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15 UNITED STATES DISTRICT COURT
16 FOR THE EASTERN DISTRICT OF CALIFORNIA

17 Randy K. Barker,
18 Plaintiff(s)/Appellant,
19 v.
20 INTERNAL REVENUE SERVICE, *et al*,
21 Defendant/Respondent

22 JOHN and JANE DOES 1 through 25

Case No. 2:13-cv-1517-MCE-CMK

**INITIAL EX PARTE REQUEST FOR
AN EXTENSION OF TIME TO
RESPOND TO THE PLAINTIFF'S
COMPLAINT AND ORDER**

23 Defendants the Internal Revenue Service, former Commissioner Douglas Schulman,
Special Agent Maria Martinez, and Special Agent Colleen Rowe – the IRS Defendants – through
their attorney, respectfully moves the Court pursuant to Federal Rule of Civil Procedure
6(b)(1)(A) and Local Rule 144 for an extension of time in which to serve an answer, motion, or

1 other response to the Plaintiff's verified complaint to and through August 27, 2103. This is the
2 first extension requested by the IRS Defendants. Undersigned placed telephone calls to the
3 number listed by plaintiff Randy K. Barker on his state court pleadings on July 15, 2013, July 18,
4 2013 and July 25, 2013 to request a stipulation extending the time; however, despite leaving
5 numerous messages with Mr. Barker, he has not returned any of those calls. (Smart Declaration)

6 The grounds for this motion are as follows:

7 1. On May June 28, 2013, plaintiff Randy K. Barker filed a complaint entitled
8 "VERIFIED COMPLAINT FOR TRESPASS: WRONGFUL DEATH" in the Superior Court of
9 the State of California for Butte County, which action was assigned case number 2013-159908.
10 On June 28, 2013, the IRS received notice of this action by way of a copy of a summons and
11 complaint hand delivered to an IRS office located Chico, CA. The United States Attorney's
12 Office also received a copy of the complaint via U.S. Priority mail on July 1, 2013. (Smart
13 Declaration) On July 25, 2013, the IRS Defendants removed the above-titled action to this Court
14 by filing a Notice of Removal (Dkt. 1).

15 2. Pursuant to Federal Rule of Civil Procedure 81(c), the IRS Defendants' answer in
16 the above-captioned case is due August 1, 2013, seven days after the United States removed the
17 state court action to this Court. The IRS defendants seek to extend their time to answer or
18 otherwise move, until August 27, 2013, sixty days from the date the plaintiff hand delivered a
19 copy of the summons and complaint to an IRS office.¹

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22 ¹ The IRS Defendants explicitly reserve their right to challenge the sufficiency of service and/or
23 service of process by way of a motion to dismiss as plaintiff has thus far failed to properly effect
service pursuant to Federal Rule of Civil Procedure 4.

1 3. Under Federal Rule of Civil Procedure 6(b)(1)(A), “[w]hen an act may or must be
2 done within a specified time, the court may, for good cause, extend the time . . . with our without
3 motion or notice if the court acts, or if a request is made, before the original time or its extension
4 expires.” The IRS Defendants’ motion is made before the time for their answer expires. The
5 IRS Defendants request an extension of time to file their response to the complaint because they
6 need additional time to investigate and to obtain the information and documents necessary to
7 meaningfully respond to the complaint. (Smart Declaration) The IRS Defendants do not seek
8 the extension for the purposes of delay. Accordingly, the IRS Defendants have established good
9 cause for the requested extension.

10 4. No party will be prejudiced should the Court grant the request because the IRS
11 Defendants will obtain no more time than it would otherwise receive under Fed. R. Civ. P.
12 12(a)(2) & (3). Therefore, the IRS Defendants’ request for an enlargement of time is
13 appropriate.

14 WHEREFORE, the IRS Defendants request this Court grant their motion for an extension
15 of time to respond and order that the IRS Defendants be given an extension of time to answer or
16 otherwise move until August 27, 2013.

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1 Dated this 25th day of July, 2013.

2 Respectfully submitted,

3 KATHRYN KENEALLY
4 Assistant Attorney General

5 By: /s/ Adam R. Smart
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16 United States Attorney
17 *Of Counsel*

18 **ORDER**

19 Good cause appearing, Defendants' Ex Parte Request for an Extension of Time to
20 Respond to Plaintiff's Complaint (ECF No. 2) is GRANTED. Defendants must file and serve an
21 answer, motion, or other response to Plaintiff's verified complaint no later than August 27, 2013.

22 IT IS SO ORDERED.

23 Dated: August 2, 2013


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT