

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.)

Civil Action No.: 1:14-cv-01523-RCL

**RESPONSE IN OPPOSITION OF THE PLAINTIFFS’
MOTION TO FILE SUPPLEMENTAL OPPOSITION BRIEF**

Despite the Court’s repeated instruction that Motley Rice, LLC is to serve as Lead Class Counsel in this action, *see* Dkt. No. 126, Allen Buckley has again decided to forge his own path, leaving the United States in the unenviable position of responding to what amounts to be two sets of counsel representing the same party. This time, Buckley has filed a Motion to File Plaintiffs’ Supplemental Opposition Brief. Dkt. No. 188.

As an initial matter, Buckley failed to confer with the United States prior to filing his motion. Local Rule 7(m) requires that counsel confer with opposing counsel prior to filing any nondispositive motion. Because he has failed to comply with the Local Rules of this Court, the motion should be denied.

But even if he had followed the local rules, this motion contains no legal argument for why Buckley should be permitted to file a supplemental brief. Instead, he merely complains that he wanted to include this material, Motley Rice rejected his suggestions, and Buckley “believe[s he] need[s] to send the material to the Court.” *Id.* at 1. This not a

legal reason for which to permit supplemental briefing, and it directly contradicts the Court's order for Plaintiffs' counsel to "work cooperatively in the best interest of their clients." Dkt. No. 126.

While the arguments advanced in Buckley's proposed Supplemental Brief and Appendix are consistent with the arguments that he presented in his Motion to Compel,¹ Dkt. No. 167, they directly contradict the arguments made in Plaintiffs' Opposition to the United States' Motion for Partial Summary Judgment. *Compare* Dkt. No. 185 *with* Dkt. No. 188. For example, Motley Rice argues, "the 2019 cost model is irrelevant to the 2013 to 2017 PTIN fees." Dkt. No. 185 at 14. However, Buckley's proposed supplemental briefing contains an Appendix which analyzes the 2019 Cost Model to support his calculations on what he believes is the appropriate amount of the PTIN fee. Dkt. No. 188-1 at 2; Dkt. No. 188-2. Similarly, Plaintiffs' Opposition argues that the Court should look at the 2010 Cost Model to determine which enumerated *activities* could be considered "costs beyond those of 'issuing and maintaining PTINs.'" *See* Dkt. No. 185 at 16–21. But Buckley argues for a reduction of the fee based on which RPO *departments* he believes "could possibly have something to do with PTINs' issuance and renewal," and a calculated percentage of the salary and benefits attributable to those departments. Dkt. No. 188-2.

It is clear that even Plaintiffs' counsel cannot agree on what they believe is an appropriate amount to charge for a PTIN fee. Permitting Buckley to file this supplemental brief would require the United States to defend against both conflicting legal theories.

¹ Of note, while designated as lead counsel, Motley Rice also did not sign or file the referenced Motion to Compel. Dkt. No. 167.

Plaintiffs' conflicting briefs indicate their concession that reasonable minds can differ as to the reasonableness of the PTIN fee. Because of this, courts have routinely held that calculating costs to the government under the IOAA is not an exact science. *See e.g., Cent. & S. Motor Freight Tariff Ass'n, Inc.*, 777 F.2d at 736 (Costs need not be "calculated with scientific precision."); *Nat'l Cable Television Ass'n, Inc. v. F.C.C.*, 554 F.2d 1094, 1105 n.40 (D.C. Cir. 1976) (same); *Yosemite Park & Curry Co. v. United States*, 686 F.2d 925, 931 (Ct. Cl. 1982) (same). As such, the fee schedule is "entitled to more than mere deference or weight." *Cent. & S. Motor Freight Tariff Ass'n, Inc.*, 777 F.2d at 729 (quoting *Am. Trucking Ass'n, Inc. v. United States*, 627 F.2d 1313, 1320 (D.C. Cir. 1980)). And, the fees should be upheld unless they are "arbitrary, capricious, an abuse of discretion, or otherwise contrary to law." *Id.*

The local rules permit Plaintiffs, as a class, to file one memorandum in opposition to the United States' Motion for Partial Summary Judgment. LCvR 7(b). The rules do not permit multiple briefs simply because Plaintiffs have retained more than one attorney for representation. Buckley's motion provides no legal reason why the Court should grant the relief requested, citing only his ongoing grievances with Motley Rice. This is not a sufficient reason to require the United States to respond to two sets of counsel with separate legal theories. Therefore, the Court should deny the Motion to File Plaintiffs' Supplement Opposition Brief filed by Allen Buckley.

(Signature block on following page.)

Dated: May 26, 2022

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/s/ Emily K. Miller

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONSE was filed with the Court's ECF system on May 26, 2022, which system serves electronically all filed documents on the same day of filing to all counsel of record.

/s/ Emily K. Miller _____
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