

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,	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Civil Action No.: 1:14-cv-01523-RCL
	)	
United States of America,	)	
<i>Defendant.</i>	)	
_____	)	

**REPLY IN FURTHER SUPPORT OF PLAINTIFFS’ MOTION FOR CLARIFICATION  
 [ECF No. 230]**

Defendant’s opposition, ECF No. 234, highlights the ambiguity in the Court’s opinion and reinforces the need for guidance from the Court. *See All. of Artists & Recording Cos., Inc. v. Gen. Motors Co.*, 306 F. Supp. 3d 413, 419 (D.D.C. 2016) (noting the ambiguity was “apparent from the dueling briefs before the Court”).

**First**, Local Rule 7(m) does not apply. Rule 7(m) only applies to filing a “non-dispositive motion.” Here, Plaintiffs seek clarification of a ruling on a dispositive motion which is not subject to a meet-and-confer requirement. In any event, Plaintiffs raised ghost preparers and foreign preparers with Defendant previously, and Defendant objected to obtaining clarification on both matters. *See* Exhibit A; ECF No. 227 at 3, 5.

**Second**, Defendant refers to the Court’s definition of ghost preparers to argue “no clarification is necessary,” ECF No. 234 at 1-2, but this reliance is misplaced. Simply because ghost preparers include those who “failed to use a PTIN or used someone else’s PTIN or an invalid number,” ECF No. 226 at 4, does not mean *all* attributable costs are recoverable. In fact, the Court

explicitly referenced “*some* of the three specific categories of Compliance Department activities”—those that “relate to misuse of PTINs.” *Id.* at 22 (emphasis added). The Court found activities associated with PTIN misuse recoverable because “the misuse of PTINs compromises their ability to serve as a secure means of identification,” *id.*, but this concern does not apply to nonuse of PTINs. Whereas misuse of a PTIN includes using someone else’s PTIN, nonuse of a PTIN involves not using a PTIN number at all. ECF No. 177-30 ¶ 85; ECF No. 176-60 ¶¶ 102, 105 (distinguishing between various types of ghost preparers including “return preparers [who] do not enter any identifying information on returns that they prepare” and “return preparers using deceased individuals’ PTINs, or other return preparers’ PTINs”). One (nonuse) does not negatively impact a complying return preparer; the other (misuse) potentially negatively impacts a complying return preparer.

As Plaintiffs explained in their summary judgment briefing, issues with PTIN nonuse “have existed for decades and exist whether the identifying number is a social security number or a PTIN.” ECF No. 204 at 14 n.9; *see also* ECF No. 176-12 at 14, 16 (discussing GAO and TIGTA studies that identified tax return preparers who did not furnish their own identifying number). Though the IRS included costs associated with “locating and treating preparers not using a PTIN” in the PTIN fee, PTIN nonuse is wholly unrelated to identity protection. ECF No. 176-21 at 5; *see also* ECF No. 176-12 at 37-38 (recognizing need to “address individuals who fail to comply with the new IRS paid preparer regulations”). To the contrary, the purpose of the ghost work related to PTIN nonuse *is to identify the preparer*. Otherwise, the returns appear to “have been self-prepared by the taxpayer.” ECF No. 176-60 ¶ 102.

Despite the Court’s initial reference to PTIN misuse and the substantive distinction between PTIN misuse and nonuse, the Court later refers to nonrecoverable costs as those unrelated

to the “misuse or *nonuse* of PTINs.” ECF No. 226 at 22 (emphasis added). Plaintiffs seek clarification to resolve this ambiguity. *Alliance of Artists*, 306 F. Supp. 3d at 418 (“[C]ourts in this Circuit have encouraged parties to file motions for clarification when they are uncertain about the scope of a ruling, and entertaining such motions seems especially prudent if the parties must implement the ruling at issue at subsequent stages of the litigation.”).

**Third**, Defendant does not contest that it failed to respond to Plaintiffs’ argument regarding foreign preparers in its summary judgment briefing, nor does it identify where in the opinion the Court discussed foreign preparers. Instead, Defendant argues that “the benefit offered by the PTIN is the ‘protection of preparers’ identity’ without limiting that protection to preparers who have social security numbers.” ECF No. 234 at 2 (citing ECF No. 226 at 22). In doing so, Defendant abandons the justification it set forth in the Federal Register to support the PTIN Fee, which the D.C. Circuit expressly adopted in *Montrois. Furnishing Identifying Number of Tax Return Preparer*, 75 F.R. 60309, 60309 (Sept. 30, 2010); *Preparer Tax Identification Number (PTIN) User Fee Update*, 80 FR 66792, 66793 (Oct. 30, 2015); *Montrois v. United States*, 916 F.3d 1056, 1063 (D.C. Cir. 2019) (“[T]he PTIN requirement is supported by an additional justification advanced by the IRS, one we find adequate to support the assessment of a PTIN fee: the protection of the confidentiality of tax-return preparer’ social security numbers.”).

As the D.C. Circuit recognized, “the PTIN helps protect tax-return preparers’ identities by allowing them to list a number on returns other than their social security number.” *Montrois*, 916 F.3d at 1063. Preparers, including foreign preparers, are still required to include other identifying information on the returns they preparer such as their name and signature. Thus, the *only* identifying information a PTIN protects is a preparer’s social security number. Because foreign

preparers do not have social security numbers to protect, they receive no special benefit from the PTIN.

Given the Court's silence on the matter and the Parties' conflicting positions, Plaintiffs request clarification of the Court's opinion regarding foreign preparers. *United States v. All Assets Held at Bank Julius, Baer & Co.*, 315 F. Supp.3d 90, 100 (D.D.C. 2018) ("The Court's prior opinion thus warrants clarification because it is reasonably susceptible to differing interpretations.").

For the reasons set forth in their opening brief and this reply, Plaintiffs respectfully request the Court grant their Motion for Clarification.

Dated: April 14, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 14, 2023, I electronically filed Reply in Further Support of Plaintiffs' Motion for Clarification 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.

Dated: April 14, 2023

/s/ William H. Narwold

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