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

Reply to Response in Opposition of the Plaintiffs' Motion to File Supplemental Opposition Brief

Except for the material at the end under the heading "Going Forward," materials in the supplemental brief are consistent with, and purely supplement, the brief filed earlier in the day by Motley Rice LLC (the "main brief"). The paragraphs titled No Special Deference, Concessions, Post-Concessions Fees Still Excessive, Annual Filing Season Program and Offset Issue generally make direct reference to the parts of the main brief they supplement. I had supplied requested inserts before the filing of the main brief. I did not know they would not be included until the main brief was filed. The main brief was filed at approximately 8:40 p.m. on May 12th. Thus, there was no opportunity to confer with counsel for Defendant that day. Had I waited until the next day to seek Defendant's permission to file (which I'm confident would not have been granted), Defendant could have claimed my brief and motion were late.

As generally noted in the motion that accompanied the brief, combined, the two briefs (totaling 33 pages) are well below the 45-page limit. And, both briefs were timely filed. There is no hardship or prejudice, etc. to Defendant.

The paragraph regarding Concessions merely noted that Defendant's 2019 cost methodology had been thoroughly analyzed, as explained in Exhibit A. I did the analysis. Contrary to Defendant's Response, it takes absolutely no position inconsistent with the main brief. When I said certain costs could "possibly" have something to do with PTINs' issuance and renewal, I meant what I said. The statement "Plaintiffs' counsel cannot agree on what they believe is an appropriate amount to charge for a PTIN fee" has no basis whatsoever. Counsel for Plaintiffs all believe the IRS abused its power in creating an unlawful licensing scheme and then interpreting *Loving* (in issuing the 2015 PTIN user fees) in an unreasonable manner. The 2019 cost model of the IRS continued the abuse. For example, although one or possibly two of the 49 activities conducted by RPO related to PTIN issuance and renewal, 75% of the costs of the RPO director and the director's staff were included in the PTIN fee. Plaintiffs' counsel all believe it is for the Court to decide which activities give rise to lawful charges for issuing and renewing PTINs.[1]

[1] My personal belief is the District Court reached the right conclusion in 2017 and the amount of fees Defendant should be allowed to charge is $0. In 2012, I wrote a *Tax Notes* article (ECF 28-3) that notes the only lawful aspect of the IRS's new licensing scheme was requiring return preparers to acquire and use PTINs. Thus, acquiring a PTIN became mandatory. In *Nat'l Cable Tel. Ass'n Inc. v. United States*, 415 U.S. 336, 240 (1974), the U.S. Supreme Court ruled a fee is "incident to a voluntary act." *Montrois* disregarded this requirement, but it remains part of the law. And it makes sense. It supplies a means of discerning a special benefit for which a fee can be charged from requirements for which fees cannot lawfully

The paragraph regarding Post-Concessions Fees Still Excessive importantly points out how *Montrois* rejected the licensing costs Defendant continues to press as being chargeable. When this material was not included in the main brief, I felt I absolutely needed to report it to the Court.

The Going Forward materials note some simple facts the Court should or needs to know, including the fact that inflation is running hot and plaintiffs (the vast majority of whom are U.S. citizens) may not be able to get interest. The Mission Statement of the Department of Justice reads as follows:

> To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

Query how taking grossly unreasonable positions to the detriment of Plaintiffs, the vast majority of whom are U.S. citizens (i.e., Americans), is consistent with "ensur[ing] fair and impartial administration of justice for all Americans"? This case is largely the "of the people, by the people, for the people" U.S. Government versus the people.

Defendant is obviously upset with the attachment (Doc. 188-4) providing an example (and, as clearly noted, only an example) of how correct fees can be

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be charged. There would be tremendously less need for Congress if agencies could simply pass their costs onto the public. (Requiring people and organizations to do/not do things is what agencies do.) Anyone can prepare tax-returns because "[w]hatever is not forbidden on our blessed shores is permitted." *Thorne v. Jones*, 765 F. 2d 1270, 1274 (5th Cir. 1985). Absent a (very rare) prohibiting injunction, anyone can prepare tax-returns. 26 U.S.C. §6109(a)(4) does not provide for renewals. Renewals began in 2011 via the licensing system because a PTIN (i.e., a simple permanent identification number) *became a license*. Anything charged of Plaintiffs is a windfall to Defendant.

calculated and refunds determined. Never did the example claim the costs projected were the costs the court should deem to be correct, etc. It started with a $5.25 cost figure for Accenture. For the reasons set forth in the main brief, Plaintiffs believe nothing can be charged with respect to Accenture's services.

Defendant's paragraph pushing its deferential standard of review argument doesn't really fit. But here's another reason that argument is bogus: Unlike all the cases cited by Defendant, the main one being *Cent. & S. Motor Freight Tariff Ass'n, Inc.*, 777 F.2d 722 (D.C. Cir. 1985), never did the IRS attempt to gauge the costs of issuing and renewing PTINs when doing its cost models (for any year). In 2010, assuming the entire licensing scheme was lawful, it costed the entire licensing scheme—without any breakout, or attempt to break out, PTINs issuance or renewal costs. Rather, the PTIN costs are buried in the massive complex of licensing costs. The same applied in 2015, although the IRS was gracious enough to exclude continuing education and testing from the mass. Likewise, Defendant's picking and choosing of costs it wishes to concede in its brief (i.e., not via regulation) does not give rise to a deferential standard of review. In sum, there is no basis for a deferential standard of review in this case.

As I have previously explained, there is no such thing as "lead counsel" under the Federal Rules of Civil Procedure or the rules of the U.S. District Court for the District of Columbia. I'm co-class counsel for the reason set forth in the May 12th motion—my firm, and no other firm, was hired to prosecute this case.

Respectfully submitted,

/s/ Allen Buckley

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