

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARK CRUMPACKER,	)	
	)	Case No. 1:16-cv-01053
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.	)	
	)	
<hr/> UNITED STATES OF AMERICA	)	
	)	
Counterclaim Plaintiff,	)	
	)	
v.	)	
	)	
MARK CRUMPACKER;MICHAEL B. ELLIS;	)	
and ROBERT A. MCNEIL	)	
Counterclaim Defendants.	)	
	)	

**UNITED STATES' RESPONSE TO ORDER TO SHOW CAUSE**

The United States of America submits the following response to the Court's Order to Show Cause why the United States' counterclaim should not be dismissed for failure to prosecute. The United States avers as follows:

1. Pursuant to the September 8, 2016 Minute Order, the parties were ordered to meet and confer and, by September 30, 2016, to file a proposed schedule for, among other things, Plaintiff to respond to the United States' counterclaim.

2. On or about September 22, 2016, the United States was served by mail with a document purporting to be an answer to its counterclaim by the counterclaim defendants that also contained a “cross-counterclaim” by the counterclaim defendants, and the other individuals whose cases were consolidated with *Dwaileebe v. Martineau*, 1:16-cv-00420. Declaration of Ryan O. McMonagle ¶ 2, Ex. A.<sup>1</sup> The attached document suggests that it was filed by mail with the Clerk of Court.

3. The parties met and conferred but could not agree upon a schedule. The United States submitted a report on September 30, 2016 setting forth a proposed schedule for the filing of a dispositive motion on its counterclaim. Dkt. No. 9.

4. On October 5, 2016, this case and a number of other cases were reassigned to this Court and were consolidated.

5. The United States moved to dismiss the original claim in this case, as well as the purported “cross-counterclaim” on October 7, 2016. Dkt. No. 14

6. Thereafter, counterclaim defendants moved for recusal, moved to stay this case and the consolidated cases, filed a notice of appeal, and (certain counterclaim defendants) responded to the United States’ motion to dismiss in this case.

7. The consolidated cases, including the original claim in this case, were dismissed on December 31, 2016. Dkt. No. 25.

8. Counsel for the United States was on leave from December 26, 2016 until January 9, 2016. McMonagle Decl. ¶ 3.

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<sup>1</sup> The document received by the United States was accompanied by eight declarations with exhibits. The United States has omitted those supporting documents from the attached exhibit on account of the fact that they are voluminous.

9. While the United States has been served with an answer and purported cross-claim, as of the date of this response, that pleading does not appear on the Court's docket.

10. Because the United States received by mail a purported "answer" from the counterclaim defendants, the undersigned does not believe that the United States could in good faith represent to the Court that, pursuant, to Federal Rule of Civil Procedure 55(a), the counterclaim defendants have "failed to plead or otherwise defend" in this case. McMonagle Dec. ¶ 4. Accordingly, the United States has not, to date, sought entry of default or moved the court for an entry of default judgment.

11. The United States respectfully requests that the Court set a deadline of February 28, 2017, for the United States to file a dispositive motion.

Dated January 30, 2017

CHANNING D. PHILLIPS  
United States Attorney

DAVID A. HUBBERT  
Acting Assistant Attorney General

/s/ Ryan O. McMonagle  
RYAN O. MCMONAGLE  
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**CERTIFICATE OF SERVICE**

I certify that on January 30, 2017 I filed the foregoing Response to Order to Show Cause and the attached Declaration of Ryan O. McMonagle and Exhibit with the Clerk of Court using the CM/ECF system, and have caused a copy thereof to be served by U.S. mail, postage prepaid, to the following:

Mark Crumpacker  
14933 Daffodil Avenue  
Canyon Country, California 91387

Michael B. Ellis  
5052 NE County Road 220  
Rice, Texas 75155

Robert A. McNeil  
729 Grapevine Highway #148  
Hurst, Texas 76054

*/s/ Ryan O. McMonagle*  
RYAN O. MCMONAGLE