

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’ RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

The government contends that the recent decision in *Desert Sunlight 250 v. Lew*, No. 15-cv-01051 (D.D.C.), “is applicable to the currently pending motion for reconsideration, because it addresses the intersection between APA and Tucker Act jurisdiction.” Dkt. 61, at 2. But, as with the government’s response to that motion, the government does not dispute that the Court has jurisdiction over the monetary claims in this case and that those claims should be resolved on a classwide basis. Nor does the government claim that *Desert Sunlight* in any way suggests otherwise.

If anything, *Desert Sunlight* only confirms that there is jurisdiction here. The court in that case squarely rejected the government’s argument (also made here) that reimbursement claims may not be brought under the APA because they are claims for “money damages,” instead holding that reimbursement constitutes specific relief, so “jurisdiction under the APA would appear to lie.” Dkt. 61-1, at 7, 11. And the court squarely rejected the government’s argument (also made here) that jurisdiction under the Tucker Act (or in this case, the Little Tucker Act) extends only to claims for money damages, instead holding that the statute includes claims for specific monetary relief. *Id.* at 7–9. Thus, there can be no doubt—even under *Desert Sunlight*—that

this Court has subject-matter jurisdiction under either the APA or the Little Tucker Act. And because the Court has jurisdiction either way, it need not decide between the two.

That was not so in *Desert Sunlight*. Because that case implicated the Tucker Act (which confers jurisdiction on the Court of Federal Claims, 28 U.S.C. § 1491(a)(1)), rather than the Little Tucker Act (which confers concurrent jurisdiction on district courts for claims of \$10,000 or less, *id.* § 1346(a)(2)), the question in that case was not which of two statutes gave the district court jurisdiction. Rather, it was whether a *different* court had exclusive jurisdiction over the claims. Judge Cooper held that the answer was yes—and therefore denied jurisdiction under the APA—because he determined that the plaintiffs sought only monetary relief (entitlement to money owed by statute) and could not “circumvent the jurisdiction of the Court of Federal Claims” through artful pleading. Dkt. 61-1, at 10–12.

These “court-shopping concerns” are not implicated here because this Court has jurisdiction under either statute. *Id.* at 12. But even if they were implicated, APA jurisdiction would still be appropriate because the plaintiffs seek significant non-monetary declaratory and injunctive relief, including: (1) a declaration that a PTIN need not be renewed once issued; (2) a declaration that the current PTIN application requires information that is unauthorized by statute; (3) a declaration that the “qualification” review of any PTIN application (which was initiated in 2011) be eliminated for lack of statutory authority; and (4) injunctive relief reinforcing the declaratory relief sought. They should be permitted to seek that relief under the APA.

Respectfully submitted,

/s/ William H. Narwold

MOTLEY RICE LLC

William H. Narwold
bnarwold@motleyrice.com
DC Bar No. 502352

One Corporate Center
20 Church Street, 17th Floor
Hartford, CT 06103
Telephone: (860) 882-1676
Facsimile: (860) 882-1682

Nathan D. Finch
nfinch@motleyrice.com
Elizabeth Smith
esmith@motleyrice.com
3333 K Street NW, Suite 450
Washington, DC 20007
Telephone: (202) 232-5504
Facsimile: (202) 232-5513

GUPTA WESSLER PLLC

Deepak Gupta
deepak@guptawessler.com
Jonathan E. Taylor
jon@guptawessler.com
1735 20th Street, NW
Washington, DC 20009
Telephone: (202) 888-1741
Facsimile: (202) 888-7792

CAPLIN & DRYSDALE, CHARTERED

Christopher S. Rizek
crizek@capdale.com
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
Telephone: (202) 862-8852
Facsimile: (202) 429-3301

LAW OFFICE OF ALLEN BUCKLEY LLC

Allen Buckley
ab@allenbuckleylaw.com
2802 Paces Ferry Road, Suite 100-C
Atlanta, GA 30339
Telephone: (404) 610-1936
Facsimile: (770) 319-0110

March 22, 2016

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

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2016, I electronically filed this motion for reconsideration 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.

/s/ William H. Narwold

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