

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

|                                       |   |                                  |
|---------------------------------------|---|----------------------------------|
| <b>NAOMI WILLIAMS,</b>                | ) |                                  |
|                                       | ) |                                  |
| <b>Plaintiff,</b>                     | ) |                                  |
|                                       | ) |                                  |
| <b>v.</b>                             | ) | <b>CIVIL ACTION 08-0506-WS-C</b> |
|                                       | ) |                                  |
| <b>LE CREWE DE SPANIARDS, et al.,</b> | ) |                                  |
|                                       | ) |                                  |
| <b>Defendants.</b>                    | ) |                                  |

**ORDER**

This matter is before the Court on the Magistrate Judge’s report and recommendation (“R&R”) that the motion to dismiss or, in the alternative, to quash filed by The Department of Alabama Veterans of Foreign Wars of the United States (“the Department”) be granted. (Docs. 30, 39). The plaintiff was provided the opportunity to respond to the R&R, (*id.* at 11), but elected not to do so. After carefully considering the R&R and other relevant material in the file, the Court concludes that it should be adopted in part.

To summarize: The complaint names as defendant, “The Veterans of Foreign Wars of the United States, Post Number 5660” (“Post 5660”). (Doc. 1 at 1). The complaint does not name the Department as a defendant. Nor has the Department become a defendant through the complaint’s pleading of fictitious parties.<sup>1</sup> Because the Department is not a defendant, it cannot be dismissed as a defendant. The motion to dismiss is

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<sup>1</sup>This for at least three reasons: (1) those defendants are described as natural persons, not artificial entities; (2) fictitious defendants identified by the plaintiff after filing the complaint can become parties only upon amendment of the complaint, which the plaintiff has not attempted to accomplish; and, dispositively, (3) all claims against fictitious defendants were previously dismissed by Court order, (Doc. 16), since “the Federal Rules do not authorize suit against fictitious parties.” *CSX Transportation, Inc. v. United Transportation Union*, 236 Fed. Appx. 562, 562 n.1 (11<sup>th</sup> Cir. 2007).

therefore **denied as moot**. Because the Department is not a defendant, it cannot properly be served with process. Accordingly, its alternate motion to quash service of process as to it is **granted**.<sup>2</sup> The R&R is **adopted** except to the extent it recommends that the motion to dismiss be granted.

DONE and ORDERED this 23<sup>rd</sup> day of January, 2009.

s/ WILLIAM H. STEELE  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>Neither the Department's motion nor this order addresses the sufficiency of service of process on Post 5660 by service on John Hancock.