

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DIRECTV, Inc., a California corporation,

Plaintiff,

Case No. 6:01-CV-1255-ORL-31DAB

v.

WILLIAM HENDERSON, MICHAEL DANDRADE, ROBERT FERGUSON, KEVIN M. FLYNN, TOM FORTIN, MARK ANDREWS, FRANK LOSCALZO, JAMES MASKASKY, DANIEL PAYNE, GEORGE PLAKIOTIS, DICK SMITH, RICHARD TAYLOR, OTTO H. WALTER, GUY WINES, JOHN RODRIGUEZ, DAVID FOX, STEVE HUNTER, WILLIAM JOHNSON, KEITH O'BRIEN, MARK PALMER, LENNY PONTE, KEN STOGSDILL,

Defendants.

FILED
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CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE (#98)

Plaintiff, DIRECTV, Inc., hereby submits its written response to this Court's March 20, 2002 Order to Show Cause why the Complaint against the defendants Michael Dandrade, James Maskasky, Daniel Payne, Guy Wines, and Mark Palmer should not be dismissed pursuant to Local Rule 3.10 for lack of prosecution:

The actions against Defendants James Maskasky and Daniel Payne have been settled, and a Notice of Voluntary Dismissal as to these Defendants was filed with the Court on March 26, 2002. Settlement documents have also been executed by

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Defendant Guy Wines, and the Plaintiff anticipates filing a Notice of Dismissal as to Mr. Wines within ten (10) days hereof.

The Plaintiff and Defendant Mark Palmer have reached a tentative settlement agreement and are in the process of finalizing the documents related thereto. Plaintiff would seek a 30 day continuance of its obligations under Local Rule 1.07(b), M.D. Fla., while the settlement is inchoate. Should the settlement not be finalized by the end of the continuance period, Plaintiff will move for entry of default against Defendant Palmer if an Answer has not been filed.

Finally, a Clerk's default was entered against Defendant Michael Dandrade on March 26, 2002. Therefore, dismissal of Plaintiff's action at this juncture would be inappropriate.

Plaintiff's failure to apply for entry of defaults against the above-named defendants was not the result of delay or contumacious conduct by the Plaintiff, and, therefore, should not result in the dismissal of Plaintiff's case. *E.g., Martin-Trigona v. Morris*, 627 F.2d 680 (5th Cir. 1980). Plaintiff has been diligently working to achieve settlements with as many of the defendants as possible and has, at times, chosen not to seek Clerk's defaults during settlement negotiations as a sign of good faith.

WHEREFORE, the Plaintiff, DIRECTV, INC., would respectfully request that the Court refrain from dismissing its Complaint against Michael Dandrade, James Maskasky, Daniel Payne, Guy Wines, and Mark Palmer and allow Plaintiff a continuance of 30 days to meet its obligations under Local Rule 1.07(b), M.D. Fla. as to Defendant Mark Palmer.

DATED: 4/1/02

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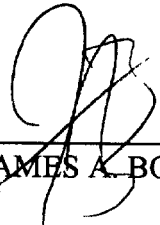
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail delivery this 1st day of April, 2002 to **William Henderson c/o Lynn James Hinson**, Dean, Mead, Egerton, et al., P.O. Box 2346, Orlando, FL 32802-2346; **Michael Dandrade c/o John M. Cacciatore, Esquire** 1360 Sarno Road, Melbourne, FL 32935; **Robert Ferguson** 2022 Tanglewood Drive

2024 W. Cleveland Street, Tampa, FL 33606; **Dick Smith c/o Thomas C. Little, Esquire**, 2123 N.E. Coachman Road, Suite A, Clearwater, FL 33765-12607; **Otto H. Walter** 8721 N. Pawnee Avenue, Tampa, FL 33617; **Ken Stogsdill c/o Albert A. Zakarian, Esquire** 2024 W. Cleveland Street, Tampa, FL 33606; **Steve Hunter,**

Newburyport Ave., Altamonte Springs, FL 32701; and **Lenny Ponte c/o Roger B.**

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JAMES A. BOATMAN, JR., ESQUIRE