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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Donnashay Williams; Valerie Miles,
Plaintiffs,
vs.
Michael J. Astrue, Commissioner of the
Social Security Administration,
Defendant.

No. CV-09-213-TUC-JMR

ORDER

In this Social Security case, Plaintiffs were ordered to effect service on the Defendant within 30 days of the Court’s order of April 28, 2010 (*see* Doc. 10). According to the docket, that service has not taken place. In light of Plaintiffs’ failure to serve, the Magistrate Judge offered a Report and Recommendation (R&R) stating that the case should be dismissed under Federal Rule of Civil Procedure 4(m), allowing the Court to dismiss a claim without prejudice if the plaintiff fails to serve the defendant.

Plaintiffs filed an affidavit with the Court on September 8, 2010 that the Court construes as an objection to the Magistrate’s R&R. In that objection, the Plaintiffs state that they “followed the orders of the Magistrate Judge and served the complaint to the defendant.” However, the Social Security Administration has not acknowledged service, made an appearance, filed an answer, or given any indication that it was served. Further, proving that

1 a party mailed a complaint to a defendant is insufficient on its own to prove that service took
2 place. The Plaintiffs have not submitted the certified mail receipt stating that the delivery was
3 received by the Social Security Administration. Nor have the Plaintiffs hired a process server
4 who could attest to personal service.

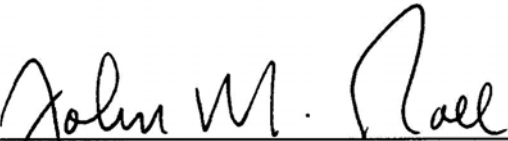
5 In light of these defects, the Magistrate's R&R is adopted. This case is dismissed
6 without prejudice.

7 Accordingly, **IT IS ORDERED:**

8 Plaintiffs' Complaint (Doc. 1) is **dismissed without prejudice**. The Clerk is directed
9 to close the case.

10 DATED this 20th day of October, 2010.

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John M. Roll
Chief United States District Judge