

**In the United States District Court
For the Northern District of Georgia
Atlanta Division**

Rev. MARKEL HUTCHINS,)	
)	
)	
Plaintiff)	Civil Action File No.
)	
v.)	1:12-CV-1222-TWT
)	
HON. NATHAN DEAL, <i>et.al.</i> ,)	
Defendants)	

**BRIEF IN SUPPORT OF INTERVENOR’S SECOND
MOTION TO DISMISS**

Introduction

GeorgiaCarry.Org, Inc. (“Intervenor”) filed a Motion to Intervene [Doc. 2] on April 19, 2012. On April 20, 2012, Intervenor filed a Motion to Dismiss [Doc. 3] for lack of standing. Both Motions remain pending and unopposed. Intervenor now files a second Motion to Dismiss, this time for failure to effect service, pursuant to Fed.R.Civ.Proc. 4(m).

Argument

I. Plaintiff Has Failed to Effect Service

Fed.R.Civ.Proc. 4(m) states, in pertinent part:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff –

must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

The Complaint [Doc. 1] in this case was filed on April 10, 2012. The 120-day deadline expired on August 8, 2012, and no proof of service of executed waiver request has been filed as to any defendants. Pursuant to Rule 4(m), therefore, the Court must either dismiss the case or order Plaintiff to serve the defendants.

Given that Plaintiff has not responded to Intervenor's first Motion to Dismiss and has failed to serve either Defendant within the time allowed by law, this case should be dismissed.

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CERTIFICATE OF SERVICE

I certify that on August 9, 2012 I served a copy of the foregoing using the ECF system upon:

Robert H. Patillo, II
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and via U.S. Mail upon

The Hon. Sam Olens
Attorney General of the State of Georgia
40 Capitol Square South
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/s/ John R. Monroe
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