1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 JOHN W. WILLIAMS, No. 2:15-cv-1057-JAM-EFB P 12 Plaintiff. 13 FINDINGS AND RECOMMENDATIONS v. 14 CALIFORNIA DEPARTMENT OF CORRECTIONS AND 15 REHABILITATION, et al... 16 Defendants. 17 Plaintiff is a state prisoner proceeding pro se in this civil action. He commenced this 18 19 action on May 15, 2015 by filing a complaint and paying the filing fee. ¹ ECF No. 1. On June 9, 2015, the court screened plaintiff's complaint pursuant to 28 U.S.C. § 1915A and found service 20 21 appropriate for all defendants. ECF No. 5. More than 90 days have passed and there is no indication from the record that any of the defendants have been served with process.² See Fed. R. 22 23 Civ. P. 4(m) (service of process must be effected within 90 days of the filing of the complaint unless plaintiff demonstrates good cause). 24 25 ¹ The court denied plaintiff's request to proceed in forma pauperis pursuant to 28 U.S.C. 26 § 1915(g). ECF No. 25. 27 ² To the contrary, plaintiff's June 17, 2016 "request for clarification and instructions" 28 regarding service of process" suggests that plaintiff has not succeeded in serving any defendant. 1

The court has repeatedly warned plaintiff that it is his responsibility to arrange for service of process and that failure to do so may result in dismissal. ECF No. 12 ("Plaintiff is cautioned that failure to accomplish service within the time prescribed by Rule 4(m) may result in a this action being dismissed for failure to follow court orders, for failure to effect service of process, and/or for lack of prosecution under Rule 41(b) of the Federal Rules of Civil Procedure."); see also ECF Nos. 16, 18, and 25.

The fact that plaintiff is incarcerated does not excuse him from properly serving defendants in a timely manner. *See Collins v. Pitchess*, 641 F.2d 740, 742 (9th Cir. 1981) (incarceration does not absolve a plaintiff of the responsibility to prosecute his actions diligently). Furthermore, plaintiff has had ample time to retain a process server and effect service and has failed to do so.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. *See* Fed. R. Civ. P. 4(m), 41(b); E.D. Cal. Local Rule 110.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: August 24, 2016.

EĎMUND F. BRĚNNAN

UNITED STATES MAGISTRATE JUDGE