


Civ. P. 12(b)(5). If a party does not make a motion under Rule 12, he must include the defense of insufficiency of service of process in his responsive pleading. *Golden v. Cox Furniture Mfg. Co., Inc.*, 683 F.2d 115, 118 (5th Cir. 1982). Objections to service of process “must be raised in a timely fashion, *i.e.*, as a party’s first pleading in the case, or they are waived.” *Broadcast Music, Inc. v. M.T.S. Enterprises, Inc.*, 811 F.2d 278, 281 (5th Cir. 1987) (citing Fed. R. Civ. P. 12(h)(1); *Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1298 (5th Cir. 1985).

Hinojosa has failed to file any motion contesting the alleged insufficient service, and did not raise insufficient service as an affirmative defense in his answer. *Def.’s Answer and Affirmative Defenses* at 4–5. Any subsequent attempt to raise insufficient service as a defense will be “untimely,” and, thus, Hinojosa’s ability to raise such a defense is precluded. *See Broadcast Music*, 811 F.2d at 281.

For all of these reasons, Plaintiffs’ Motion is **DENIED as moot**.

SO ORDERED.

Date: July 11, 2013.


BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS