

1 **WO**

2

3

4

5

6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8

9 Anita Calugay,

10 Plaintiff,

11 vs.

12

13 GMAC Mortgage; GMAC; and Green  
Tree Services,

14 Defendants.

15

No. CV-09-1947-PHX-LOA

**ORDER**

16

17 This case arises on the Court’s review of the file regarding Defendant GMAC  
18 Mortgage and other named Defendant which have not yet appeared in this action. Pending  
19 for ruling is Defendant Green Tree Servicing LLC’s Motion to Dismiss. (docket # 7)

20

21 Plaintiff filed her Complaint on September 18, 2009, alleging eight federal and  
22 state causes of action. It appears that *pro se* Plaintiff is attempting to serve Defendant GMAC  
23 Mortgage, allegedly an out-of-state “company . . . conducting business in the State of  
24 ARIZONA,” by certified mail in Waterloo, Iowa. (docket ## 1, 5) Although the return  
25 receipt indicates received Plaintiff’s certified mail on September 22, 2009, Plaintiff has not  
26 filed a Rule 4.2(c) affidavit to date.

27

28 “A plaintiff must serve all defendants with a copy of the summons and  
complaint within 120 days of filing a complaint.” *Robinson v. Heritage Elementary School,*

29

30

1 2009 WL 1578313, \* 2 (D.Ariz. 2009) (citing Rule 4(m), Fed.R.Civ.P.). Federal Rule of  
2 Civil Procedure 4 contains detailed provisions on the manner in which service should occur.  
3 “A plaintiff may also utilize the service of process rules that apply in the state in which the  
4 federal district court is located or, if service is effected in another state, the rules of that  
5 state.” *Id.* (citing Rule 4(e)(1), Fed.R.Civ.P.) (footnote omitted). “Therefore, service of  
6 process will be upheld if it conforms to either federal or Arizona’s service of process rules.”  
7 *Id.* Arizona allows service by mail upon a party “[w]hen the whereabouts of [such] party  
8 outside the state is known.” Arizona Rule of Civil Procedure (“ARCP”) 4.2(c); *Barlage v.*  
9 *Valentine*, 210 Ariz. 270, 110 P.3d 371 (Ariz.Ct.App. 2005).

10 Arizona Rule of Civil Procedure 4.2(c) provides that “service may be made  
11 [upon an out-of-state party] by depositing the summons and a copy of the pleading being  
12 served in the post office, postage prepaid, to be sent to the person to be served by any form  
13 of mail requiring a signed and returned receipt. . . Upon return through the post office of the  
14 signed receipt, the serving party *shall file an affidavit with the court.* . . .” Rule 4.2(c),  
15 ARCP, (emphasis added). “[W]ith service by mail under Rule 4.2(c), . . . [Rule 4.2(c)]  
16 requires . . . an affidavit containing nothing more than the same information found in a  
17 process server’s return.” *Creach v. Angulo*, 186 Ariz. 548, 551, 925 P.2d 689, 692  
18 (Ariz.Ct.App. 1996), *affirmed by* 189 Ariz. 212, 941 P.2d 224 (Ariz. 1997).

19 Service of process by mail is not complete, however, until a plaintiff or her  
20 attorney complies with all aspects of Rule 4.2(c), ARCP. *Postal Instant Press v. Corral*  
21 *Restaurants, Inc.*, 186 Ariz. 535, 537, 925 P.2d 260, 262 n. 2 (Ariz. 1996) (Rule 4.2(c)  
22 “expressly permits such service to be completed by the use of ‘. . . any form of mail  
23 requiring a signed and returned receipt.’ Certified mail with a return postal receipt falls  
24 within this definition. Therefore, to effect service outside the state, the serving party must  
25 first obtain the signed postal receipt and then must prepare and file an affidavit, as described  
26 in Rule 4.2(c), to which the receipt must be attached.”). Also see, *Walker v. Los Angeles*  
27 *County*, 2008 WL 4447011, \* 3 (D.Ariz. 2008) (plaintiff did not file a proper affidavit of  
28 service pursuant to Rule 4.2(c), ARCP). Rule 4.2(c) itself makes clear that “[s]ervice shall

1 be deemed complete and time shall begin to run for the purposes of [the time to answer or  
2 otherwise appear] from the date of receipt by the party being served, provided that no default  
3 may be had on such service until such an affidavit has been filed.” Rule 4.2(c), ARCP.

4 On the Court’s own motion,

5 **IT IS ORDERED** that Plaintiff shall complete service of process on all  
6 Defendants named herein by **Monday, January 18, 2010** or such Defendants may be  
7 dismissed from this lawsuit without prejudice.

8 DATED this 2nd day of November, 2009.

9  
10   
11 Lawrence O. Anderson  
United States Magistrate Judge

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28