

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARK CRUMPACKER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CAROLINE CIRAOLO-KLEPPER; )  
 MICHAEL MARTINEAU; )  
 MARK J. LANGER; )  
 COMM'R., INTERNAL REVENUE; )  
 UNITED STATES ATTORNEY GENERAL; )  
 and )  
 2 UNKNOWN-NAMED IRS/DOJ )  
 ATTORNEYS, )  
 )  
 Defendants. )

Case No. 1:16-cv-01053

\_\_\_\_\_  
UNITED STATES OF AMERICA )  
 )  
 Counterclaim Plaintiff, )  
 )  
 v. )  
 )  
 MARK CRUMPACKER;MICHAEL B. ELLIS;) )  
 and ROBERT A. MCNEIL )  
 Counterclaim Defendants. )

**DECLARATION OF RYAN O. MCMONAGLE**

I, Ryan O. McMonagle, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a trial attorney with the United States Department of Justice, Tax Division and am counsel for the United States in this matter. I have personal knowledge of the matters set forth below, and if called as a witness, could testify competently thereto.

2. On or about September 22, 2016, my office received by mail from the counterclaim defendants, and other individuals, a document purporting to be an Answer to the

United States' counterclaim in this case, and a purported "cross-counterclaim." That purported pleading asserts that it was filed by mail with the Clerk of Court for the United States District Court for the District of Columbia. A true and correct copy of that document is attached hereto as Exhibit A.

3. From December 26, 2016 until January 9, 2017, I was on approved leave from the Department of Justice.

4. Because I received by mail a purported "answer" from the counterclaim defendants, I do not believe that I could in good faith represent to the Court that the counterclaim defendants have "failed to plead or otherwise defend" the United States' counterclaim. Accordingly, the United States has not sought the entry of a default judgment.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 30, 2017 at Washington, District of Columbia

/s/ Ryan O. McMonagle  
RYAN O. MCMONAGLE

*McMonagle*



Attn: Clerk of Court of the District Court of the United States  
In the District of Columbia  
333 Constitution Ave., NW  
Washington, D.C. 20001

*Mr. McMonagle  
This doc explains  
the enclosures.  
Beet*

Cause ~~Crumpacker~~ v. ~~Ciraolo-Klepper~~, et al. 1:16-CV-1053  
RE: ~~Answer to Counterclaim & Cross-Counterclaim~~  
~~Eight (8) Declarations in Support of Cross-Counterclaim, and~~  
~~Motion to Certify Class~~

September 9<sup>th</sup>, 2016

Dear Clerk,

First, please find enclosed the Original and three copies of "The Answer of CounterClaim Defendants (Crumpacker, McNeil and myself, Michael Ellis) and Original Cross-Counterclaim", by Eight Cross-counterclaim Plaintiffs.

Second, each Cross Counterclaim Plaintiff has filed a separate, stand-alone sworn "Declaration ... with Evidence Appended in Support of Answer & Cross-Counterclaim", so please find an Original Declaration and three copies of each Plaintiff's sworn "Declaration..."

Third and finally, each Cross-Counterclaim Plaintiff, including myself, has filed motions to certify a class, and for appointment of counsel. So please find an Original and three copies of the "Motion by Cross-Counterclaim Plaintiffs to Certify a Class and for Appointment of Counsel Paid by the Government".

Please file each into the case styled and numbered above. If possible, please file stamp one copy of each and return it to me at the address listed below.

If there is ANY PROBLEM whatsoever with the filings, please reach me or Mr. McNeil by phone. (His number is [redacted].) We will be delighted to assist or clarify the filings in any way possible.

Thank you for your assistance.

Sincerely,

Michael Ellis  
5052 N.E. County Road 0220  
Rice, Texas 75155



**Exhibit**  
A

*2016101754*

RECEIVED  
U.S. DISTRICT COURT  
SEP 22 PM 3:15



**James W. Morris**  
9317 Frenchman's Way  
Dallas, Texas 75220-5039

§  
§  
§

**William B. McGarvin**  
2977 Hwy. K, Apt. 235  
O'Fallon, Mo. 63368

§  
§  
§

**Adele Podgorny**  
c/o 11445 E. Via Linda Ste 2-262  
Scottsdale, Arizona  
85259-2655-995

§  
§  
§

**Cross-Counterclaim Plaintiffs** §

**V.** §

**United States of America,** §

**Cross-Counterclaim Defendant**

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**ANSWER of COUNTERCLAIM DEFENDANTS (Crumpacker, McNeil, Ellis)  
and ORIGINAL CROSS-COUNTERCLAIM**

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1. Counterclaim Defendants Robert A. McNeil, Mark Crumpacker, and Michael Ellis (hereinafter CCDs) file their Original Answer to the Counterclaim filed by The United States of America (hereinafter USA).<sup>1</sup> Also herein, Cross-Counterclaim Plaintiffs (hereinafter CCCPs), Robert A. McNeil, Mark Crumpacker, Michael Ellis, L. Ronald DePolo, Gary S. Dwaileebe, James W. Morris, William B. McGarvin and Adele Podgorny, bring their Cross-Counterclaim against USA (hereinafter CCCD).

**Jurisdiction and Venue**

2. The court has jurisdiction to hear this Cross-Counterclaim because a.) it involves questions of federal law, specifically the failure of the Commissioner of IRS to fulfill the requirements of 26 U.S.C. § 6020(b)(1) mandating the Secretary (or his designee) make a return from his knowledge and/or from such information as he can obtain through testimony or otherwise in cases involving those IRS labels "income tax non-filers".<sup>2</sup>

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<sup>1</sup> Defendants McNeil and Crumpacker were not served the Counterclaim Complaint by the United States.

<sup>2</sup> **6020(b)Execution of return by Secretary**

**(1) Authority of Secretary to execute return**

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because all or a substantial part of the events giving rise to the CCCPs' claims for injunctive and other relief, occurred in this judicial district.

#### **Counterclaim Plaintiff USA and McMonagle**

4. USA is represented by Channing D. Phillips, United States Attorney; Caroline D. Ciruolo, Principal Deputy Assistant Attorney General, and a Trial Attorney for the Tax Division of the U.S. Department of Justice, Ryan O. McMonagle.

#### **Cross-Counterclaim Defendants**

5. Knowing there is no lawful defense of IRS' institutionalized record falsification program, and realizing he cannot lawfully refute its existence as proven by incontrovertible documents, records and concessions *produced by the IRS*, some of which is attached hereto as Exhibits A-H, (eight Declarations with Evidence attached), Mr. McMonagle now has initiated a patently frivolous attack upon IRS victims, filing his "counterclaim" in the name of the USA.

#### **Cross-Counterclaim Plaintiffs**

6. McMonagle's Counterclaim seeks to affect the rights of an unnamed class, but to which he refers to variously as "*those acting in concert* with them (Crumpacker, McNeil and Ellis) or at their direction",<sup>3</sup> or as "Counterclaim Defendants *and their followers*". (See Counterclaim at ¶ 83). McMonagle has thus sued the entire putative Class of victims of the IRS record falsification scheme, both those who have already filed suits to enjoin it, and those who have yet to file. Hence, all putative Class victims are now justified to enter this Cross-Counterclaim as Plaintiffs, and a Motion to Certify the Class is filed contemporaneously with this Answer and Cross Counterclaim, seeking permission to furnish counsel of unqualified integrity and top flight caliber to represent the interests of the Class, at Government expense.

### **FIRST GENERAL DEFENSE**

7. At Counterclaim ¶64, USA seeks to enjoin CCDs from filing, or assisting any other victims of the IRS record falsification program in filing, what Mr. McMonagle labels "frivolous" and "duplicative lawsuits" in the District of Columbia Federal District Court.
8. In response, CCDs and CCCPs state they have neither filed, nor encouraged the filing by others of any "frivolous" case, as that term has been defined in IRS Publication dated February 2016 and titled "The Truth About Frivolous Tax Arguments." In fact, IRS has never defined a lawsuit seeking to terminate its record falsification program as 'frivolous'.

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(2) **Status of returns** Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

<sup>3</sup> Counterclaim at ¶ 73, 82, etc.

## SECOND GENERAL DEFENSE

9. No case to which McMonagle alludes in said Counterclaim at ¶¶58-63, under the heading “Defendants’ Frivolous Lawsuits,” has been deemed “frivolous” by the presiding judge, nor has any court meted out any punishment for filing same.
10. In fact, despite repeated, duplicative requests from attorneys representing the United States in cases filed by putative Class victims to date, [See Motion to Dismiss by DoJ attorney Michael J. Martineau in *Ellis v. Commissioner, et al*, 1:14-CV-471 (ABJ), and Motion to Dismiss by DoJ attorney Michael J. Martineau in *DePolo v. Commissioner, et al*, 1:15-CV-2039 (RMC), etc.] all Courts have repeatedly declined the DoJ request to find that victims of IRS’ institutionalized record falsification program have filed frivolous lawsuits.
11. Undaunted, Mr. McMonagle in his Counterclaim asks this Court to do what none of its contemporaries was willing to do: label incontrovertible allegations and evidence of IRS’ record falsification program as “frivolous”, before any court has had opportunity to review the evidence supporting the putative Class’ claims. In other words, despite Mr. McMonagle’s inability and utter failure to controvert the core class claim that IRS does not execute procedurally correct “substitute income tax returns” under 6020(b), but instead institutionally falsifies records concerning those it labels “non-filers” to make it appear that it has, he makes yet another lawless request on behalf of the DoJ to find the putative Class action “frivolous”.
12. USA’s repeated use of the epithet “frivolous” simply does not make it so.

## THIRD GENERAL DEFENSE

13. The rules of this court specifically authorize a pro se non-prisoner to receive help from other non-attorneys in drafting pleadings and other papers. (See I(B)(b) Pro Se Non-Prisoner Handbook published by the U.S. District Court for the District of Columbia.) Therefore, CCDs cannot be enjoined from doing what the Court, itself, specifically authorizes.

## COUNTERCLAIM DEFENDANTS’ ANSWER

14. CCDs DENY the allegations at ¶74. They offer as evidence to refute McMonagle’s unsworn claim they have filed “factually frivolous” actions, eight (8) Declarations sworn under penalty of perjury proving in explicit detail that their claims ARE factually irrefutable, derived wholly from evidence provided by IRS and the DoJ. [See Exhibits A-H, Declarations with Evidence appended by putative Co-Class Representatives Robert A. McNeil, Mark Crumpacker, Michael B. Ellis, L. Ronald DePolo, Gary S. Dwaileebe, James W. Morris, William B. McGarvin and Adele Podgorny.]

15. CCDs DENY the allegations at ¶75. No law authorizes falsification of Government records, and IRS falsified its records concerning each putative Class representative in invariable, systematic manner, as set forth in Exhs. A-H, appended hereto.
16. CCDs DENY the allegations at ¶76. The evidentiary support lacking in this case is the USA's failure to produce the single most important document related to the enforcement of a federal tax lien: the substitute income tax returns IRS claims to have executed on dates shown in its IMF records concerning each victim, as set forth below.
17. CCDs DENY the allegations at ¶77. The intent of all putative Class lawsuits is to secure relief from a Court to either compel the USA to produce substitutes for return executed on dates IRS claims in its internal records, (set forth serially below with regard to each putative Class Plaintiff who filed suit to enjoin IRS' record falsification program), or, in alternative, enjoin IRS falsification of its records to make it appear it executes SFRs under 6020(b) on claimed dates, when none exist. That is a truly "proper purpose" for filing federal lawsuits against the IRS.
18. CCDs DENY the allegations at ¶78. Knowing that neither the DoJ, nor any court to date, has addressed or mentioned the irrefutable evidence provided by IRS records, documentation and public concessions proving IRS is institutionally, systematically and invariably falsifying records concerning Americans IRS labels "non-filers", knowing that no court to date has granted putative Class Plaintiffs ANY of the required inferences which should have been derived from the irrefutable proof they've offered, and KNOWING that no court has even mentioned, let alone exercised, its equitable power which still exists in extraordinary cases, such as those presented by the putative Class, CCDs see those actions by courts as PROVING the meritorious, incontrovertible content of their cases.
19. CCDs ADMIT the allegations at ¶79, taking exception to the term "frivolous." It is not frivolous to expect the USA to provide the document that shows a substitute income tax return was executed on dates claimed by IRS, especially when lives and fortunes have been lost without a citizen ever having seen the single most important document in the enforcement process.
20. The Court may, of course, make any order or injunction pursuant to 26 U.S.C. § 7402 that is necessary or appropriate for the enforcement of internal revenue laws. The production and disclosure of all evidence relating to the assessment of taxes must be the foundation of any just enforcement action. The court should ORDER the USA to change its policy of non-production of the substitutes for return IRS claims to have executed, as requested below.
21. CCDs DENY the allegations at ¶81, since it is the USA's failure to produce the substitute income tax returns it claims to have executed on certain dates, which is interfering with the just enforcement of internal revenue laws, and which failure is compelling Americans to seek injunctive relief from the Courts, at great personal expense to the individual putative Co-Class victims.



22. CCDs DENY the allegations at ¶82, since it is not “necessary for the enforcement of the internal revenue laws” for IRS to falsify IRS records, or withhold from Americans substitute income tax returns IRS claims to have executed.
23. CCDs DENY the allegations at ¶83, since there is ZERO likelihood that the USA will be harmed by either presenting the substitute income tax returns it claims to have executed on claimed dates in its Individual Master File records concerning each putative Class victim, or by terminating its program to falsify IRS records making it appear IRS executed substitute income tax returns when it didn't.

### **CROSS-COUNTERCLAIM**

24. In each of the cases referenced by USA, the IRS has failed or refused to provide to those Plaintiffs a copy of the substitute income tax return required to be executed by 26 U.S.C. § 6020(b).
25. USA claims in paragraph 72 it has been inundated with similar lawsuits, but refuses to acknowledge that it has failed in every such case to merely provide the Plaintiff a copy of the substitute income tax return from which all assessments and levies flow, which IRS records show IRS supposedly executed on certain claimed dates.
26. In other words, the cases filed by putative Class Plaintiffs, to date, would be justly ended if USA simply provided Plaintiffs the substitute income tax returns IRS claims to have executed on the dates shown in the IMF records of said Plaintiffs.
27. The putative Class members comprised of those directly attacked by Mr. McMonagle and the USA in their Counterclaim, as well as others similarly situated, have filed contemporaneously with this Cross-Counterclaim a Motion to Certify the Class and provide Government funding for representation.
28. USA is herein specifically requested to produce the substitute income tax return concerning the following putative Class victims. Incontrovertible evidence provided by IRS of the purported existence of such returns was injected into the Individual Master File IRS concerning each Plaintiff, and which returns IRS claims<sup>4</sup> it executed on these specified dates:
  - a. Michael Ellis for 2007, executed on 1/13/2010 and 2/8/2010; and
  - b. Robert A. McNeil for 2006, executed on 7/23/2008 and 8/11/2008; and
  - c. Mark Crumpacker for 2002, executed on 6/5/2004 and 6/28/2004; and

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<sup>4</sup> See Exhibits A-H, eight “Declarations in Support of Answer and Cross-Counterclaim” filed contemporaneously with this document by each Plaintiff who has filed a case to enjoin the institutionalized IRS record falsification program.

- d. L. Ronald DePolo for 2004, executed on 8/10/2006 and 8/28/2006; and
- e. Gary S. Dwaileebe for 1996, executed on 10/26/2005 and 11/14/2005; and
- f. James W. Morris for 2009, executed on 9/10/2012 and 10/1/2010; and
- g. William B. McGarvin, executed on 10/22/1994 and 11/28/1994; and
- h. Adele Podgorny, executed on 12/19/2007 and 1/7/2008.

29. Furthermore, these lawsuits ARE a significant part of the enforcement process and IRS/DOJ are only bringing this “problem” on themselves by failing or refusing to provide copies of the substitute returns claimed by IRS to have been executed on the dates shown above concerning each putative CCCP. Compelling the USA to produce key information should not be deemed too burdensome for the IRS and DOJ, as it is a necessary part of any enforcement action.
30. As a result of the USA’s refusal to provide evidence of properly executed substitute income tax returns for those IRS labels “non-filers” to justify USA’s enforcement of tax claims, individual victims have no recourse but to continue seeking equitable remedy from the Courts, and will continue to do so until the pattern of refusal/obfuscation/falsification ends.
31. Unless the Court compels the IRS and DOJ to (a) comply with the requirements of 26 U.S.C. § 6020(b)(1), then actually produce the substitute for return IRS claims in its IMF records to have executed on each date cited above, a grave injustice will continue to be perpetrated upon citizens of this country who simply ask to see the basis on which USA’s claims are made.
32. CCCPs and the unnamed mass of those similarly situated and similarly violated, are tired of being jailed and relieved of their property without the benefit of seeing the substitute income tax return, ostensibly authorized and required by law to be performed by IRS prefatory to seizures, forfeitures and criminal prosecutions of “non-filers”.
33. Those violated by the IRS scheme to produce records showing IRS supposedly executes substitute income tax returns on dates no such thing occurs, will continue to seek redress in the Courts, and cannot lawfully be restrained from so doing, because no other avenue of relief exists.
34. The requested injunction, compelling USA to produce substitute income tax returns supposedly executed pursuant to 26 U.S.C. § 6020(b) on dates shown in IRS’ actionable Individual Master File records which IRS provided putative Class members, is necessary to ensure that “due process” is being carried out in the enforcement of the internal revenue laws.

35. It is not only likely, it is inevitable that irreparable harm to their due process rights will continue to be dealt to citizens who are convicted and jailed, and who's property has been seized, without IRS producing the substitute income tax returns from which all seizures and prosecutions flow, and which IRS claims to have made concerning the CCCPs on the dates shown above.
36. The balance of harms favors the CCCPs, since the DoJ, IRS and judicial system are suspected of favoring their own personal interests over the Rule of Law and the interests of Americans harmed by the IRS failure to produce valid substitute income tax returns.
37. Also, the entire sequence of lawsuits filed by putative Class victims would instantly end, and the courts would no longer be "inundated with suits", if IRS simply provides the procedurally correct substitute income tax returns IRS claims to have executed on the dates given above.
38. A fair and impartial exchange of information between CCCP and the USA regarding the hitherto missing substitute income tax returns is necessary to prevent a further erosion of the public trust, and to restore trust between citizens and their government.

**WHEREFORE, the Cross-Counterclaim Plaintiffs pray for the following relief:**

39. That the Court order CCC Defendant USA and Mr. McMonagle to demonstrate that it is "necessary for the enforcement of the internal revenue laws" that USA either withhold from victims the substitute income tax returns IRS claims to have executed, or that IRS must falsify its records concerning victims to show IRS executed a return when it didn't;
40. That the court order the CCC Defendant USA and McMonagle to produce the substitute income tax return shown on each date shown above whereon IRS claimed to have executed one;
41. That the Court find that the USA has engaged in a pattern of refusal to produce the substitute income tax returns (SFRs) IRS is required to execute pursuant to 26 U.S.C. § 6020(b), and which IRS claims to have executed concerning CCCPs on the dates shown above, derived from incontrovertible IRS internal records concerning the CCCPs;
42. That the Court deny the USA's request to find that the cases to which reference is made in its counterclaim are "factually frivolous" and that the CCCPs "knew that their factual claims lack evidentiary support", when all other courts have declined repeated DoJ invitations in the past to designate putative Class victims' explicit incontrovertible factual allegations in such manner;
43. That the Court deny the USA's request to enjoin McNeil, Crumpacker, Ellis and others from assisting those seeking the substitute income tax return Congress mandates and IRS claims it has executed on certain claimed dates;
44. That the Court deny the USA's request to enjoin McNeil from posting updates to his website about this effort to achieve fairness in the enforcement of the income tax;

45. That, should the CCC Defendant USA fail to provide the substitute income tax returns IRS claims to have executed on the dates shown above, the Court ORDER the USA to prominently post on DoJ and IRS websites for the ensuing five (5) years the public service announcement that IRS has been enjoined from falsifying federal records, and that the class of Americans damaged by the scheme will be offered restitution from suffering inflicted by the institutionalized IRS record falsification program operated by our Government servants, in both the IRS and the DoJ, to enforce the income tax.

46. That the Court ORDER such other and further relief as it deems just and proper.

This Answer and Cross-Counterclaim is

Respectfully submitted.

\_\_\_\_\_  
CCCP Robert A. McNeil  
701 N. Hwy. 281, Suite E 193  
Marble Falls, Texas 7865

Dated: \_\_\_\_\_

\_\_\_\_\_  
CCCP Mark Crumpacker  
14933 Daffodil Avenue  
Canyon Country, California 91351

Dated: \_\_\_\_\_

\_\_\_\_\_  
CCCP Michael Ellis  
5052 N.E. County Road 0220  
Rice, Texas 75155

Dated: \_\_\_\_\_

\_\_\_\_\_  
CCCP Louis Ronald DePolo  
462 Birchwood Drive  
Garland, Texas 75043

Dated: \_\_\_\_\_

\_\_\_\_\_  
CCCP Gary S. Dwaileebe  
PMB 456  
Goffstown, New Hampshire 03045

Dated: \_\_\_\_\_

\_\_\_\_\_  
CCCP James W. Morris  
9317 Frenchman's Way  
Dallas, Texas 75220-5039

Dated: \_\_\_\_\_

\_\_\_\_\_  
CCCP William B. McGarvin  
2977 Hwy. K, Apt. 235  
O'Fallon, Mo. 63368

Dated: \_\_\_\_\_

\_\_\_\_\_  
CCCP Adele Podgorny  
c/o 11445 E. Via Linda Ste 2-262  
Scottsdale, Arizona  
85259-2655-995

Dated: \_\_\_\_\_

### CERTIFICATE of SERVICE

I certify that a copy of the forgoing Answer and Cross-Counterclaim was served via United States Mail on or about \_\_\_\_ Sept. 2016, to the following:

Ms. Loretta Lynch  
United States Attorney General  
Department of Justice  
950 Pennsylvania Ave. NW  
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Mr. John Koskinen  
Commissioner, IRS  
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\_\_\_\_\_  
/s/ Michael Ellis