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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Cheryl Wells,
Plaintiff,
v.
Jan Kearney, et al.,
Defendants.

No. CV 07-309 TUC FRZ (JM)

REPORT AND RECOMMENDATION

On October 9, 2009, the Court issued an Order to Show Cause [Doc. No. 112] ordering Plaintiff, by November 6, 2009, to provide the Court with an affidavit showing good cause why the Magistrate Judge should not issue a report and recommendation to the District Court recommending that this case be dismissed pursuant to Rule 4(m) due to Plaintiff's failure to serve the two remaining defendants in this case, Cia Wells and Alan Belauskas. The docket reflects that, as of the date of this Report and Recommendation, Plaintiff has neither served the remaining defendants, nor filed the required affidavit of good cause.

Based on the foregoing, the Magistrate Judge **RECOMMENDS** that the District Court, after its independent review, dismiss this action without prejudice as to Defendants Cia Wells and Alan Belauskas based on Plaintiff's failure to prosecute.

This Recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the District Court's judgment.

However, the parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the District Court. *See* 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a) and 6(e) of the Federal Rules of Civil Procedure. Thereafter, the parties have ten (10) days within which to file a response to the objections.

1 If any objections are filed, this action should be designated case number: **CV 07-309-TUC-**
2 **FRZ**. Failure to timely file objections to any factual or legal determination of the Magistrate
3 Judge may be considered a waiver of a party's right to *de novo* consideration of the issues.
4 See *United States v. Reyna-Tapia* 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*).

5 DATED this 2nd day of December, 2009.

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9 Jacqueline Marshall
United States Magistrate Judge

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