

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
**MOTION TO MODIFY SCHEDULING
ORDER**

The plaintiffs move the Court to modify the current Order Modifying Scheduling Order (ECF No. 52). The parties have met and conferred. The United States takes no position on this request.

Background and Procedural Posture

This class action challenges fees that the Internal Revenue Service imposes on tax-return preparers to obtain what is known as a preparer tax identification number (or PTIN). The complaint seeks declaratory relief and a refund of PTIN fees on the grounds that the fees are both categorically unlawful and, in the alternative, unlawfully excessive.

On February 9, 2016, this Court issued an Order (ECF No. 54) granting in part and denying in part the plaintiffs’ motion for class certification (ECF No. 46). In its opinion (ECF No. 55), the Court granted class certification as to the plaintiffs’ request for declaratory relief and denied “Plaintiffs’ motion for class certification as it relates to their request for restitution.” *Id.* at 24. The Court further stated that the latter ruling “is subject to reconsideration, if needed, after the parties more fully brief issues relating to subject matter jurisdiction.” *Id.*

Consistent with this ruling, the plaintiffs are contemporaneously filing a motion for reconsideration, which includes a full briefing on subject matter jurisdiction and sovereign immunity as those issues relate to the plaintiffs' request for a refund of PTIN fees.

Proposed Modification to the Scheduling Order

In light of the Court's Order on February 9, 2016, the plaintiffs ask that the Court modify the Scheduling Order to allow the Court to decide the question of whether it has subject matter jurisdiction over the plaintiffs' claims seeking a refund of PTIN fees before notice is provided to the Class and before the parties brief and file dispositive motions on Count One of the complaint. This modification would ensure that all class certification issues are resolved, and notice, if any, is provided before the Court addresses the merits-related issues, thus avoiding potential one-way intervention concerns. *See Hyman v. First Union Corp.*, 982 F. Supp. 8, 11 (D.D.C. 1997). One-way intervention, and the resulting prejudice to the United States, can only be avoided here if class certification is decided before the merits.¹ For these reasons, the parties request that the following schedule be adopted:

1. **Notice.** The plaintiffs will provide notice to class members within 30 days of the Court's ruling on the plaintiffs' motion for reconsideration. The parties will attempt to agree on the form and manner of the notice. Any disputes will be promptly brought to the Court's attention.
2. **Motions for Partial Summary Judgment.** Within 30 days of the Court's ruling on the plaintiffs' motion for reconsideration, the parties will cross-move for summary judgment on Count One of the Amended Class Action Complaint. Oppositions will be filed 30 days thereafter.
3. **Ruling and Further Proceedings.** The Court will rule on the cross-motions for summary judgment. Based on the Court's ruling, the parties will meet and confer and, within 15 days of the ruling, propose a schedule for the

¹ This Court recognized that a defendant can waive its right to have class certification decided before merits issues, but the United States has not done so here. *Hyman*, 982 F. Supp. at 11.

balance of the case.

Conclusion

In light of the Court's Order on class certification (ECF No. 54), the plaintiffs believe that the most efficient schedule would delay class notice and briefing on Count One until after the Court decides the plaintiffs' motion for reconsideration. We are available for a telephonic or in-person status conference at the Court's convenience to discuss this proposal in more detail.

Dated: February 16, 2016

Respectfully submitted,

By: /s/ William H. Narwold

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the Putative Class*

CERTIFICATE OF SERVICE

I, William H. Narwold, declare that I am over the age of eighteen (18) and not a party to the entitled action. I am a member of the law firm MOTLEY RICE LLC, and my office is located at 20 Church Street, 17th Floor, Hartford, CT 06103.

On February 16, 2016, I caused to be filed the following in the above-captioned case:

Motion to Modify Scheduling Order

[Proposed] Order Modifying Scheduling Order

with the Clerk of Court using the Official Court Electronic Document Filing System, which served copies on all interested parties registered for electronic filing.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 16, 2016

Respectfully submitted,

By: /s/ William H. Narwold
William H. Narwold
MOTLEY RICE LLC