

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL

<p>JON H. ROBERTSON, Plaintiff,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA, Defendant.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING MOTION TO DISMISS AND GRANTING THE GOVERNMENT LEAVE TO FILE AN AMENDED THIRD PARTY COMPLAINT</p> <p>Case No. 1:09-CV-76 TS</p>
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Scott Robertson moves to dismiss the government's claims against him on the grounds that (1) they were improperly brought as a counterclaim against a non-party and (2) the government did not obtain leave to file before re-filing them as a third-party complaint after the government filed its Answer.

Upon review of the entire record, it appears the claims were included in the government's answer as a counterclaim, were personally served on Scott Robertson, and were promptly re-filed as a third party complaint within three business days of the government filing its original answer. Under the version of Fed.R.Civ.P. 14(a) applicable

to this case, a defending party requires leave to file a third-party complaint only if it is filed more than ten days after the defending party files its original answer.¹ Because the third-party complaint at issue was filed within ten days of the original Answer, leave to file the third-party complaint was not required. Therefore, the Court will deny the Motion to Dismiss.


However, in the interest of having a clearer record, the Court will also grant the government leave to file an amended third-party complaint to more clearly caption Scott Robertson as a third-party defendant. It is therefore

ORDERED that Scott Robertson's Motion to Dismiss (Docket No. 14) is DENIED and it is further

ORDERED that the government is GRANTED leave to file an amended third-party complaint against Scott Robertson and should do so within ten days of the entry of this order.

DATED February 11, 2010.

BY THE COURT:



TED STEWART
United States District Judge

¹The Federal Rules of Civil Procedure were recently amended, effective December 1, 2009, to require leave only if a defending party files a third-party complaint more than 14 days after serving its original answer. However, because all of the relevant pleadings in this case were filed prior to that date, those 2009 Amendments do not apply to this matter.