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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Lynnell Levingston, Pro Se,

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No. CV-09-08138-PCT-LOA

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Plaintiff,

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ORDER

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vs.

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Patricia Piburn, Victoria Earle, Steve West, David Gregory, Jody Tapia, Carol Haverstick, Erasmo Chavez, Mike Nuttail, Mel Cody, Jerry McLain, Vicki Wilkins, Kenneth Issacson, Thomas "Benny" Garms, Roger Vanderpool, David Denlinger, Raymon Piburn,

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Defendants.

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The Court has received and considered Plaintiff's Motion for Order for Service of Complaint and Summons by US Marshal. (docket # 14)

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On September 11, 2009, Plaintiff consented to magistrate-judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1). (docket # 11) After considering Plaintiff's motion to proceed *in forma pauperis* and supplement to her application, the Court denied Plaintiff's Motion to Proceed *in Forma Pauperis* on September 14, 2009.

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Under Federal Rules of Civil Procedure 4(c)(3), the district court may order at the plaintiff's request "that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court." Fed.R.Civ.P. 4(c)(3). If a plaintiff is not proceeding *in forma pauperis*, the decision falls within the discretion of the district court. *Koger v. Bryan*, 523 F.3d 789, 803 (7th Cir. 2008) (citing Fed.R.Civ.P. 4 advisory

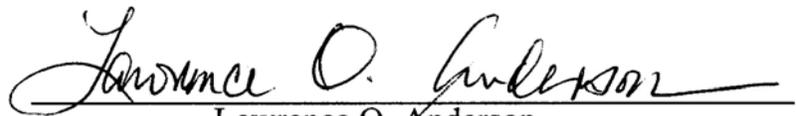
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1 committee's note (1993) ("The court . . . retains discretion to appoint a process server on
2 motion of a party.")). The Court should exercise its discretion in determining whether
3 service should be made under Rule 4(c)(3) instead of simply denying service to those
4 plaintiffs not proceeding *in forma pauperis*. *Id.*

5 In her financial affidavit, Plaintiff avers that after paying her monthly expenses,
6 Plaintiff has \$171.00 remaining. (docket # 4, attachment) Although Plaintiff's budget is
7 tight, she owns her home and car, and has funds remaining after paying her monthly
8 expenses. The Court will exercise its discretion and will deny Plaintiff's Motion. It will be
9 Plaintiff's obligation to have all Defendants timely served at Plaintiff's expense within 120
10 days of July 23, 2009, the date she filed her Complaint, or this lawsuit may be dismissed for
11 lack of prosecution. See, Rule 4(m) and 41(b), FED.R.CIV.P.

12 **IT IS ORDERED** that Plaintiff's Motion for Order for Service of Complaint
13 and Summons by the US Marshal, docket # 14, is **DENIED**.

14 DATED this 23rd day of September, 2009.

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17 Lawrence O. Anderson
18 United States Magistrate Judge
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