, and that the officials'  
8 failure to forward the appeal thwarted his attempts at exhaustion.

9 Plaintiff's argument is without merit. Plaintiff cites to the route slip to show that he  
10 submitted a grievance in the first instance, but the Magistrate Judge assumed this fact in the  
11 Findings and Recommendations. "Viewing the evidence in the light most favorable to Plaintiff,  
12 as this Court must, CSATF received the appeal at some point and cancelled it as untimely on July  
13 6, 2010. However, there is no indication that Plaintiff filed a separate appeal on the cancellation."  
14 ECF No. 115, at 7. Moreover, contrary to Plaintiff's argument, a remedy remained because he  
15 could have appealed the cancellation. *Ross v. Blake*, 136 S.Ct. 1850, 1857-1859 (2010).

16 Plaintiff also argues that prison officials improperly applied their own regulations,  
17 because they *could have* accepted his untimely grievance. 15 Cal.Code Regs. § 3000.5(f).  
18 However, as Defendants note, the regulation at issue affords discretion to prison officials to  
19 excuse non-compliance with regulatory deadlines, and they are not required to do so. Prison  
20 officials' decision not to exercise their discretion to overlook the untimeliness of Plaintiff's  
21 grievance does not excuse his failure to exhaust.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. The Findings and Recommendations, filed April 28, 2016, are adopted in full;
- 24 2. Defendants' motion for summary judgment (Document 91) is GRANTED;

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3. This action is DISMISSED WITHOUT PREJUDICE for Plaintiff's failure to exhaust.

This terminates this action in its entirety.  
IT IS SO ORDERED.

Dated: August 10, 2016

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