

**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

**Reply to Response in Opposition of the Plaintiffs' Motion to File Amendment to Plaintiffs'  
Draft Order**

The filing the undersigned made on July 8<sup>th</sup> relates to a *single paragraph* addition to a *proposed* order. Obviously, the Court will decide what it wishes to order. But, contrary to what Defendant said in its Response of July 11<sup>th</sup>, the information sought largely has not been provided.<sup>1</sup>

Defendant has supplied information used to *project* licensing costs and PTIN costs via IRS cost models. For each IRS employee's wages and benefits, actual costs exist for only the first year of the cost model. Projected costs, generally applying a three percent (3%) inflation adjustment to the first year of actual costs, are supplied thereafter for the next two succeeding years in each cost model. These figures are not actual costs. Perhaps the Court believes such projected costs suffice, but they are not actual costs, as specified in *Montrois* at p. 1066 (relating to renewal fees). Regarding other IRS costs (i.e., not wages and benefits), some numbers are "buried" in larger

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<sup>1</sup> Defendant filed its Response on July 11<sup>th</sup>. This filing would apparently ordinarily have been due on July 18<sup>th</sup>. However, on the morning of July 12<sup>th</sup>, the undersigned requested an extension until the 20<sup>th</sup> of July to reply, given I was leaving for vacation on the 12<sup>th</sup> and would not return until the 19<sup>th</sup>. Via email, Defendant agreed to the July 20<sup>th</sup> extension of time to reply.

numbers. Like the wages and benefits, these figures generally are projected costs, not actual costs. Of course, what is missing and needed will turn on what the Court ultimately rules is chargeable.<sup>2</sup>

The requested paragraph would require the IRS to supply thorough proof of source and means of determination with respect to each cost figure supplied. In this regard, based on what the IRS did in 2015 when it issued new PTIN fee regulations and its recent 2019 cost methodology, the IRS simply cannot be trusted to do the right thing with respect to PTIN costs. In 2015, *Loving* was final. It includes the following sentence at p. 1066: “We agree with the District Court that the IRS’s authority under Section 330 [of Title 31] cannot be stretched so broadly as to encompass authority to regulate tax-return preparers.” Of the licensing scheme, that left only 26 U.S.C. §6109(a)(4)—an identification requirement. It doesn’t supply licensing power, and an agency gets its power only from a statutory grant from Congress.<sup>3</sup> Yet the IRS included the following activities’ costs in the 2015 user fees supposedly relating to PTINs’ issuance and renewal:

The PTIN user fee is based on direct costs of the PTIN program, which include staffing and contract-related costs for activities, processes, and procedures related to the electronic and paper registration and renewal submissions; tax compliance and background checks; professional designation checks; foreign preparer processing; compliance and IRS complaint activities; information technology and contract-related expenses; and communications. . . . [T]he determination of the user fee no longer includes expenses for personnel who perform functions primarily related to continuing education and testing for registered tax return preparers.

80 Fed. Reg. 66794 (Oct. 30, 2015). *Montrois* quoted this language at p. 1067, but placed a period after “renewal submissions,” indicating that Court’s take on the IRS’s action. ECF 188-2 (Appendix A of ECF 188-1) explains how the 2019 cost model of the IRS, with a substantial majority of the costs being licensing in nature, is simply wrong. (It is also unreasonably wrong.)

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<sup>2</sup> The objective of setting user fees is to project actual future costs. If the year was 2011 and future costs were being challenged, projected costs would have to be analyzed. Such is not the case.

<sup>3</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022); *City of Arlington v. FCC*, 569 U.S. 290, 298 (2013); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 124 (2000).

On pp. 2-3 of ECF 206, an explanation is supplied of how the requested actual cost information could be coupled with responses to Plaintiffs' Third Set of Interrogatories to calculate costs with respect to IRS employees whom the Court determines were involved in issuing and renewing PTINs. Both PTIN work percentages for IRS employees who worked on PTINs' issuance and renewal and their actual wages and benefits information would be needed. However, on July 19, 2022, the Court ruled Defendant does not need to supply the work percentage responses to Plaintiffs' Third Set of Interrogatories because the information does not exist. Thus, IRS employee costs can be calculated only if the Court rules only the costs of Contracting Officer Technical Representatives (COTRs or Contracting Officer Representatives—CORs), or CORs costs and possibly some communications costs, are chargeable.<sup>4</sup> Otherwise, it is difficult to discern how IRS employee costs of issuing and renewing PTINs can be determined. If those costs cannot be determined, it is difficult to see how a determination can be made whether PTIN fees charged “unreasonably exceed the costs of the IRS to issue and maintain PTINs.” *Montrois* at 1058.

Respectfully submitted,

*/s/ Allen Buckley*  
Allen Buckley LLC  
LAW OFFICE OF ALLEN BUCKLEY LLC  
Allen Buckley  
ab@allenbuckleylaw.com  
2727 Paces Ferry Road, Suite 750  
Atlanta, GA 30339  
Telephone: (678) 981-4689  
Facsimile: (855) 243-0006

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

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<sup>4</sup> Concerning COR costs, testimony exists that COR Kay Deppe spent 46% of her time working on Accenture matters and COR Robert Mattingly spent 10-20% of his time working on Accenture matters, but it is unclear for what years such was the case. And the declaration of Amy Goudey provided two CORs spent most of their time working on the Accenture contract. The letter sent by the undersigned on January 14, 2022 (ECF 167-5) attempted to resolve these matters.