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

PLAINTIFFS' REPLY WITH RESPECT TO THEIR MOTION TO COMPEL REGARDING PLAINTIFFS' THIRD SET OF INTERROGATORIES

Defendant responded by mainly attempting to convert the motion to compel into a venue for the Court to analyze its arguments with respect to the scope of the *Montrois v. U.S.* opinion (916 F.3d 1056 (D.C. Cir. 2019)). Summary judgement filings are due in two weeks. The *Montrois* scope matter will be dealt with by Plaintiffs there—not here. As noted below, Defendant's *Montrois* scope arguments are not pertinent to this discovery dispute. Replies to Defendant's Response's positions and claims follow the next paragraph.

Under Rule 26(b) of the Federal Rules of Civil Procedure, the scope of discovery is broad. Discovery under this rule "has been construed to broadly encompass any matter that bears on, or that could lead to other matters that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). While Rule 26(b) was modified after *Oppenheimer Fund* was decided to add a proportionality requirement and

eliminate subject matter inquiries, the information sought in Plaintiffs' third set of interrogatories meets the current Rule 26(b) standard. *In re Williams-Sonoma, Inc.*, 947 F.3d 535, 539 (9th Cir. 2020), holding in pertinent part: ". . . Now, the 'subject matter' reference has been eliminated from the rule and the matter sought must be 'relevant to any party's claim or defense.'"[1] While some courts have limited information to relevant information, the information sought here is relevant to Plaintiffs' claims.[2]

At the top of page 3 of its Response, citing Doc. 167-4, Defendant states it objected in part on the basis the interrogatories limit was exceeded. It made no such objection. In its response and its amended response to the third set of interrogatories, Defendant took the position it has gone beyond what is required with respect to declarations and depositions. Thus, it doesn't need to answer the interrogatories. Those pre-agreed matters have no significance here. Defendants half-heartedly answered the interrogatories. By doing so, it waived any claim of excessiveness. *Collins v. Grey Hawk Transp.* (D.N.M. 2021)[3].

---

[1] "The statement in *Oppenheimer* that describes the breadth of relevance inquiry remains intact. In discovery context, relevance is 'construed broadly to encompass any matter that bears on' the matter in question. *Oppenheimer*, 437 U.S. at 351. The difference today is the relevance inquiry is linked only to claims and defenses—not subject matter—and is joined by proportionality in defining scope." *Revised Guidelines and Practices for Implementing the 2015 Discovery Amendments to Achieve Proportionality*. Duke Law Center for Judicial Studies (Jan. 20, 2017).

[2] *See e.g., Cole's Wexford Hotel, Inc. v. Highmark Inc.*, 209 F. Supp. 3d 810, 823 (W.D. Pa. 2016).

[3] The *Collins* opinion is attached. In *Collins*, the court stated: "In any event, Plaintiffs answered the interrogatories and subparts, which rendered their

On pp. 3-5 of its Response, Defendant states because it provided a lot of information, it need not answer the interrogatories. A case of this nature necessitates disclosure of a lot of information. This objection is not actionable.

On p. 5, Defendant summarized its position by stating: "In short, Plaintiffs have the available information responsive to their requests." It this statement was accurate, Plaintiffs' third set of interrogatories would not have been issued. Attorneys for Plaintiffs scoured the materials discovered to find the answers. Only when they could not be found was the third set issued.

Somewhat bizarrely, at the bottom of page 6, Defendant claims the information sought is not relevant. Plaintiffs wish to determine the costs necessary to issue and renew preparer tax identification numbers (PTINs). To the extent some IRS employees worked on PTIN issuance and renewal matters, the percent of their time working on such matters is clearly relevant. Defendant's claim makes sense only if all the costs of the licensing scheme that was *completely* struck down in *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014) are lawful costs to issue and renew PTINs. Plaintiffs submit *Loving* struck down the licensing powers as unlawful. Thus, costs attributable thereto are not chargeable of tax return preparers, the vast majority of whom are Americans.

---

supernumerary objections waived" (citing *Allahverdi v. Regents of University of New Mexico*, 228 F.R.D. 696, 699 (D.N.M. 2005).

On pp. 6-9, Defendant lays out its theory why *Loving* doesn't impact its continued charging of licensing fees. Again, that matter is not pertinent here; it will be covered soon.

On p. 8, Defendant incorrectly claims Plaintiffs seek a minute-by-minute accounting of costs. Plaintiffs do not seek such and have not sought such. A reasonable range (e.g., 25-35 percent) was requested with respect to each employee and former employee.

As noted in Plaintiffs' February 22nd brief in support of its motion to compel, the declaration of Leann Ruf was received in December of 2020. It was the first declaration produced. It provided a breakdown of time spent pre-*Loving* and post-*Loving*. When counsel for Plaintiffs asked for *more* detail regarding a split between PTIN-related functions and other functions, declarations received thereafter supplied *substantially less* information that than provided in the Ruf declaration.

It's obvious what is taking place. Defendant recognizes the information is needed to calculate potential costs of Defendant relating to PTINs' issuance and renewal. The IRS is the only source of the information. By not giving the information, Plaintiffs cannot calculate the costs—potentially dragging out the case with respect to this issue when it can be resolved via disclosure.

Finally, on p. 10 of 12, Defendant gets to issues pertinent to the motion to compel. Claiming the information "simply does not exist" is a claim that no one who works at the IRS knows what its Return Preparer Office (RPO)

employees did in their jobs from 2011 forward—at least not those with respect to whom the third set of interrogatories are addressed. Anyone dealing with the IRS recently could find that claim believable. But it's simply not realistic. And the law does not permit such stonewalling.

Generally, information has not been supplied. In some cases, information has been supplied, but it is deficient. An example of an information deficiency with respect to the Contracting Officer Representatives (CORs) covered by the 18th interrogatory was supplied in Plaintiffs' letter of January 14, 2022. (It is Doc. 167-5.) The pertinent paragraph on pp. 1-2 of the letter reads:

> Based on the Goudey declaration (paragraph 63), two Contracting Officer Representatives ("CORs") annually worked on the Accenture contract. Apparently, for 2015, Robert Mattingly and Kaye Deppe were the CORs who worked on the contract. Exhibit 125 provides Kay Deppe spent 46 percent of her time working on oversight of the Accenture contract. We need to know if this is accurate and, if so, if it is accurate for all years in issue. And we need to know such a percentage for any other COR, including Mr. Mattingly, for each year in issue. Mr. Mattingly appears to have worked on both the Booze Allen contract and the Accenture contract. Exhibit 125 provides Mr. Mattingly spent 10-20 percent of his time working on Accenture. However, paragraph 64 of the Goudey declaration provides two CORs spend most of their time working on the Accenture contract. We need *specific percentages* for each COR for each year.

The undersigned believes there is no collective memory void. Rather, there is an intentional effort not to disclose information Defendant has a duty to disclose. Again, if Defendant cannot produce the information when given months to think through it, then Defendant's employees and former employees presumably won't be able to come up with the answers on the witness stand.

Case law does not support Defendant's unwillingness to cooperate. In substance, Defendant's position is no one who works at the IRS or did work at the IRS remembers. Blanket "I don't remember" statements don't meet the

applicable standard (noted in the brief supplied with Plaintiffs' motion to compel).[4] *Wolfe v. Churray*, (D.S.C. 2021); opinion attached (wherein motion to compel was granted with respect to Defendant's common response to interrogatories of "I don't remember"). A case requiring a party to "rack his memory" to provide answers is *Collins v. Grey Hawk Transp.* (D.N.M. 2021)[5].

Records exist of what people did in their jobs. To the extent collective memory is allegedly deficient, Defendant has a duty to analyze records to produce the answers. ". . . [A]nswers to interrogatories addressed to a corporation or other judicial person must speak to the composite knowledge of the party." *Weddington v. Consolidated Rail Corp.*, 101 F.R.D. 71, 74 (N.D. Ind. 1984), citing *General Dynamics Corp. v. Selb Manufacturing Co.*, 482 F. 2d 1204, 1210 (8th Cir. 1973).[6] As noted, Ms. Ruf and two other employees had no problem coming up with percentages, with or without analyzing records.

The "overbroad and unduly burdensome" argument of Defendant is a standard defense that has no merit with respect to information now needed to compute costs in this case. The information requested in discrete and specific.

---

[4] *See also Hansel v. Shell Oil Corp.*, 169 F.R.D. 303, 305 (E.D. Pa. 1996), quoting *Milner v. National School of Health Tech.*, 73 F.R.D. 628, 632 (E.D. Pa. 1977).

[5] As noted in footnote 3, the *Collins* opinion is attached.

[6] As noted in Plaintiffs' brief in support of its motion to compel, "[s]imply stating that a party does not know the answer to legitimate questions is unacceptable; a party has a duty to inquire or find the answer[,]" citing *DCFS USA, LLC v. District of Columbia*, 803 F. Supp. 2d 29, 36 (D.D.C. 2011.) "As a general rule, a party in answering interrogatories must furnish information available to it and that can be given without undue labor or expense." 8B Charles Allan Wright, Arthur R. Miller Richard L. Marcus, Federal Practice and Procedure §2174 (3d ed. 2020).

Respectfully submitted,

/s/ Allen Buckley

Allen Buckley LLC

LAW OFFICE OF ALLEN BUCKLEY LLC

Allen Buckley
ab@allenbuckleylaw.com
2727 Paces Ferry Road, Suite 750
Atlanta, GA 30339
Telephone: (678) 981-4689
Facsimile: (855) 243-0006

Counsel for Plaintiffs Adam Steele, Brittany Montrois, Joseph Henchman, and the Class

March 9, 2022