

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  
NORTHERN DISTRICT OF CALIFORNIA

JOHN DELL HENDERSON,  
Plaintiff,  
v.  
JENNIFER R. SWINEY,  
Defendant.

Case No. [16-cv-06893-JST](#)

**ORDER OF DISMISSAL**

The instant action was filed on November 30, 2016 against Salinas Valley State Prison doctors Kumar and Tuvera and against Natividad Medical Center doctors Jennifer Swiney and Giles Duesdieker. On March 28, 2019, the Court granted defendants Kumar and Tuvera's motion for summary judgment, granted defendant Duesdieker's motion for summary judgment, entered judgement in favor of defendants Kumar, Tuvera, and Duesdieker, and terminated these defendants from this action. ECF No. 64. On March 22, 2021, the Court vacated the entry of default entered against defendant Swiney, finding that Plaintiff had not validly effected service on defendant Swiney. ECF No. 87 at 3-4. Pursuant to Fed. R. Civ. P. 4(m),<sup>1</sup> the Court ordered Plaintiff to, by April 20, 2021, either effect service on defendant Swiney or submit to the Court sufficient information to identify and locate defendant Swiney such that the Marshal is able to effect service, or defendant Swiney would be dismissed from this action without prejudice pursuant to Fed. R. Civ. P. 4(m). ECF No. 87 at 5.

On April 26, 2021, Plaintiff requested a 30-day extension of time to respond to the Court's

---

<sup>1</sup> Fed. R. Civ. P. 4(m) provides that if a defendant is not served within 90 days after the complaint is filed, the Court may, on motion or its own after notice to plaintiff, dismiss the action without prejudice against that defendant or order that service be made within a specified time. Fed. R. Civ. P. 4(m).

United States District Court  
Northern District of California

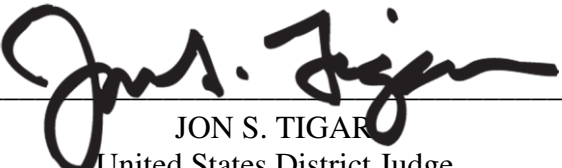
1 March 22, 2021 Order, stating that he intended to object to the Court's order requiring him to  
2 effect service because the order in essence punished Plaintiff for the Court's error. ECF No. 88.  
3 To the extent that Plaintiff was requesting an extension of time to file objections to the Court's  
4 order, Plaintiff's request is DENIED as moot. There is no deadline within which Plaintiff was  
5 required to file objections to the Court's order. To the extent that Plaintiff was requesting an  
6 extension of time to either effect service on defendant Swiney or submit to the Court sufficient  
7 information to identify and locate defendant Swiney such that the Marshal is able to effect service,  
8 that request is GRANTED nunc pro tunc. The revised deadline for complying with the Court's  
9 March 22, 2021 order is therefore extended to May 21, 2021.

10 The deadline to effect service on defendant Swiney has passed, and Plaintiff has neither  
11 effected service nor has he provided sufficient information to allow the Marshal to effect service.  
12 Accordingly, defendant Swiney is **DISMISSED** without prejudice from this action pursuant to  
13 Rule 4(m) of the Federal Rules of Civil Procedure. Because there are no remaining defendants in  
14 this action, the Clerk is ordered to enter judgment in favor of defendants Kumar, Tuvera, and  
15 Duesdieker pursuant to the Court's March 28, 2019 Order; terminate all pending motions as moot;  
16 and close the file.

17 This order terminates ECF No. 88.

18 **IT IS SO ORDERED.**

19 Dated: September 3, 2021

20   
21 \_\_\_\_\_  
22 JON S. TIGAR  
23 United States District Judge  
24  
25  
26  
27  
28