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WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

HARRY HAYES

CIVIL ACTION NO. 1:16-0153

VERSUS

JUDGE JAMES T. TRIMBLE, JR.

DEPT. OF PUBLIC SAFETY & CORRECTIONS, ET AL

MAG. JUDGE PEREZ-MONTES

.....
MEMORANDUM RULING AND ORDER

Before the court is a "Motion to Dismiss for Insufficient Service of Process" (R. # 9) wherein defendants, the Department of Public Safety and Corrections and M/T Richard Horton filed the instant motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process. Rule 4(j)(2) of the Federal Rules of Civil Procedure states that a state that is subject to suit must be served by either "delivering a copy of the summons and of the complaint to its chief executive officer, or serving a copy of each in a manner prescribed by that state's law for serving a summons or like process on such a defendant." Louisiana Revised Statute 31:5107 provides that service upon the Department must be made upon the Secretary of the Department. Rule 4(m) provides that if a defendant is not served within 90 days of filing of the complaint, the court may dismiss the suit without prejudice unless good cause for the failure is shown by the plaintiff.

The instant suit was filed February 1, 2016 and the motion was filed on May 10, 2016. The court notes that a summons was returned executed by defendants Richard Hayes and the Department of Public Safety & Corrections on May 20, 2016 and the Attorney General has made

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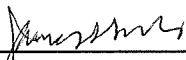
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an appearance in the record. Accordingly, the motion to dismiss based on insufficient service of process is now moot.

IT IS ORDERED that the motion to dismiss is hereby **DENIED**.

THUS DONE AND SIGNED in Alexandria, Louisiana on this 12th day of July, 2016.



JUDGE JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE