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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JOSEPH RAYMOND McCOY,  Plaintiff,  v.  GONZALES, et al.,  Defendants.	) ) ) ) ) ) ) ) ) ) ) )	Case No.: 1:12cv00983 AWI DLB (PC)  <b>FINDINGS AND RECOMMENDATIONS REGARDING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT FOR FAILURE TO EXHAUST</b> (Document 65)  <b>THIRTY-DAY OBJECTION DEADLINE</b>  <b>ORDER DISREGARDING PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE</b> (Document 93)
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Plaintiff Joseph Raymond McCoy (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on June 19, 2012. This action is proceeding on Plaintiff’s First Amended Complaint (“FAC”) against Defendants Stronach, Gonzales, LeMay, Beltran, Fisher, Snell and Tann for deliberate indifference in violation of the Eighth Amendment.

On November 5, 2014, Defendants filed the instant motion for summary judgment based on Plaintiff’s failure to exhaust his administrative remedies.<sup>1</sup> Plaintiff filed his opposition on February

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<sup>1</sup> Concurrent with their motion for summary judgment, Defendants provided Plaintiff with the requirements for opposing summary judgment. *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998); *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988).

1 12, 2015.<sup>2</sup> On April 7, 2015, Defendants filed their reply, as well as objections to Plaintiff's evidence.  
2 The motion is deemed submitted pursuant to Local Rule 230(l).

3 **A. PLAINTIFF'S ALLEGATIONS**

4 Plaintiff is currently incarcerated at the California Substance Abuse Treatment Facility  
5 ("CSATF") in Corcoran, California, where the events at issue occurred.

6 Plaintiff alleges that on June 11, 2009, Defendant Stronach examined him and determined that  
7 he had an infection of his right foot. Plaintiff alleges that she knowingly overstepped the scope of her  
8 LVN license by prescribing him two tubes of anti-fungal cream. Defendant Stronach also instructed  
9 Plaintiff to return to the general population, despite his request to see qualified medical personnel and  
10 despite obvious signs of swelling, oozing and difficulty walking.

11 On June 14, 2009, after following Defendant Stronach's instructions, Plaintiff noticed an  
12 increase in swelling, discoloration and drainage, and he had more difficulty walking. Defendant  
13 Stronach again refused to provide Plaintiff with access to specialized medical personnel.

14 On June 25, 2009, Clark Kelso delegated Defendant Doctor Gonzales and Defendant Stronach  
15 to carry out Plaintiff's medical orders. Plaintiff told Defendants Gonzales and Stronach that while he  
16 was trying to shower, the splint on his right leg became contaminated. Instead of referring him to  
17 medical personnel to replace his splint, and despite observing discharge, pain, swelling and difficulty  
18 walking, Defendant Gonzales instructed Defendant Stronach to remove the splint and issue an Ace  
19 Wrap. Defendant Stronach instructed Plaintiff to place the Ace Wrap on his own foot and when  
20 Plaintiff disagreed, Defendants Gonzales and Stronach ordered Plaintiff to leave the clinic.

21 On June 30, 2009, Defendant Gonzales interviewed Plaintiff. When Plaintiff began to explain  
22 his dissatisfaction with his medical treatment, Defendant Gonzales told Plaintiff that he would order  
23 Defendant Stronach to ensure that staff under her supervision cleaned the wound every two days for  
24 one week. Defendant Gonzales did not send Plaintiff to a specialist or issue protective footwear.

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27 \_\_\_\_\_  
28 <sup>2</sup> Defendants argue that Plaintiff's opposition was untimely. However, the proof of service indicates that it was placed in the prison mail on February 5, 2015, making it timely. Defendants also miscalculate the date it was due- three days are added when documents are served by mail. Fed. R. Civ. Proc. 6(d).

1           On August 13, 2009, Mr. Kelso delegated Defendants Gonzales and Stronach to comply with  
2 orders for Plaintiff's medical treatment. Defendant Gonzales issued a priority ducat authorizing  
3 custody staff to make sure Plaintiff attended his medical appointment. When custody staff told them  
4 that the wheelchair that had been issued to Plaintiff had malfunctioned and he could not make the  
5 appointment, Defendants Gonzales and Stronach filed a report charging Plaintiff with a rules violation  
6 for destroying state property. Defendant Gonzales and Dr. Enenmoh had another prisoner retrieve a  
7 wheelchair from the clinic and go get Plaintiff. Plaintiff was accompanied by Defendant LeMay.

8           When he arrived, Defendants Snell, Gonzales, LeMay and Stronach told Plaintiff that he was  
9 being charged with destruction of state property. When Plaintiff asked for another wheelchair,  
10 Defendant Gonzales told Plaintiff that he did not need another one. He instructed Defendants  
11 Stronach and LeMay to issue Plaintiff another inmate's walker. When Plaintiff refused and told them  
12 that both of his feet were now infected and that walking without protective footwear would be  
13 dangerous, Defendants Gonzales, Stronach, Snell and LeMay decided to force Plaintiff to remain in  
14 the general population without protective footwear.

15           On August 25, 2009, Plaintiff asked other prisoners to find a wheelchair so that he could go to  
16 the medical clinic. Plaintiff was in severe pain, with excessive swelling, burning and blood in his  
17 urine. When Plaintiff arrived, Defendants Gonzales, Stronach and LeMay asked Plaintiff where he got  
18 the wheelchair. Plaintiff told them he got it from another prisoner and Defendant Gonzales ordered  
19 Defendants Stronach and LeMay to confiscate the wheelchair. Plaintiff tried to disagree, but  
20 Defendant Gonzales immediately activated his prison emergency alarm. Defendants Beltran, Fisher,  
21 Snell and Tann responded and Plaintiff told them that he could not walk. However, Defendants  
22 Gonzales, Stronach and LeMay told them to confiscate the borrowed assistive device. Defendant  
23 Gonzales also told Defendants Beltran, Fisher, Snell and Tann to remove Plaintiff from the medical  
24 clinic, and they ordered staff to pick Plaintiff up off a bench and place him on another bench outside.  
25 Plaintiff was given a walker and told to return to his housing unit. Plaintiff tried to walk, but the pain  
26 caused him to pass out. When he came to, he felt like he was being carried and noticed that  
27 Defendants Gonzales, Stronach and LeMay were standing over him. Plaintiff passed out again and  
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1 when he regained consciousness, he told Defendant Gonzales that he had severe pain in his back,  
2 shoulders and head and requested medical assistance.

3         Instead of referring Plaintiff to a medical expert to provide appropriate treatment, Defendant  
4 Gonzales instructed Defendants Stronach, LeMay, Beltran, Snell, Fisher and Tann to again remove  
5 Plaintiff from the clinic. Custody staff was instructed to assist Gonzales, Stronach, and LeMay in  
6 removing Plaintiff. Plaintiff was lowered to the ground from a gurney and rolled to the pavement.  
7 While Defendants Stronach, Gonzales, LeMay, Beltran, Snell, Fisher and Tann watched, Plaintiff  
8 made attempts to remove himself from the heat of the sun by crawling on his hands and knees back to  
9 his assigned housing.

10         On December 21, 2009, medical specialists at Mercy Hospital diagnosed disseminated  
11 coccidiomycosis of the right navicular bone.

12 **B.     LEGAL STANDARD**

13         The failure to exhaust is subject to a motion for summary judgment in which the court may  
14 look beyond the pleadings. Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014). If the Court  
15 concludes that Plaintiff has failed to exhaust, the proper remedy is dismissal without prejudice. Jones,  
16 549 U.S. at 223-24; Lira v. Herrera, 427 F.3d 1164, 1175-76 (9th Cir. 2005).

17         Defendants bear the burden of proof in moving for summary judgment for failure to exhaust,  
18 Albino, 747 F.3d at 1166, and must “prove that there was an available administrative remedy, and that  
19 the prisoner did not exhaust that available remedy,” id. at 1172. If Defendants carry this burden, the  
20 burden of production shifts to Plaintiff “to come forward with evidence showing that there is  
21 something in his particular case that made the existing and generally available administrative remedies  
22 effectively unavailable to him.” Id. This requires Plaintiff to “show more than the mere existence of a  
23 scintilla of evidence.” In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010) (citing  
24 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505 (1986)). “If the undisputed  
25 evidence viewed in the light most favorable to the prisoner shows a failure to exhaust, a defendant is  
26 entitled to summary judgment under Rule 56.” Albino, 747 F.3d at 1166. However, “[i]f material  
27 facts are disputed, summary judgment should be denied, and the district judge rather than a jury should  
28 determine the facts.” Id.

1 **C. APPEALS PROCESS**

2 The California Department of Corrections and Rehabilitation has an administrative grievance  
3 system for prisoners to appeal any departmental decision, action, condition, or policy having an  
4 adverse effect on prisoners' welfare. Cal. Code Regs. tit. 15, § 3084.1. In order to satisfy section  
5 1997e(a), California state prisoners are required to use this process to exhaust their claims prior to  
6 filing suit. Woodford v. Ngo, 548 U.S. 81, 85-86, 126 S.Ct. 2378 (2006); McKinney v. Carey, 311  
7 F.3d 1198, 1199-1201 (9th Cir. 2002).

8 To exhaust available remedies during the relevant time period, an inmate must proceed through  
9 several levels of review, including an informal level. Cal. Code Regs. tit. 15, § 3084.5. A final  
10 decision from the Director's Level of Review satisfies the exhaustion requirement.

11 Under the regulations in place at the time at issue, Plaintiff was required to "describe the  
12 problem and action requested." Cal. Code Regs. tit. 15, § 3084.2(a)(2008). "[T]he primary purpose of  
13 a grievance is to notify the prison of a problem, and facilitate its resolution." Griffin v. Arpaio, 557  
14 F.3d 1117, 1120 (9th Cir. 2009). In the absence of greater specificity required by the applicable  
15 regulations, a grievance is sufficient "if it alerts the prison to the nature of the wrong for which  
16 redress is sought." Id. (quoting Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002)); see also Sapp v.  
17 Kimbrell, 623 F.3d 813, 824 (9th Cir. 2010) (noting that section 3084.2(a) is subject to Arpaio). e  
18 Director's Level of Review satisfies the exhaustion requirement.

19 **D. UNDISPUTED FACTS<sup>3</sup>**

20 Plaintiff filed multiple custody and health care appeals from June 12, 2009, to May 13, 2013.  
21 Only three appeals (discussed below) were fully exhausted at the Third Level of Review. Hildreth  
22 Decl. ¶ 11; Robinson Decl. ¶ 10; Briggs Decl. ¶ 8.

23 1. Log No. SATF-B-2329

24 Plaintiff submitted Log No. SATF-B-2329 ("2329") on June 29, 2009. The appeal, filed as a  
25 citizen's complaint, alleges that "on various dates...including...June 29, 2009," Correctional Officers  
26 Morales, Bentencourt and Childress failed to assist Plaintiff in obtaining emergency medical care  
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28 <sup>3</sup> Undisputed facts that are not relevant to the exhaustion issue have been omitted.

1 treatment for an injury to his right foot. Hildreth Decl. ¶ 11, Ex. A. Defendant Stronach is not  
2 mentioned in the initial appeal. However, in Plaintiff’s request for Second Level Review, Plaintiff  
3 alleges that Defendant Snell conspired with Defendant Stronach to breach doctor-patient  
4 confidentiality. Hildreth Decl. ¶ 11, Ex. A.

5 This appeal is not relevant to this action.

6 2. Log No. SATF-HC-09000734

7 In Log Number SATF-HC-09000734 (“09000734”), submitted on June 25, 2009, Plaintiff  
8 alleges that on or about June 23, 2009, Defendant Stronach conspired with Defendant Gonzales to  
9 rescind authorization for the use of his wheelchair. He alleged that they knew that this decision would  
10 leave “[his] person exposed to conditions injurious to [his] health and a constant danger to [his] life.”  
11 The appeal further explains that on June 24, 2009, Plaintiff collapsed on the bathroom floor after being  
12 exposed to hazardous conditions. Plaintiff also alleges that Defendant Stronach poisoned him and  
13 tried to interfere with his ADA rights. Plaintiff concludes his appeal by alleging “to date, despite  
14 Stronach and Gonzales’ ongoing knowledge of the hazardous conditions, [they] refuse to implement  
15 medical decisions non-injurious or life-threatening.” Hermosillo Decl. ¶ 10, Ex. I.

16 In his request for Third Level Review, Plaintiff restates the same allegations, but adds an  
17 allegation that Defendants Stronach and Gonzales admitted, in writing, that these allegations were  
18 true, and that they threatened the use of physical force to get Plaintiff to surrender his wheelchair.  
19 Plaintiff also adds an allegation that Defendant Stronach admitted to observing Plaintiff incapacitated  
20 based on “prior information and knowledge” that he initially refused to surrender the wheelchair.  
21 Hermosillo Decl. ¶ 10, Ex. I.

22 On October 31, 2009, the Third Level of Review screened out Plaintiff’s appeal, explaining  
23 that Plaintiff did not attach and copy of the Second Level denial. Plaintiff was required to resubmit his  
24 appeal package. Hermosillo Decl. ¶ 10, Ex. I.

25 Plaintiff resubmitted the appeal, but also attached several other documents that were not  
26 previously submitted. The new documents mention several incidents, including the August 13 and 25  
27 incidents. Hermosillo Decl. ¶ 10, Ex. I. These documents include a request for judicial notice  
28 submitted in a prior state court habeas action. The request alleges that on August 13, 2009, Defendant

1 Stronach conspired with others to claim that Plaintiff destroyed state property, at the insistence of  
2 Defendant Snell, by placing a custodial counseling chrono into Plaintiff’s central file. Hermosillo  
3 Decl. ¶ 10, Ex. I. The request for judicial notice also alleges that on August 25, 2009, Defendant  
4 LeMay conspired with Defendants Stronach, Gonzales, Beltran, Fisher, Tann and others to continue  
5 retaliatory conduct against Plaintiff by charging him with manipulation of staff. Plaintiff alleges that  
6 the manipulation charged stemmed from his attempts to return a wheelchair that Defendants Stronach,  
7 Fisher and Tann knew had been destroyed on August 13, 2009. Hermosillo Decl. ¶ 10, Ex. I.

8 The appeal was denied at the Third Level of Review on March 9, 2010. Hermosillo Decl. ¶ 10,  
9 Ex. I.

10 3. Log No. SATF-HC-10001195

11 Plaintiff submitted Log No. SATF-HC-10001195 (“10001195”) on February 17, 2010. He  
12 alleged that Dr. Onyeje refused to provide him medical treatment in retaliation for his filing of the  
13 previously mentioned state court habeas action. Specifically, Plaintiff contends that Dr. Onyeje denied  
14 him neurologic care for chronic inflammation, fibrosis, granulation, paralysis and chronic pain in his  
15 lower extremities. Hermosillo Decl. ¶10, Ex. O.

16 This appeal is not relevant to this action.

17 **E. DISCUSSION**

18 Plaintiff admits, and it is therefore undisputed, that appeals 2329 and 10001195 are not  
19 relevant to the claims in this action.

20 According to his FAC, Plaintiff believes that the March 10, 2009, denial  
21 of 09000734 at the Third Level of Review served to exhaust his claims. ECF No. 17, at 16-17.

22 Based on the undisputed evidence, this appeal initially alleged that on June 23, 2009,  
23 Defendants Stronach and Gonzales conspired to rescind Plaintiff’s authorization for a wheelchair.  
24 Plaintiff also alleged that “to date, Stronach and Gonzales’ ongoing knowledge of the hazardous  
25 conditions, refuse to implement medical decisions non-injurious or life-threatening,” has placed  
26 Plaintiff’s life in danger. The appeal, as filed, makes no mention of his claims that Defendant  
27 Stronach (1) overstepped her license by prescribing anti-fungal cream on June 11, 2009; or (2) refused  
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1 to provide specialist treatment on June 14, 2009. Rather, the appeal deals with a conspiracy to deprive  
2 Plaintiff of his wheelchair on June 23, 2009.

3 Similarly, the appeal does not mention anything about Defendants Stronach and Gonzales  
4 refusing treatment on June 25, 2015, giving him an Ace bandage to wrap his foot, or ordering him to  
5 leave when he disagreed with the treatment. Nor does it mention his claim that they failed to send him  
6 to a specialist or order footwear on June 30, 2009, or any of the events of August 2009.

7 While the appeal generally suggests that Defendants Stronach and Gonzales are making “life-  
8 threatening” decisions, the appeal is specifically about their June 23, 2009, conspiracy to rescind his  
9 wheelchair, and would not have put prison officials on notice of a deficient treatment claim. Griffin v.  
10 Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009). Indeed, Plaintiff’s request for review at the subsequent  
11 levels, as well as the decisions, confirm that the appeal did not include a general issue with medical  
12 treatment.

13 To the extent that Plaintiff added allegations about the August 2009 events involving all  
14 Defendants at the subsequent levels of review, it does not serve to exhaust those claims. An inmate  
15 cannot add new claims to an appeal at different levels of review. “Proper exhaustion[, which]  
16 demands compliance with an agency’s deadlines and other critical procedural rules . . . .” is required,  
17 Woodford v. Ngo, 548 U.S. 81, 90, 126 S.Ct. 2378 (2006), and may not be satisfied “by filing an  
18 untimely or otherwise procedurally defective . . . appeal,” Woodford, 548 U.S. at 83-84.

19 Defendants have therefore carried their burden of proving that Plaintiff did not exhaust his  
20 available remedies. The burden now shifts to Plaintiff “to come forward with evidence showing that  
21 there is something in his particular case that made the existing and generally available administrative  
22 remedies effectively unavailable to him.” Albino, 747 F.3d at 1172. To carry this burden, Plaintiff  
23 must demonstrate that administrative remedies were “effectively unavailable to him by ‘showing that  
24 the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile.’”  
25 Williams v. Paramo, 775, F.3d 1182, 1191 (9th Cir.2015) (quoting Hilao v. Estate of Marcos, 103 F.3d  
26 767, 778, n. 5 (9th Cir. 1996).



1 In his opposition, Plaintiff alleges that he submitted numerous appeals to the Warden  
2 describing many of the events at issue, but he never received responses or appeal log numbers.<sup>4</sup>  
3 Specifically, he states that he submitted the following appeals directly to the Warden: (1) a June 17,  
4 2009, appeal describing Plaintiff’s June 11 and 14 encounters with Defendant Stronach; (2) three  
5 appeals related to the August 13, claims against Defendants Gonzales, Stronach, LeMay and Snell;  
6 and (3) an administrative health care appeal and staff complaint describing the events of August 25,  
7 2009, involving Defendants Tann, Snell, Stronach, Gonzales, Beltran, Fisher and LeMay.<sup>5</sup>

8 Plaintiff states that he submitted each of the above appeals directly to the Warden, as  
9 exceptions to the regular appeals process, or “emergency appeals.” He argues that the Warden should  
10 have forwarded the appeals directly to the Appeals Coordinator, and that he should have received a  
11 response within five working days. Plaintiff therefore argues that he attempted to comply with the  
12 administrative grievance procedure, but staff interfered with his use of the institutional mail system.

13 To support his claims, Plaintiff attaches numerous proofs of service showing that  
14 “legal/confidential” mail was addressed to “Ken Clark, Warden.” The proofs of services are  
15 purportedly signed by mailroom staff and a housing officer, and bear a date stamp of the day following  
16 execution of the proof of service. Pl.’s Opp., Ex. A-G.<sup>6</sup>

17 Plaintiff’s argument, however, assumes that it was proper procedure to submit an appeal  
18 directly to the Warden. To demonstrate that administrative remedies were unavailable, an inmate must  
19 establish the appeal “would have sufficed to exhaust the claim that he seeks to pursue in federal  
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22 <sup>4</sup> This is the first time Plaintiff raises this argument in support of exhaustion. As noted above, Plaintiff indicated in his  
23 FAC that 09000734 exhausted his claims.

24 <sup>5</sup> Plaintiff makes no argument related to the June 25 incident against Defendant Stronach and the June 30 incident against  
25 Defendants Gonzales and Stronach.

26 <sup>6</sup> Defendants object to the proofs of service as unauthenticated and lacking foundation. Courts generally have a dim view  
27 of authentication objections presented in the absence of any indication that the record’s authenticity is genuinely in dispute,  
28 Chamberlain v. Les Schwab Tire Center of California, Inc., 2012 WL 6020103, at \*2 (E.D.Cal. 2012); Burch v. Regents of  
the University of California, 433 F.Supp.2d 1110, 1120-21 (E.D.Cal. 2006), and objections to prison records which are  
clearly what they purport to be are routinely overruled under Rule 901(b)(4), e.g., Thomas v. Quintana, 2014 WL 5419418,  
at \*3 (C.D.Cal. 2014). Here, Plaintiff has submitted proofs of service that bear a purported signature by mailroom staff and  
a housing officer. They also bear a date stamps above the signature of the mailroom official related to the date of  
execution. There is no indication that the documents are not authentic, and Defendants’ objections are overruled.

1 court.” Sapp, 623 F.3d at 823-824. In other words, Plaintiff’s attempts to exhaustion must have  
2 followed the proper procedure.

3         Considering the facts in the light most favorable to Plaintiff, i.e., that he submitted the above  
4 grievances to the Warden but never received a response, Plaintiff has not demonstrated that he  
5 followed the proper procedures. Plaintiff submitted his appeals directly to the Warden, but the  
6 governing regulations at the time did not permit appeals to be submitted directly to the warden, even if  
7 the appeals were “emergency appeals.” Such appeals were to be submitted to the Appeals  
8 Coordinator, who then determines if emergency processing is warranted. Cal. Code Regs. tit. 15, §  
9 3084.7 (2009). Plaintiff therefore did not follow the proper procedure and he cannot show that his  
10 appeals would have sufficed to exhaust his claims.

11         Insofar as Plaintiff relies on an April 26, 2010, response to a Request for Interview addressed  
12 to the Warden, the document does not transform his submissions into *proper* appeals. Plaintiff  
13 submitted a Request for Interview to the Warden on April 22, 2010, inquiring about “an appeal to the  
14 Wardens Office concerning an issue” at CSATF. Pl.’s Opp., Ex. K. The request was forwarded to the  
15 Appeals Office for response. In the response, Steven Smith explains that when the Warden’s Office  
16 receives an appeal via institutional mail, the appeal is forwarded to the Appeals Office. Mr. Smith  
17 explained that the Warden’s Office does not have a tracking system to monitor appeals, and the  
18 “Warden’s Office is not the appropriate destination when mailing appeals.” Plaintiff was instructed to  
19 send his Request for Interview to the Appeals Office to inquire about his existing appeals.

20         Therefore, while the Request for Interview sent to the Warden may have been forwarded to the  
21 Appeals Office, it was forwarded for the purpose of explaining to Plaintiff that appeals or Requests for  
22 Interviews should not be submitted directly to the Warden.

23         Plaintiff also submitted a Request for Judicial Notice on April 13, 2015, stating that he  
24 discovered “additional evidence” relevant to the issues. He attaches a June 26, 2009, letter from J.  
25 Cordova, relating to Plaintiff’s June 18, 2009, letter to the Warden. The letter, in which Plaintiff  
26 complained of his right to access the prison law library, was forwarded to Mr. Cordova for a response.  
27 Mr. Cordova discussed Plaintiff’s ability to access the law library for a pending court case. The letter  
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1 is irrelevant to the exhaustion issue and Plaintiff's request for judicial notice is therefore  
2 DISREGARDED.

3 In sum, Plaintiff was required to properly exhaust by complying with the rules and regulations,  
4 there was an administrative remedy process available to him of which he was on notice, and his failure  
5 to properly exhaust that available process entitles Defendants to judgment for failure to exhaust.  
6 Woodford, 548 U.S. at 90-91.

7 **F. CONCLUSION AND RECOMMENDATION**

8 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 9 1. Defendants' motion to dismiss, filed November 5, 2014, be GRANTED; and  
10 2. This action be DISMISSED WITHOUT PREJUDICE for Plaintiff's failure to exhaust.

11 These Findings and Recommendations will be submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days**  
13 after being served with these Findings and Recommendations, the parties may file written objections  
14 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and  
15 Recommendations." A party may respond to another party's objections by filing a response within  
16 **fourteen (14) days** after being served with a copy of that party's objections. The parties are advised  
17 that failure to file objections within the specified time may waive the right to appeal the District  
18 Court's order. Martinez v. Ylst, 951 F.2d 1153, 1157 (9th Cir. 1991).

19  
20 IT IS SO ORDERED.

21 Dated: April 22, 2015

/s/ Dennis L. Beck  
22 UNITED STATES MAGISTRATE JUDGE  
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