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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEVIN LEE McCULLOM,  
Plaintiff,  
v.  
SEAN WHENT, et. al.,  
Defendants.

Case No. [15-cv-5718-TEH](#)  
ORDER DENYING MOTION TO  
DISMISS

Dkt No. 54

Defendants filed a motion for summary judgment on August 18, 2016. Plaintiff has been granted several extensions and his opposition was to be filed by December 18, 2016. Plaintiff did not file an opposition but did file a motion to dismiss without prejudice because he failed to exhaust.

Defendants' motion for summary judgment does not raise exhaustion, rather discusses the merits of Plaintiff's claim regarding tampering with his mail and denial of access to the courts. Because Defendants' have already filed a motion for summary judgment and have not stipulated to the dismissal, Plaintiff's motion to dismiss without prejudice (Docket No. 54) is DENIED. See Fed. R. C. P. 41(a)(1)(A).

Plaintiff has already had more than four and a half months to file an opposition. He will be provided one final extension and must file the opposition by January 18, 2017. No further extensions will be provided and failure to file an opposition may

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result in the dismissal of this action.

IT IS SO ORDERED.

Dated: 1/4/2017



THELTON E. HENDERSON  
United States District Judge

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