

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Adam Steele, Brittany Montrois, and Joseph
Henchman, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

United States of America,

Defendant.

Case No. 14-cv-01523-RCL

**Status Report and Joint Motion for Modification
of the Scheduling Order**

The parties jointly submit this Status Report and Joint Motion for Modification of the Scheduling Order.

This is a certified class action by tax-return preparers challenging the amount the IRS charge to obtain and renew preparer tax identification numbers (“PTINs”). This Court, on cross-motions for summary judgment, ruled in favor of the plaintiffs on the issue of authority to charge a PTIN fee, holding that the IRS “does not have the authority to charge fees for issuing PTINs.” ECF 78 at 1. The Court of Appeals for the District of Columbia Circuit reversed, holding that the IRS acted within its authority “in charging tax-return preparers a fee to obtain and renew a PTIN.” *Montrois v. United States*, 916 F.3d 1056, 1067 (D.C. Cir. 2019). It remanded the case for further proceedings “including an assessment of whether the amount of the PTIN fee unreasonably exceeds the costs to the IRS to issue and maintain PTINs.” *Id.* at 1058.

Since the remand, the parties have been engaged in discovery regarding the IRS’s costs to issue and maintain PTINs. On April 27, 2020, this Court issued an Order setting certain

discovery cut-off dates that had been agreed to by the parties. ECF 127. That Order provided that document discovery be completed by August 31, 2020 and that fact witness depositions be completed by November 30, 2020. Due to the COVID-19 pandemic and despite diligent efforts, document discovery was not completed by August 31 and the parties will not be able to complete fact witness depositions by November 30.

In preparation for filing this Status Report, the parties have conferred by email and telephone on a number of occasions to discuss revised scheduling for the balance of this case. As part of the parties' discussions, the United States has agreed to provide plaintiffs with declarations from individuals with knowledge each of the eight Department in the IRS's Return Preparer Office (the office charged with overseeing the IRS's PTIN program). These declarations (and any supporting documentary exhibits) will provide detailed descriptions of the responsibilities, personnel, and estimates of time spent on certain tasks for the period 2010-2017. These declarations will assist the parties in determining the costs per task for each Department for that period. In addition, the parties anticipate that these declarations will provide for more focused and efficient deposition discovery. These declarations may also help streamline and narrow issues for summary judgment and trial.

In addition, the parties have also discussed the fact that, commencing in October 2020, the IRS again began charging PTIN fees (which this Court had enjoined in 2017). Plaintiffs believe that the new fees continue to unreasonably exceed the costs to the IRS to issue and maintain PTINs. The United States disagrees.

Nevertheless, the parties agree that the issue of these reinstated fees should be resolved within the existing litigation and anticipate filing, by November 13, 2020, a Stipulation Regarding

Post-2019 PTIN Fees to clarify that understanding. Subject to the Court's approval, the parties have agreed to defer discovery on the post-2019 fees until after resolution of plaintiffs' claim relating to the fees charged from 2010-2017. The parties recognize that information regarding the current operations of the Return Preparer Office may be relevant to understanding the period 2010-2017. The parties anticipate that the guidance from this Court's adjudication of the issues relating to the 2010-2017 PTIN fees will permit the parties to resolve any issues relating to the post-2019 fees.

For these reasons, the parties have agreed, subject to the Court's approval, to the following:

- (i) All document discovery relating to the 2010-2017 period, except discrete follow-up, based on documents previously produced, will be completed by November 30, 2020;
- (ii) The United States will provide, on a rolling basis, ending no later than February 28, 2021, declarations from individuals with knowledge of each of the eight Department in the IRS's Return Preparer Office detailing the responsibilities, personnel, and estimates of time spent on certain tasks for each Department for the period 2010-2017;
- (iii) All fact depositions relating to the 2010-2017 period will be completed by April 30, 2021;
- (iv) By March 31, 2021, the parties will submit a proposed schedule for the balance of the case, including expert reports and discovery (if any), summary judgment and trial.

The parties have submitted a separate Proposed Order setting forth these deadlines.

They request that the Court enter this Proposed Order. The parties are available for a telephonic conference, should the Court have any questions or concerns.

Dated: October 30, 2020

Respectfully submitted,

/s/ William H. Narwold

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2020, I electronically filed this Status Report and Joint Motion for Modification of the Scheduling Order through this Court's CM/ECF system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ William H. Narwold

William H. Narwold