1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 LEO CIENFUEGOS, Case No. 1:14-cv-00215 AWI DLB PC 12 Plaintiff, FINDINGS AND RECOMMENDATIONS REGARDING DISMISSAL OF ACTION FOR FAILURE TO EFFECT SERVICE OF 13 v. **PROCESS** 14 GIPSON, et al., THIRTY-DAY DEADLINE 15 Defendants. 16 Plaintiff Leo Cienfuegos ("Plaintiff") is a California state prisoner proceeding pro se in this 17 action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on February 18, 2014. Pursuant 18 to Court order, he filed a First Amended Complaint on August 21, 2014. 19 On February 9, 2015, the Court ordered Plaintiff to serve his First Amended Complaint 20 within one-hundred twenty (120) days. 21 On May 1, 2015, Plaintiff filed a request for a thirty (30) day extension of time. However, 22 the request was not signed and it was therefore stricken on May 4, 2015. The order striking the 23 request for additional time was served on Plaintiff. ECF No. 23. Plaintiff did not request additional 24 time or otherwise contact the Court. 25 /// 26 /// 27 28 ¹ Plaintiff paid the filing fee and is not proceeding in forma pauperis.

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Accordingly, on June 30, 2015, the Court ordered Plaintiff to show cause why this action should not be dismissed for failure to serve. Plaintiff was ordered to respond within twenty-one (21) days. Over twenty-one (21) days have passed and Plaintiff has not responded or otherwise contacted the Court. There is no evidence in the record demonstrating that Plaintiff effected service.

DISCUSSION

Rule 4(m) of the Federal Rules of Civil Procedure provides, in relevant part:

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

This action has been pending since February 18, 2014. Plaintiff was first ordered to effect service on Defendants on February 9, 2015. In compliance with Rule 4(m), Plaintiff was ordered to effect service within a specified time and then provided with the opportunity to show cause why this action should not be dismissed. Plaintiff neither effected service nor showed cause why this action should not be dismissed. Therefore, pursuant to Rule 4(m), this action must be dismissed, without prejudice.

RECOMMENDATION

Based on the foregoing, it is HEREBY RECOMMENDED that this action be dismissed, without prejudice, based on Plaintiff's failure to effect service of the summons and First Amended Complaint pursuant to Federal Rule of Civil Procedure 4(m)

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within thirty (30) days after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the

1	specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
2	1153 (9th Cir. 1991).
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4	IT IS SO ORDERED.
5	Dated: August 3, 2015 /s/ Dennis L. Beck
6	UNITED STATES MAGISTRATE JUDGE
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