

**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

**MOTION TO FILE AMENDMENT TO PLAINTIFFS' DRAFT ORDER WITH
RESPECT TO ITS REPLY IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT (ECF No. 175)**

On behalf of the Plaintiffs, the undersigned hereby motions the Court to consider an additional provision to the draft order submitted as an exhibit to Plaintiffs' Reply in Further Support of Plaintiffs' Motion for Summary Judgement. In accordance with Local Rule 7(m), I conferred with counsel for Defendant with respect to this matter on Friday, July 8, 2022. Attached as an exhibit is the email exchange wherein the matter was discussed. As provided in the exchange, Defendant opposes this motion.

I regret the need to take this action. ECF No. 188 explains why I believe I need to take this action. Specifically, I'm responsible for the outcome, and I tried to work with co-counsel to resolve the matter before making this filing. I am in the process of acting outside the federal court system to try to prevent the need for supplemental filings, etc. in the future.

The provision is as follows, and it would follow the provision on page 2 of ECF 204-1 that reads “FURTHER ORDERED that all fees in excess of the costs of the items identified herein, in an amount to be determined at trial, shall be refunded to the Class; and it is”:

“FURTHER ORDERED, that Defendant will cause the Internal Revenue Service (IRS) to determine and produce to Plaintiffs, within 60 days of the date of entry of this order, the actual costs of the above activities for which fees can be charged, without apportionment as described above, with thorough proof of source and means of determination, for each of the fiscal years of the IRS from 2010 through 2017; and it is”.

Obtaining this information, when coupled with answers to Interrogatories 18-21 of Plaintiffs’ Third Set of Interrogatories (ECF 167-3) and the Accenture PTINs issuance and renewal allocation percentage, would permit the annual costs of IRS employees relating to PTINs issuance and renewal to be calculated. For example, if a Contracting Officer Technical Representative (COTR) had salary and benefits of \$160,000 for fiscal year 2016, and the overhead allocation was 50 percent, then the total COTR costs would be \$240,000. If the COTR spent 40 percent of his/her time working with Accenture, and the percentage of Accenture work related to PTINs issuance and database maintenance was 50 percent, then the allocated COTR’s PTINs-related cost for 2016 would be \$48,000 (i.e. $\$240,000 \times .4 \times .5$). The allocation percentage for the other IRS costs (i.e., non-employee costs), and the percentage of Accenture work related to PTINs issuance and maintenance of a database would need to be determined at trial. (Note: The IRS often uses the term “Contracting Officer Representative” (COR) instead of “Contracting Officer Technical Representative.” ECF 167-3 uses the COR acronym.) The Court

may believe some portion of IRS supervisor employee costs with respect to the COTR(s) can be charged (and perhaps other costs), in which case the order would need to include such costs.

At page 1066, the *Montrois* opinion permits only fee charges for “costs which the agency actually incurs” in issuing PTINs and maintaining the PTINs database (citing *Nat’l Cable Television Ass’n v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976), at 1107). Currently, less than all such actual IRS costs are in the record. Once produced, such costs could be plugged into an EXCEL spreadsheet to ultimately produce per-plaintiff refund amounts, as noted in ECF 188-4.

Obtaining the information should greatly help move this case forward.

Respectfully submitted,

/s/Allen Buckley

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July 8, 2022

Counsel for Plaintiffs Adam Steele, Brittany Montrois, Joseph Henschman, and the Class