

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

<p>UNITED STATES OF AMERICA,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">vs.</p> <p>TWO FIREARMS,</p> <p style="text-align:center">Defendant.</p>	<p>CV 17-43-BU-BMM</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE OF FORFEITURE</p>
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This matter having come before the Court on the United States' Unopposed Motion for Entry of Judgment and Order of Forfeiture, and the Court having reviewed the Motion and the Settlement Agreement filed with the Court, hereby makes the following Findings of Fact, Conclusions of Law, and Decree:

FINDINGS OF FACT

1. On July 7, 2017, the United States filed a Verified Complaint for Forfeiture *In Rem* against the above-captioned defendant property. (Doc. 1).
2. Pursuant to Supplemental Rule G(4)(b)(v), the United States provided "direct notice" of this civil asset forfeiture action to known potential claimants on August 4, 2017, by mailing the Notice of Complaint for Forfeiture (Doc. 2) and

Verified Complaint *In Rem* (Doc. 1) to Douglas Mascari and William Reaves, via first class U.S. mail and certified mail, return receipt requested, to the address provided in their administrative claims. (See Doc. 2).

3. On September 8, 2017, Douglas Mascari and William Reaves, through their counsel, filed a verified claim (Doc. 7), and on September 28, 2017, an Answer was filed. (See Doc. 8).

4. Notice of this forfeiture action was also provided to unknown potential claimants by publishing on the government's asset forfeiture website the Notice of Forfeiture Action for 30 consecutive days, beginning on July 25, 2017, and ending on August 23, 2017. The "Notice of Forfeiture Action" provides in pertinent part as follows:

Any person claiming a legal interest in the Defendant Property must file a verified Claim with the court within 60 days from the first day of publication (July 25, 2017) of this Notice on this official government internet web site and an Answer to the complaint or motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days thereafter. . . .

(Dec. of Publication, Doc. 6-1).

5. Unknown potential claimants failed to file a claim within 60 days from the first day of publication, and an answer or motion within 21 days thereafter as required by Supplemental Rules G(5)(a)(ii)(B) and G(5)(b) and Fed. R. Civ. P. 12. After a motion for entry of default (Doc. 14), supported by Declaration (Doc. 15),

the Clerk of Court entered the default of unknown potential claimants on August 21, 2018. (Doc. 16).

6. Plaintiff and claimants, Douglas Mascari and William Reaves, through their Counsel, Jami Rebsom, entered into a Settlement Agreement filed with the Court on August 10, 2018. (Doc. 13) Pursuant to the Settlement Agreement, the parties agree to the entry of a judgment on the Verified Complaint for Forfeiture *In Rem* in favor of the United States for the Glock GMBH Pistol, CAL:40 SN:HES727. The parties agree that all right, title and interest in the Glock GMBH Pistol, CAL:40 SN:HES727 shall vest in the United States.

7. The parties further agree that the United States shall return to Claimant, Douglas Mascari, the COLT King Cobra Revolver CAL:357 SN:3712CK upon execution of the Acknowledgment of Notice. It was also further agreed, by and between the parties, that each party will bear its own costs, fees, expenses and attorney fees. Douglas Mascari did execute the Acknowledgement of Notice. (Doc. 13, Att. 1).

Based upon the foregoing findings of fact, the Court makes the following conclusions of law:

CONCLUSIONS OF LAW

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1355.

The United States filed a Verified Complaint for Forfeiture *In Rem* to forfeit the defendant property. Under the Settlement Agreement filed with the Court, the Glock GMBH Pistol, CAL:40 SN:HES727, shall be forfeited to the United States, and , the COLT King Cobra Revolver CAL:357 SN:3712CK, shall be returned to claimant, Douglas Mascari.

2. Pursuant to 28 U.S.C. §§ 1355(b)(1)(A) and 1395(b) or (c), venue is proper in this district because this is a civil proceeding to forfeit United States Funds found in this district and the acts or omissions complained of occurred in this district.

3. In accordance with 18 U.S.C. Section 981(a)(1)(A) and Section 1956, incorporating 21 U.S.C. Section 841, the Glock GMBH Pistol, CAL:40 SN:HES727 is subject to forfeiture. Civil forfeitures are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture.

4. Based on the facts set forth in the Verified Complaint *In Rem* and the Settlement Agreement filed with this Court, the Glock GMBH Pistol, CAL:40 SN:HES727 was knowingly utilized by a person who is subject to a court order that was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; and which order restrains such person

from harassing, stalking, or threatening an intimate partner of such person, and by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner, to possess in or affecting commerce, any firearm or ammunition. Under 18 U.S.C. § 924(d)(1), any firearm and ammunition involved or used in any knowing violation of 18 U.S.C. § 922(g) shall be subject to seizure and forfeiture. Thus, the defendant property is liable for forfeiture to the United States for its use in accordance with 18 U.S.C. Section 924 (d)(1).

5. The COLT King Cobra Revolver CAL:357 SN:3712CK shall be returned to claimant, Douglas Mascari, under the terms of the Settlement Agreement. (Doc 13).

6. Notice of this action was properly provided in accordance with Supplemental Rule G(4). No other persons, other than Douglas Mascari and William Reaves, have filed a claim, and claimants Douglas Mascari and William Reaves have settled this matter. Default is proper to any other potential unknown claimants under Fed. R. Civ. P. 55(b)(2).

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Glock GMBH Pistol, CAL:40 SN:HES727 is forfeited to the United States and shall be disposed of in accordance with the law.

2. The ATF is directed, pursuant to the terms of the settlement agreement, to return the COLT King Cobra Revolver CAL:357 SN:3712CK to claimant, Douglas Mascari.

3. Any other claims to the defendant property by persons are barred by default.

DATED this 10th day of October, 2018.



Brian Morris
United States District Court Judge