
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

2014 JEEP GRAND CHEROKEE,
VIN: 1C4RJFDJ4EC309681,

Defendant in Rem,

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:16-cv-1145-CW-BCW

Judge Clark Waddoups

Magistrate Judge Brooke C. Wells

The case was assigned to United States District Court Judge Clark Waddoups, who then referred it to United States Magistrate Judge Brooke C. Wells (“Judge Wells”) pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 8.)

On November 7, 2016, the U.S. Attorneys’ Office filed Complaint for Forfeiture in Rem against a 2014 Jeep Grand Cherokee. (ECF No. 1.) David Miramontes filed a Cross-claim challenging forfeiture on December 13, 2016. (ECF No. 4.) Following discovery in the case, and pursuant to motion, on April 13, 2017, the U.S. Attorneys’ Office filed an Amended Complaint. (ECF No. 10.) On April 17, 2017, Mr. Miramontes filed a Motion for Extension of Time to respond, which the court granted. See ECF Nos. 13 and 14, respectively. Instead of filing a response to the Amended Complaint, Mr. Miramontes filed a document entitled “Request to Deny Amended Complaint, or Notice Opposing Defendant’s Motion for Leave to Amend Complaint.” (ECF No. 15.) On August 8, 2017, the U.S. Attorneys’ Office filed a Motion to Strike Claim and Cross Claim of David Miramontes. (ECF No. 16.) The basis for the motion

was that despite the court's extension, Mr. Miramontes had failed to answer the Amended Complaint, and the deadline to do so had passed.

In a civil forfeiture matter, a claimant must file both a claim and an answer. See Supplemental Rules, Rule G(5)(a) and 5(b). Where a claimant fails to file an answer he lacks standing and the court should strike his claim. See U.S. v. All Assets Held at Bank Julius Baer & Co., Ltd. 664 F. Supp.2d 97, 101-04 (D.D.C 2009) (granting Rule G(8)(c) motion to strike for failure to file an answer); United States v. \$12,126.00 in U.S. Currency, 2009 WL 2156960, 337 Fed. Appx. 818, 820 (11th Cir. 2009) (unpublished) (the Government may move under Rule G(8)(c) to strike a claim for failure to comply with Rule G(5) or for lack of standing under Rule G(8)(c)).

Here, on September 5, 2017, Judge Wells issued an Order clarifying the record and allowing Mr. Miramontes an additional 30 days to respond to the Amended Complaint, but the Order was returned as undeliverable. (ECF No. 17.) Using the Bureau of Prisons' Inmate Locator, the Clerk's Office located Mr. Miramontes and forwarded him the Court's September 5th Order. (ECF No. 19.) As of November 13, 2017, Mr. Miramontes still had not answered the Amended Complaint. Accordingly, on November 14, 2017, Judge Wells issued a Report and Recommendation recommending that the Motion to Strike the Claim and Cross Claim be granted. Mr. Miramontes did not file an objection to the recommendation and the time for doing so has passed.

Having reviewed the Report and Recommendation, the court agrees that Mr. Miramontes failed to respond to the Amended Complaint and that the Government's request to strike the claim and cross claim was proper. Accordingly, the court APPROVES AND ADOPTS Judge Well's Report and Recommendation (ECF No. 19) in its entirety.

SO ORDERED this 1st day of December, 2017.

BY THE COURT:



Clark Waddoups
United States District Judge