

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**BETTY JOHNSON**

**CIVIL ACTION**

**VERSUS**

**No. 09-4400**

**DAVIS PRO, ET AL.**

**SECTION I/2**

**ORDER AND REASONS**

Before the Court is a motion to dismiss filed by the United States on behalf of the Federal Emergency Management Agency (“FEMA”).<sup>1</sup> Plaintiff, Betty Johnson, has not opposed the motion.<sup>2</sup> For the following reasons, the motion is **GRANTED**.

***BACKGROUND***

Plaintiff initiated this lawsuit on August 5, 2008, in the Civil District Court for the Parish of New Orleans. FEMA removed this case pursuant to 28 U.S.C. § 1442(a)(1) on July 14, 2009. On September 10, 2009, FEMA filed this motion to dismiss arguing that plaintiff failed to effect proper service. Plaintiff did not file an opposition to the motion and on October 26, 2009, this Court ordered plaintiff to provide proof of proper service by October 30, 2009. Plaintiff did not do so.

***LAW AND ANALYSIS***

“Federal Rule of Civil Procedure 12(b)(5) provides for dismissal of a claim if service of process was not timely made in accordance with Federal Rule of Civil Procedure 4 or was not properly served in the appropriate manner.” Wallace v. St. Charles Parish Sch. Bd., No. 04-1376, 2005 WL 1155770, at \*1 (E.D. La. May 5, 2005) (Duval, J.). “In the absence of valid

---

<sup>1</sup> R. Doc. No. 8.

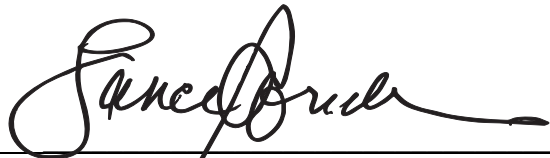
<sup>2</sup> Plaintiff’s opposition to the motion to dismiss was due on September 30, 2009.

service of process, proceedings against a party are void.” Aetna Bus. Credit, Inc. v. Universal Decor & Interior Design, 635 F.2d 434, 435 (5th Cir. 1981). “When service of process is challenged, the party on whose behalf it is made must bear the burden of establishing its validity.” Id. If a defendant is not served within 120 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time. Fed. R. Civ. P. 4(m).

Plaintiff initiated this lawsuit more than one year ago. There is no evidence in either the state court record or the federal record that plaintiff has served FEMA. Additionally, plaintiff has failed to respond to the Court’s order that it provide proof of proper service. Accordingly,

**IT IS ORDERED** that the motion to dismiss is **GRANTED**. Plaintiff’s claims against FEMA are **DISMISSED WITHOUT PREJUDICE**.

New Orleans, Louisiana, November 3, 2009.

A handwritten signature in black ink, appearing to read "Lance Africk", written over a horizontal line.

**LANCE M. AFRICK**  
**UNITED STATES DISTRICT JUDGE**