

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

CONSENT MOTION FOR APPROVAL OF LATE OPT-OUT REQUESTS

The United States moves this Court for an order approving the late requests of several individuals with the Internal Revenue Service, who have paid a fee to obtain or renew a Preparer Tax Identification Number (“PTIN”), to opt-out of the certified class in this case. Approval of these late opt-out requests is necessary in order to avoid any potential conflict of interest. In support of its motion, the United States avers as follows:

1. On August 8, 2016, this Court certified a class of “[a]ll individuals and entities who have paid an initial and/or renewal fee for a PTIN, excluding Allen Buckley, Allen Buckley LLC, and Christopher Rizek.” (Dkt. 63.)
2. On September 9, 2016, the Court entered an order approving a plan of class notice for all individuals who obtained their PTINs on or before August 20, 2016. (Dkt. 68.)
3. Those class members received notice as ordered by the Court and had until December 7, 2016 to opt out of the class. (Dkt. 65-1, 65-2, 65-3.)

4. On January 5, 2018, after this Court's entry of final judgment on July 10, 2017, the Court entered an order approving a plan of supplemental class notice to those individuals who obtained their PTINs after August 20, 2016. (Dkt. 97.)

5. The January 5, 2018 order provided that the opt-out period for individuals who obtained their PTINs after August 20, 2016 would expire on April 13, 2018. (Dkt. 97 at 3.)

6. Recently, counsel for the United States became aware that several individuals currently with the Internal Revenue Service, including certain senior executives, have paid a PTIN User Fee, which would make them part of the class in this case.

7. These individuals are as follows:

- Charles P. Rettig, Commissioner of Internal Revenue;
- Michael J. Desmond, IRS Chief Counsel;
- Thomas A. Cullinan, Senior Counselor to the Commissioner and Chief Counsel; and
- Charles V. Hyde, IRS Office of Chief Counsel General Attorney.

8. Commissioner Rettig was confirmed by the United States Senate on September 12, 2018.

9. Chief Counsel Desmond was confirmed on February 27, 2019.

10. Mr. Cullinan joined the Internal Revenue Service as a senior advisor to the Commissioner following the Commissioner's confirmation.

11. Commissioner Rettig, Chief Counsel Desmond, and Mr. Cullinan are likely to be involved in decision-making regarding this case as well as the policies and operations of the programs at issue, including the Return Preparer Office and the PTIN User Fee.

12. Mr. Hyde is an attorney with the IRS Office of Chief Counsel, who recently began working on this case.

13. All of these individuals had PTINs prior to August 20, 2016, which means they were required to opt-out if they so desired by December 7, 2016.

14. None of these individuals were involved in the defense of this litigation, or with the policies or operations of the programs at issue, when the initial opt-out period ended on December 7, 2016 or when the supplemental opt-out period ended on April 13, 2018.

15. Given that these individuals are directly involved in issues related to this case on behalf of the United States, a potential conflict of interest exists if they remain members of the class.

16. In order to avoid such a conflict, each of the above individuals has disclaimed any interest whatsoever in the class.

17. Each individual therefore seeks to opt-out of and be excluded from the class.

18. Although these opt-out requests are being made after the close of the opt-out period, good cause supports excluding these individual from the class, in order to

avoid any potential conflict of interest that did not exist at the time the opt-out periods closed.

19. Counsel for the United States discussed this motion with plaintiffs' counsel and was informed that plaintiffs consent to excluding these individuals from the certified class.

WHEREFORE, the United States respectfully requests that its motion be granted and that Charles P. Rettig, Michael J. Desmond, Thomas A. Cullinan, and Charles V. Hyde be excluded from the certified class.

Dated: November 12, 2019

Respectfully submitted,

/s/ Christopher J. Williamson
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CERTIFICATE OF SERVICE

On November 12, 2019, I, Christopher J. Williamson, declare that I filed the foregoing Consent Motion for Approval of Late Opt-Out with the Clerk of Court using the Official Court Electronic Document Filing System, which served copies on all interested parties registered for electronic filing.

Dated: November 12, 2019

/s/ Christopher J. Williamson
CHRISTOPHER J. WILLIAMSON