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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 BRIAN WHITAKER,
8 Plaintiff,

9 v.

10 CURTIS HANSEN,
11 Defendant.

Case No. [21-cv-04822-TSH](#)

ORDER TO SHOW CAUSE

12
13 On June 23, 2021, Plaintiff Brian Whitaker filed this complaint against Curtis Hansen,
14 alleging violations of the Americans with Disabilities Act. On January 6, the case was reassigned
15 to the undersigned magistrate judge.

16 On August 23, 2021, the previous judge assigned to the case, Judge Lucy Koh, granted in
17 part Plaintiff's motion to extend the deadline to serve Defendant by 90 days. ECF No. 11. In his
18 request, Plaintiff provided two explanations for why he had been unable to effectuate service on
19 Hansen: (1) "shelter-in-place" restrictions in the Northern District of California; and (2) because
20 the courts are not functioning at full capacity. ECF No. 10. Judge Koh rejected those reasons,
21 finding that at no point during the relevant period were there shelter-in-place restrictions in the
22 Northern District of California, and that this District has been functioning at full capacity. Thus,
23 Judge Koh found both of Whitaker's purported explanations for his failure to serve Hansen lacked
24 credibility. Judge Koh also noted that although Whitaker made five attempts to serve Hansen,
25 each attempt was made at a closed business, and he made no attempt to serve Hansen at his
26 personal address. Judge Koh thus found Whitaker's attempts at service were not diligent, and
27 good cause did not exist to extend the service deadline. Despite these findings, Judge Koh granted
28 Whitaker "a one-time thirty (30) day extension from the date of this Order," and extended the

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Northern District of California

1 service deadline to September 22, 2021.

2 To date, no proof of service of the summons and complaint has been filed. “If a defendant
3 is not served within 90 days after the complaint is filed, the court – on motion or on its own after
4 notice to the plaintiff – must dismiss the action without prejudice against that defendant or order
5 that service be made within a specified time.” Fed. R. Civ. P. 4(m). Here, Judge Koh ordered that
6 service be made by September 22, 2021, yet it has been over three months since the “one-time”
7 extension and there is no indication Hansen has been served. Accordingly, the Court **ORDERS**
8 Whitaker to show cause, in writing and no later than January 20, 2022, why this case should not be
9 dismissed for failure to serve within the time required by Rule 4(m) and Judge Koh’s order.
10 Whitaker is advised that the Court agrees with the reasoning in Judge Koh’s August 23 order, and
11 any such explanation for failure to complete service will not establish good cause.

12 Notice is hereby provided that failure to file a written response will be deemed an
13 admission that Whitaker does not intend to prosecute, and the case will likely be dismissed
14 without prejudice. Thus, it is imperative the Court receive a written response by the deadline
15 above.

16 **IT IS SO ORDERED.**

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18 Dated: January 7, 2022



THOMAS S. HIXSON
United States Magistrate Judge

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