

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

**SMITH & WESSON 9MM PISTOL, SERIAL
NUMBER PDL2755, et al.,**

Defendants.

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Civil Action No.: 4:17-cv-00388

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, the matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On April 2, 2019, the report of the Magistrate Judge (the “Report”) (Dkt. #9) was entered, containing proposed findings of fact and recommendations that Plaintiff the United States of America’s (“United States” or “Government”) Motion for Default Judgment (the “Motion”) (Dkt. #7) against the Defendant Property, a Smith & Wesson 9mm pistol, serial number PDL2755, et al., be granted. See *id.*

Having received the Report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s report as the findings and conclusions of the Court.

I. BACKGROUND

On June 5, 2017, the United States filed its Verified Complaint for Forfeiture in Rem (Dkt. 1). In the Complaint, the United States asserts an action for forfeit property pursuant to 18 U.S.C. §§ 922(g)(1) and 924(c), and 21 U.S.C. § 846. Specifically, the United States seeks forfeiture of the following Defendant Property: (1) Smith & Wesson 9mm pistol, serial number PDL2755, seized from Narbel Penaloza (“Penaloza”) on October 16, 2008; (2) Bryco Arms Jennings Model T380 pistol, serial number 1328835, seized from Pablo Aviles (“Aviles”) on June 3, 2010; (3) Hipoint 9mm pistol, serial number P1293053, seized from Moises Lopez (“Lopez”) on January 18, 2011; and (4) Taurus PT 92 AFS 9mm pistol, serial number TRF 23218, seized from Delfino Garcia (“Garcia”) on January 19, 2011. See Dkt. #1 at 1–2.

II. DISCUSSION

The Court finds the Government complied with the mandatory notice procedures, prescribed in the Supplemental Rule for Admiralty or Maritime Claims and Asset Forfeiture Actions G(4)(a)(iv)(C), by posting the Notice of Civil Forfeiture at www.forfeiture.gov for at least thirty consecutive days. The Notice required any claimant to the property to file a claim with the Court within sixty days from the first date of the publication of the Notice, and serve and file an answer to the complaint or a motion under Federal Rule of Civil Procedure 12 within twenty days after the filing of the claim, as provided by Supplemental Rule of Certain Admiralty and Maritime Claims and Asset Forfeiture Actions G(5).

In this case, the Government also served potential claimants by certified mail. See Dkt. #7 at 2. No claim or answer has been filed by any other person or entity, and the time for filing a claim has passed. On October 11, 2018, the Clerk entered default in this matter, confirming that no potential parties or claimants have answered or otherwise made a claim in this case. See Dkt. #8.

Further, since the filing of the Motion for Default Judgment (Dkt. #7) on October 10, 2018, or the Report (Dkt. #9) on April 2, 2019, no claimant has appeared or attempted to appear in this matter. See Dkts. #10–17.

Upon consideration, the Motion for Default Judgment (Dkt. #7) is **GRANTED**.

II. CONCLUSION

IT IS THEREFORE ORDERED that the Government’s Motion for Default Judgment (Dkt. #7) against the Defendant Property is **GRANTED**, and that all right, title, and interest in the Defendant Property is vested in the United States. The Defendant Property should be disposed of according to law.

IT IS SO ORDERED.

SIGNED this 29th day of April, 2019.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE