

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

**PLAINTIFFS’ MOTION FOR PARTIAL FINAL JUDGMENT
UNDER RULE 54(b)**

Plaintiffs ask this Court to enter partial final judgment under Rule 54(b) for the \$110,165,532.35 in PTIN fees conceded by the government to have been unlawfully exacted. Immediate payment into escrow of the concededly unlawful exactions will enable interest to be earned on the monies illegally collected by the government.

According to the government, the IRS collected \$231,559,850 in PTIN fees from FY2011 through FY2017, not including the Accenture portion of the PTIN fees. It has conceded that \$110,165,532.35 of the PTIN fees collected—nearly half—were excessive and unlawfully exacted. ECF 203-2. At the end of fiscal years 2020 and 2021, the government used soon-to-expire appropriations dollars to refund a portion of the PTIN fees it concedes were unlawfully exacted. It refunded \$15,293,393 at the end of FY 2020 and \$13,689,106 at the end of FY 2021. *See* ECF 173-22; ECF 173-23. Class counsel placed those funds in escrow, and last fall, directed the administrator to invest the bulk of those funds in 6-month Treasury bills, earning approximately 4.5% in interest. Since being placed in escrow, the conceded funds have earned over \$90,000 in

interest. The current return on 6-month Treasury bills is approximately 5%, so significant earnings can be received if the money is returned to the Plaintiffs—the lawful owners. Plaintiffs now ask the Court to enter partial final judgment, requiring the government to refund the remainder of the conceded fees.

Rule 54(b) allows entry of partial final judgment under certain circumstances, including where “a portion of the damages has been definitively established and further litigation will not impact the government’s obligation to pay at least that amount.” *Entergy Nuclear Palisades, LLC v. United States*, 122 Fed. Cl. 225, 228 (Fed. Cl. 2015). The government conceded a total of \$110,165,532.35 in illegal exactions over the course of summary-judgment briefing almost a year ago, and has hinted that the class will have to wait many more months, or perhaps years, before any fees—even those that it concedes were unlawfully exacted—are refunded. According to the first status update, the government has just “beg[un] developing the methodology and process for calculating a refund for the class.” ECF 227 at 1. In the meantime, those funds remain in government coffers. To make matters worse, it is the government’s position that the class will not be able to recover interest on any of the amounts awarded through this litigation—including the concededly unlawful exactions. If the concededly unlawfully exacted fees are paid now, however, they can be placed in escrow where they could earn significant low-risk interest for the benefit of the class until final judgment on the disputed portion of the PTIN fees is entered.

The government’s concededly unlawful exactions give rise to their own claims for purposes of Rule 54(b), and there is no sound reason to permit the government to continue retaining funds that it agrees were unlawfully taken from the class. *See Entergy Nuclear Palisades*, 122 Fed. Cl. at 228-30. For these reasons, Plaintiffs respectfully request that the Court enter partial final judgment under Rule 54(b) for amount of the concededly unlawful exactions.

Dated: March 17, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2023, I electronically filed Plaintiffs' Motion for Partial Final Judgment Under Rule 54(b) 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.

Dated: March 17, 2023

/s/ William H. Narwold

William H. Narwold