

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

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UNITED STATES OF AMERICA )  
 )  
 Counterclaim Plaintiff, )  
 )  
 v. )  
 )  
 MARK CRUMPACKER )  
 14933 Daffodil Avenue )  
 Canyon Country, California 91387; )  
 )  
 MICHAEL B. ELLIS )  
 5052 NE County Road 220 )  
 Rice, Texas 75155; )  
 )  
 ROBERT A. MCNEIL )  
 701 N. Hwy 281, Suite E 193 )  
 Marble Falls, Texas 78654, )  
 )  
 Counterclaim Defendants. )

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**ANSWER AND COUNTERCLAIM**

The United States of America, as the real party in interest and in place of the improperly-named federal individual defendants, responds to the allegations of the complaint as follows:

FIRST DEFENSE

The Court lacks subject matter jurisdiction over the claims asserted by Plaintiff in the Complaint.

SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted

THIRD DEFENSE

For its further defense, the United States responds to the numbered paragraphs of Plaintiff's complaint as follows:

1. The United States denies the allegations of paragraph 1.
2. The United States denies the allegations of paragraph 2.
3. The United States denies the allegations of paragraph 3.
4. The United States denies the allegations of paragraph 4.
5. The United States denies the allegations of paragraph 5.
6. The United States denies the allegations of paragraph 6, except that it admits that D.C. Cir. Case No. 15-5035 was dismissed.
7. The statements in paragraph 7 require no response, as the decisions of the United States Court of Appeals for the District of Columbia Circuit Court of Appeals speak for themselves; to the extent a response is required, the United States denies the allegations of paragraph 7.
8. The United States denies the allegations of paragraph 8.
9. The United States denies the allegations of paragraph 9.

10. The United States denies that this court has jurisdiction over this matter under the cited statutes or under its equitable power.

11. The United States denies the allegations of paragraph 11.

12. The United States admits so much of paragraph 12 as it alleges that the Internal Revenue Service (“IRS”) assessed tax liabilities against Plaintiff, and filed an action against Plaintiff to reduce those assessments to judgment and foreclose its federal tax liens on November 4, 2014. The United States denies the remaining allegations of paragraph 12.

13. The statements in paragraph 13 are legal conclusions requiring no response; to the extent a response is required, the United States denies the allegations of paragraph 13.

14. The United States denies the allegations of paragraph 14.

15. The statements in paragraph 15 are legal conclusions requiring no response; to the extent a response is required, the United States denies the allegations of paragraph 15.

16. The statements in paragraph 16 are legal conclusions requiring no response; to the extent a response is required, the United States denies the allegations of paragraph 16.

17. The United States denies the allegations of paragraph 17.

18. The United States denies the allegations of paragraph 18.

19. The United States denies the allegations of paragraph 19.

20. The United States denies the allegations of paragraph 20.

21. The United States denies the allegations of paragraph 21.

22. The United States admits so much of paragraph 22 as it alleges that Document Locator Numbers are associated with transactions on a tax module and that the referenced Document Locator Number is associated with Plaintiff’s transcript. The United States denies the remaining allegations of paragraph 22.

23. The United States admits so much of paragraph 23 as it alleges that the IRS assessed \$16,223 in unpaid income taxes plus penalties and interest against Plaintiff. The United States denies the remaining allegations of paragraph 23.

24. The United States admits so much of paragraph 24 as it alleges that the IRS assessed taxes, penalties and interest against Plaintiff on August 20, 2004. The United States denies the remaining allegations of paragraph 24.

25. The United States denies the allegations of paragraph 25.

26. The United States denies the allegations of paragraph 26.

27. The United States admits so much of paragraph 27 as it alleges that the IRS recorded a Notice of Federal Tax Lien for the personal income taxes assessed against Plaintiff for the 2002 and 2003 tax years. The United States denies the remaining allegations of paragraph 27.

28. The United States admits so much of paragraph 28 as it alleges that a Form 2866 Certificate of Official Record, and Form 4340 Certificate of Assessments, Payments, and Other Specified Matters were prepared on October 24, 2014 with respect to Plaintiff for the 2002 tax year under the name D.T. Harris, Director Field Collection, Southwest Area. The United States denies the remaining allegations of paragraph 28.

29. The United States admits so much of paragraph 29 as it alleges that a Form 2866 Certificate of Official Record, and Form 4340 Certificate of Assessments, Payments, and Other Specified Matters were prepared on October 24, 2014 with respect to Plaintiff for the 2002 tax year under the name D.T. Harris, Director Field Collection, Southwest Area. The United States denies the remaining allegations of paragraph 29.

30. The United States admits so much of paragraph 30 as it alleges that AUSA Charles Parker filed a complaint against Plaintiff in the United States District Court for the Central District of California, Case No. 14-cv-8575, to reduce federal tax assessments to judgment and foreclose federal tax liens. The United States denies the remaining allegations of paragraph 30.

31. The United States admits so much of paragraph 31 as it alleges that a number of cases have been filed in the United States District Court for the District of Columbia raising the same legal claims as Plaintiff raises in this action. The United States denies the remaining allegations of paragraph 31.

32. The United States denies the allegations in paragraph 32 except that it admits that the named defendants have been named personally in other lawsuits in this District.

33. The United States denies the allegations of paragraph 33.

34. The United States admits so much of paragraph 34 as it alleges that the case referenced 34 was filed in this District and was dismissed; the United States denies the remaining allegations of paragraph 34.

35. The statements in paragraph 35 require no response, as the decisions of the United States District Court for the District of Columbia speak for themselves; to the extent a response is required, the United States denies the allegations of paragraph 35.

36. The statements in paragraph 36 require no response, as filings in the United States Court of Appeals for the District of Columbia Circuit speak for themselves; to the extent a response is required, the United States denies the allegations of paragraph 36.

37. The statements in paragraph 37 require no response, as the decisions of the United States Court of Appeals for the District of Columbia Circuit speak for themselves; to the extent a

response is required, the United States admits that Plaintiff's appeal was dismissed on November 20, 2015, and denies remaining the allegations of paragraph 37.

38. The statements in paragraph 38 require no response, as the decisions of the United States Court of Appeals for the District of Columbia Circuit Court of Appeals speak for themselves; to the extent a response is required, the United States denies the allegations of paragraph 38.

39. The statements in paragraph 39 require no response; to the extent a response is required, the United States denies the allegations of paragraph 39.

40. The statements in paragraph 40 require no response; to the extent a response is required, the United States denies the allegations of paragraph 40.

41. The statements in paragraph 41 require no response; to the extent a response is required, the United States denies the allegations of paragraph 41.

42. The United States realleges paragraphs 1-41 as if set forth fully herein.

43. The first sentence of paragraph 43 states legal conclusions which require no response; to the extent a response is required, the United States denies the allegations in the first sentence of paragraph 43. The United States denies the remaining allegations of paragraph 43.

44. The United States denies the allegations in paragraph 44.

45. The United States denies the allegations in paragraph 45.

46. The United States realleges paragraphs 1-45 as if set forth fully herein.

47. The United States denies the allegations in paragraph 47.

48. The United States denies the allegations in paragraph 48.

49. The United States denies the allegations in paragraph 49.

50. The United States admits so much of paragraph 50 as it alleges that citizens have a right to access United States courts; the United States denies the remaining allegations of paragraph 50.

51. The United States denies the allegations in paragraph 51.

52. The United States denies the allegations in paragraph 52, except that it admits that Plaintiff lacks any legal avenue to maintain his suit.

WHEREFORE, the United States prays that the Court

- A. Deny the relief sought in the complaint, dismiss the complaint with prejudice, and
- B. Grant such other relief that the Court deems appropriate.

**COUNTERCLAIM FOR INJUNCTIVE RELIEF AGAINST  
MARK CRUMPACKER, MICHAEL B. ELLIS, AND ROBERT A. MCNEIL**

The United States of America, as the proper defendant and counterclaim plaintiff, brings this counterclaim to:

Permanently enjoin Mark Crumpacker, Michael B. Ellis, and Robert McNeil from filing any action in the United States District Court for the District of Columbia without obtaining prior leave from the court, and from assisting in filing, or inciting others to file, any further frivolous actions in this District without obtaining prior leave from the court, which:

- Assert or purport to assert a claim under the United States Constitution or Administrative Procedure Act (5 U.S.C. § 701, *et seq.*) (the “APA”) challenging actions taken by the Internal Revenue Service in preparing to assess and assessing income tax liabilities pursuant to 26 U.S.C. § 6020; and/or

- Assert or purport to assert a claim under the United States Constitution or the APA challenging actions taken by the Department of Justice to defend against the suits described above and/or collect income tax liabilities.

### **JURISDICTION AND VENUE**

53. Jurisdiction is conferred on the Court by 28 U.S.C. §§1340 and 1345, and 26 U.S.C. § 7402.

54. 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 Government's claim for an injunction and other relief occurred in this judicial district.

### **COUNTERCLAIM DEFENDANTS**

55. Counterclaim defendant Mark Crumpacker is a resident of California and the plaintiff in this action.

56. Counterclaim defendant Michael B. Ellis is a resident of Texas, and the plaintiff in the following actions filed in this District, and dismissed: *Ellis v. Comm'r*, 1:14-cv-0471 (D.D.C.) (dismissed Sept. 16, 2014), *Ellis v. Langer, et al.*, 1:16-cv-0729 (D.D.C.) (dismissed Apr. 21, 2016), and *Ellis v. Jarvis*, 1:16-cv-0031 (D.D.C.) (dismissed May 31, 2016).

57. Counterclaim defendant Robert A. McNeil is a resident of Texas, and the plaintiff in the following action dismissed filed in this District, and dismissed: *McNeil v. Comm'r, et al.*, 1:15-cv-1288 (D.D.C.) (dismissed Apr. 12, 2016).

### **DEFENDANTS' FRIVOLOUS LAWSUITS**

58. Counterclaim defendant Michael B. Ellis filed the action styled *Ellis v. Commissioner*, 1:14-cv-0471, on March 19, 2014, *pro se*, alleging that the Internal Revenue Service and the Department of Justice violated the Fifth Amendment and the APA by engaging



in a “criminally fraudulent scheme.” According to that suit, the IRS generates a “fraudulent” and “falsified” substitute for returns in order to assess federal income tax liabilities from individuals who do not file their legally-required federal income tax returns, and the Department of Justice (“DOJ”) purportedly is complicit in that scheme by relying on those “falsified” returns in litigation and criminal prosecutions against those nonfilers. *Ellis v. Comm’r*, 67 F. Supp. 3d 325, 328 (D.D.C. 2014).

59. Ellis’ first suit was dismissed by the United States District Court for the District of Columbia, which held that his claims were barred by the Tax Anti-Injunction Act (26 U.S.C. § 7421) because the creation of a “substitute return” for a nonfiler “directly relates to . . . tax assessment.” *Ellis*, 67 F. Supp. 3d 325, 332-33 (D.D.C. 2014). The District Court also held that Ellis lacked the Article III standing necessary to maintain his suit because his injuries were caused by the fact that he failed to file his tax returns. Ellis appealed that decision, and the United States Court of Appeals for the District of Columbia Circuit unanimously affirmed the trial court’s dismissal. *Ellis v. Comm’r*, 622 Fed. App’x 2 (D.C. Cir. 2015).

60. While Ellis’s appeal to the United States Court of Appeals for the District of Columbia Circuit was pending, Defendant Robert A. McNeil filed another lawsuit nearly factually identical to Ellis’s, which asserted identical legal claims. Like Ellis, McNeil is also a “non-filer,” who believes that the IRS may not prepare returns from information available to it when he fails to file his federal income tax return. McNeil’s case – like Ellis’s – was dismissed. *McNeil v. Comm’r*, No. 15-1288 (CKK), 2016 WL 1446127 (D.D.C. Apr. 12, 2016). Like the Court in *Ellis*, the Court held that the Anti-Injunction Act barred McNeil’s Fifth Amendment and APA challenges.

61. Undeterred by the dismissal of *Ellis* and *McNeil*, Ellis then filed two more actions in this District: *Ellis v. Jarvis* (No. 1:16-cv-00031 (D.D.C.) [filed January 6, 2016]), and *Ellis v. Langer, et al.* (No. 1:16-cv-00729 [filed April 15, 2016]).

62. In *Ellis v. Jarvis*, Ellis again challenged the authority of the IRS to collect taxes, and sought to compel the Department of Justice to inform grand juries of the illegality of the IRS's actions. The Court dismissed that action, holding that the Anti-Injunction Act stripped it of jurisdiction, and that Ellis lacked standing. The Court noted:

It is undoubtedly true that many people would prefer not to pay taxes. Yet the great majority of us do so as the price of living in civilized society. Such a lesson seems lost on *pro se* Plaintiff Michael Ellis, who has waged a long-running war with the Internal Revenue Service to avoid filing tax returns.

No. 16-00031, 2016 WL 3072244, at \* 1 (D.D.C. May 31, 2016).

63. In *Ellis v. Langer*, Ellis sued the Commissioner of Internal Revenue, the Attorney General, the United States Attorney for the District of Columbia, and the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit, alleging that he was denied his First Amendment right of access to the courts by the Clerk's order dismissing his prior appeal. The United States District Court for the District of Columbia dismissed that action *sua sponte*, noting that it amounted to "nothing more than a challenge to the Court of Appeals' decision." No. 1:16-cv-00729, 2016 U.S. Dist. LEXIS 53181, at \*1-\*2 (D.D.C. Apr. 21, 2016). He has appealed that decision on July 26, 2016 to the United States Court of Appeals for the District of Columbia Circuit.

64. While pursuing their own frivolous and duplicative lawsuits, Ellis and McNeil have also encouraged and assisted others in filing further frivolous lawsuits in this District asserting the same arguments rejected in the cases referenced in paragraphs 59-63, *supra*. Specifically, Defendants assisted in the filing of the following actions in this District from 2015-

2016: *DePolo v. Commissioner*, (1:15-cv-02039-RMC [dismissed July 14, 2016]), *Dwaileebe v. Commissioner* (No. 1:16-cv-00420 [motion to dismiss pending]), *McGarvin v. Commissioner* (1:16-cv-01458 [filed July 14, 2016]), *Morris v. McMonagle* (1:16-cv-01384 [filed June 27, 2016]), and *Crumpacker*. Each case uses the same distinctive format for the complaint. A declaration from McNeil is either attached to the complaint as an exhibit, or submitted later as an exhibit to a motion.

65. The action in *DePolo* was – like *Ellis* and *McNeil* – dismissed on July 14, 2016. As in *Ellis*, the Court held that DePolo’s constitutional and APA challenges were barred by the Tax Anti-Injunction Act, and that he lacked standing.

66. In the more recent iterations of these actions – specifically *Dwaileebe*, *McGarvin*, *Morris*, and the case at bar (*Crumpacker*) – the Plaintiffs have begun to name individual DOJ attorneys, as well as judicial officers such the Clerk of Court of the United States Court of Appeals for the District of Columbia Circuit.

67. McNeil and Ellis regularly and publicly boast about the flood of frivolous lawsuits that they have encouraged on McNeil’s blog: <http://www.ram-v-irs.com>. In a recent post, McNeil lists all of the above cases and says:

As you can see, in addition to the IRS Commissioner and the U.S. Attorney General (in their official capacities), the most recent Plaintiffs have begun suing DoJ attorneys and Federal Court clerks in their personal capacities, for concealing the fraud. There are more Plaintiffs in the queue waiting to file their cases and others are welcomed to join the Class.

68. McNeil goes on to say that he and his cohorts “are keeping the pressure on the Judges to do the right thing, which is to invoke their equity jurisdiction, hear these cases on the merits, and enjoin the fraud. To date, not one judge has done so, an indication that the IRS, DoJ,

court clerks, and Federal judges are acting in collusion to keep the fraud alive, allowing the IRS to continue destroying the lives of an untold number of innocent Americans in the process.”

69. On the same blog, Ellis accuses the judges of this court of committing “crimes” by, among other things, disregarding precedent and “fabricating allegations.” He goes on to say: “Nothing proves the bankruptcy of the federal bar more clearly than watching attorneys behind federal benches conceal and prolong crimes committed under the direction of attorneys inside the IRS and DoJ.”

70. As a result of Ellis and McNeil’s actions, the IRS, the DOJ, and the District Court have been inundated with duplicative and facially frivolous lawsuits. Ellis and McNeil have, in turn, made clear that they have no intention of ceasing their activities, no matter how many courts dismiss these suits on the same exact grounds.

71. Plaintiff and counterclaim defendant Crumpacker has filed precisely the type of suit encouraged by Ellis and McNeil, and admits in his Complaint that no court has agreed with the claims he purports to assert, and that he is *precluded* from receiving any legal relief.

72. As a result of these constant frivolous filings, the IRS and DOJ must divert their enforcement resources to fighting myriad meritless civil actions that have no chance of success. This interferes with – and indeed is intended to interfere with – the United States’ ability to enforce the internal revenue laws.

73. Unless the Court enjoins Ellis, McNeil, and Crumpacker, and those acting in concert with them or at their direction, from filing lawsuits without prior leave from the court, the interference with the IRS’s ability to enforce the Internal Revenue Laws will increase in volume and intensity.

**INJUNCTIVE RELIEF IS APPROPRIATE**  
**(26 U.S.C. § 7402; 28 U.S.C. § 1651)**

74. Counterclaim defendants Ellis, McNeil, and Crumpacker (the “Counterclaim Defendants”) have all knowingly filed actions that are factually frivolous, without any legal basis, and duplicative of each other.

75. When the Counterclaim Defendants filed these actions, they knew or had reason to know that their lawsuits asserted claims that were not warranted by existing law or by a nonfrivolous argument for modifying the existing law.

76. When the Counterclaim Defendants filed their actions, they knew that their factual claims lack evidentiary support.

77. The Counterclaim Defendants have filed these actions for the express purpose of burdening the IRS, DOJ, and the courts with their frivolous claims, and not for any proper purpose.

78. Counterclaim defendants McNeil and Ellis have each filed multiple frivolous motions, pleadings, and appeals in their respective actions, with the full knowledge that their pleadings were legally insufficient as a matter of law.

79. Counterclaim defendants McNeil and Ellis have publicly encouraged others to file identical, frivolous lawsuits, and have assisted in those lawsuits by preparing supporting documents such as affidavits that are filed with the initial pleadings.

80. The Court may make any order or injunction pursuant to 28 U.S.C. § 7402 that is necessary or appropriate for the enforcement of the internal revenue laws.

81. The Counterclaim Defendants’ frivolous lawsuits, and their encouragement of a multiplicity of additional frivolous lawsuits, has interfered with the enforcement of the internal revenue laws.

82. The requested injunction, barring Counterclaim Defendants and anyone acting at their direction or in concert with them from filing the specific type of legal challenge at issue in this case without obtaining prior leave from the court, is necessary for the enforcement of the internal revenue laws.

83. There is a likelihood of irreparable harm if Counterclaim Defendants and their followers can continue to file yet more lawsuits without prior leave. Counterclaim Defendants' civil actions burden the courts, force the IRS and DOJ to expend scarce federal resources in defending against them, and interfere with the individually-named defendants' ability to properly perform their duties.

84. The balance of harms favors the United States. The requested injunction would not deprive Counterclaim Defendants of access to the courts, or even the ability to file a complaint, but would only require them to seek and obtain prior leave from the United States District Court for the District of Columbia before filing complaints in this District that assert challenges to the process of creating returns under 26 U.S.C. § 6020.

85. The requested injunction would serve the public interest by preventing facially frivolous lawsuits from being entered onto the dockets of the courts of this District, as well preventing the IRS and DOJ from being forced to divert resources away from tax administration and enforcement efforts in order to defend a multiplicity of frivolous lawsuits.

WHEREFORE, the United States prays for the following relief:

A. That the Court find that Michael B. Ellis, Robert A. McNeil, and Mark Crumpacker have filed frivolous lawsuits in this District: *Ellis v. Commissioner*, *McNeil v. Commissioner*, *DePolo v. Commissioner*, and *Crumpacker v. Ciralo*;

B. That the Court find that Michael B. Ellis and Robert A. McNeil have continually and repeatedly encouraged others to file – and participated in– additional frivolous lawsuits in this District;

C. That the Court find that Michael B. Ellis, Robert A. McNeil and Mark Crumpacker have engaged in conduct that interferes with the administration and enforcement of the internal revenue laws, and that injunctive relief against Ellis, McNeil, and Crumpacker is appropriate to prevent the recurrence of that conduct pursuant to the Court’s inherent equity power and 26 U.S.C. § 7402;

D. That the Court, pursuant to 26 U.S.C. § 7402 and 28 U.S.C. § 1651 enter a permanent injunction barring Michael B. Ellis, Robert McNeil, and Mark Crumpacker, from filing any suit in the United States District Court for the District of Columbia without obtaining prior leave from the court;

E. That the Court, pursuant to 26 U.S.C. § 7402 and 28 U.S.C. § 1651 enter a permanent injunction barring Michael B. Ellis, Robert A. McNeil, and Mark Crumpacker, from assisting in filing, or encouraging others to file, any further civil actions in the United States District Court for the District of Columbia, without obtaining prior leave from the court, which:

1. Asserts or purport to assert a claim under the United States Constitution or Administrative Procedure Act challenging actions taken by the Internal Revenue Service in preparing to assess and assessing income tax liabilities pursuant to 26 U.S.C. § 6020; and/or
2. Asserts or purport to assert a claim under the United States Constitution or Administrative Procedure Act challenging actions taken by the Department of Justice to collect income tax liabilities assessed pursuant to 26 U.S.C. § 6020;

F. That the Court order that Michael B. Ellis and Robert A. McNeil provide written notice of the entry of a permanent injunction in this action by positing the injunction on their website: <http://www.ram-v-irs.com>, for a continuous period of five years;

G. That the Court order such other and further relief as it deems just and proper.

Dated August 15, 2016

Respectfully submitted,

CHANNING D. PHILLIPS  
United States Attorney

CAROLINE D. CIRAOLO  
Principal Deputy Assistant Attorney General

/s/ Ryan O. McMonagle  
RYAN O. MCMONAGLE  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 227  
Washington, D.C. 20044  
Telephone: (202) 307-1355  
Fax: (202) 514-6866  
Email: Ryan.McMonagle@usdoj.gov