

1 On May 11, 2017, the undersigned issued an order to show cause to plaintiff due to
2 plaintiff's failure to file a timely status report. (ECF No. 5.) The order to show cause again
3 advised plaintiff of the requirements of Rule 4. (Id. at 2.) On May 23, 2017, plaintiff filed a
4 response to the order to show cause. (ECF No. 6.) Therein, plaintiff asserted that he had "been
5 unable to locate either of the Defendants," but had "recently discovered another address" and
6 intended to effect personal service that same week. (Id. at 2.)

7 More than two more months passed without a defendant appearing or plaintiff filing a
8 proof of service. Accordingly, on August 9, 2017, the undersigned issued findings and
9 recommendations recommending that this action be dismissed due to plaintiff's lack of
10 prosecution. (ECF No. 8.) On August 24, 2017, plaintiff filed a "RESPONSE" to those findings
11 and recommendations. (ECF No. 9.) Therein, plaintiff asserted that plaintiff was "not
12 disregarding nor ignoring the Court's orders," but that plaintiff had been unable to serve
13 summons on a defendant. (Id. at 2.)

14 Accordingly, the August 9, 2017, findings and recommendations recommending dismissal
15 due to plaintiff's failure to prosecute were vacated on September 15, 2017. (ECF No. 10.)
16 Plaintiff was granted an additional forty-five days to serve a defendant. (Id. at 3.) Plaintiff was
17 cautioned that the failure to comply with that order could result in a recommendation that this
18 case be dismissed due to plaintiff's failure to comply with Rule 4. (Id.) More than forty-five
19 days has passed, no defendant has appeared in this action, and plaintiff has not filed proof of
20 service on any defendant.

21 Rule 4(m) provides two avenues for relief. The first is mandatory:
22 the district court must extend time for service upon a showing of
23 good cause. The second is discretionary: if good cause is not
established, the district court may extend time for service upon a
showing of excusable neglect.

24 Crowley v. Bannister, 734 F.3d 967, 976 (9th Cir. 2013) (quoting Lemoge v. United States, 587
25 F.3d 1188, 1198 (9th Cir. 2009)).

26 Here, this action was commenced almost one year ago. Despite being granted several
27 extension of time, plaintiff has failed to serve any defendant. Plaintiff's most recent extension of
28 time has passed and plaintiff has shown neither good cause nor excusable neglect for plaintiff's

1 failure to effect service.

2 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
3 prejudice pursuant to Rule 4(m).

4 These findings and recommendations will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
6 days after being served with these findings and recommendations, plaintiff may file written
7 objections with the court. A document containing objections should be titled "Objections to
8 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
9 objections within the specified time may, under certain circumstances, waive the right to appeal
10 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: November 17, 2017

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14 DEBORAH BARNES
15 UNITED STATES MAGISTRATE JUDGE
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