

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA,
Plaintiff,

No. 3:15-cv-01621 (SRU)

v.

ONE PARCEL OF PROPERTY
LOCATED AT 115 BLINMAN STREET,
NEW LONDON, CONNECTICUT, WITH
ALL APPURTENANCES AND
IMPROVEMENTS THEREON,
Defendant,

and

ERNESTO QUINONES, ARIEL
QUINONES,
Claimants.

**ORDER ON ERNESTO QUINONES' MOTION TO DISMISS AND MOTION TO STAY
EXECUTION OF FORFEITURE PENDING APPEAL**

Ernesto Quinones, Claimant, has filed a Motion to Stay Execution of the Forfeiture Pending Appeal, Doc. No. 43, and a Motion to Dismiss, Doc. No. 46. Because those motions are untimely, both motions are denied.

I. Standard of Review

“Under Rule 12(b)(5), a party may file a motion to dismiss due to insufficiency of service of process.” *Rzayeva v. United States*, 492 F. Supp. 2d 60, 74 (D. Conn. 2007). “A motion to dismiss pursuant to Rule 12(b)(5) must be granted if the plaintiff fails to serve a copy of the summons and complaint on the defendants pursuant to Rule 4 of the Federal Rules, which sets forth the federal requirements for service.” *Id.* (citing *Cole v. Aetna Life & Cas.*, 70 F. Supp. 2d

106, 110 (D. Conn. 1999)). “Once validity of service has been challenged, it becomes the plaintiff’s burden to prove that service of process was adequate.” *Id.* (internal quotation marks omitted).

II. Background

Ernesto Quinones was arrested on April 7, 2015. Compl., Doc. No. 1, at ¶¶ 27, 30. On May 24, 2017, he pleaded guilty to Sale of Narcotics or Hallucinogens other than Marijuana in Connecticut Superior Court and was sentenced to a six-year prison term. *See* Connecticut Superior Court Docket No. KNL -CR15-0329030-T, located at <https://www.jud2.ct.gov/crdockets/CaseDetailDisp.aspx?source=Pending&Key=5f6cfcca-245b-41bd-abef-f844dce12977> (last viewed May 2, 2019). The Government filed a Verified Complaint of Forfeiture against the real property located at 115 Blinman Street, New London, Connecticut (“Defendant Property”) on November 9, 2015. *See* Compl., Doc. No. 1. While incarcerated at Corrigan Radgowski detention facility, before being transferred to Osborn Correctional Institution, Ernesto Quinones received service of the complaint via certified mail, which was delivered on December 15, 2015. Doc. No. 5. Almost six months later, on June 28, 2016, after Ernesto Quinones failed to file an appearance or to file any other motion or pleading, the Government filed a motion for Default Entry 55(a) against Ernesto Quinones. Doc. No. 8. On August 8, 2016, pursuant to Federal Rule of Civil Procedure 55(b), the Government filed a Motion for Default Judgment against Ernesto Quinones. Doc. No. 13. The Court granted the Government’s motion for Default Judgment against Ernesto Quinones on October 6, 2016. Doc. No. 14. On January 18, 2018, more than one year after entry of the Default Judgment against Ernesto Quinones, the Government filed a Motion for Partial Decree of Forfeiture regarding Ernesto Quinones’ one-half interest in the Defendant Property. Doc. No.

22. The Court entered a partial decree of forfeiture for Ernesto Quinones' interest in the Defendant Property on January 19, 2018. Doc. No. 23. On February 28, 2018, the Partial Decree of Forfeiture was filed on the New London Land Records. *See* Doc. No. 2018000678, City of new London Online Document Search, located at <https://countyfusion7.kofiletech.us/countyweb/main.jsp?countyname=TownFusion> (last viewed May 2, 2019).

III. Discussion

Ernesto Quinones has filed multiple motions objecting to the forfeiture of his one-half interest in the Defendant Property but has never claimed, until now, that he did not receive timely notice of this federal civil judicial forfeiture action. In addition, he does not recognize that the District Court entered a Partial Decree of Forfeiture against his one-half interest in the Defendant Property on January 19, 2018, forfeiting his interest to the United States. *See* Doc. No. 23.

Pursuant to Rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure, Ernesto Quinones had 60 days to file a Notice of Appeal in accordance with Rule 4(c) of the Federal Rules of Appellate Procedure. To be timely, Ernesto Quinones had to file a Notice of Appeal on or before March 20, 2018. More than a year later, Ernesto Quinones filed several untimely motions to the District Court, including a Motion to Stay Execution of the Forfeiture Pending Appeal, Doc. No. 43, and a Motion to Dismiss, Doc. No. 46.

Accordingly, both of Ernesto Quinones' untimely motions are denied.

IV. Conclusion

For the foregoing reasons, the Motion to Dismiss and the Motion to Stay Execution of the Forfeiture Pending Appeal are denied.

So ordered.

Dated at Bridgeport, Connecticut, this 2nd day of May 2019.

/s/ STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge