

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,	)	
<i>Plaintiffs,</i>	)	Civil Action No.: 1:14-cv-01523-RCL
	)	
v.	)	
	)	
United States of America,	)	
<i>Defendant.</i>	)	
_____	)	

**DEFENDANT’S RESPONSE TO ORDER TO SHOW CAUSE**

On July 2, 2024, the Court ordered that the Defendant “shall show cause as to why this matter should not be remanded back to the IRS for failure to comply with the Court’s Amended Remand Order.” ECF No. 285. The Defendant now respectfully responds that another remand to the IRS is not required because the failure to comply with the Court’s Amended Remand Order was due to an inadvertently utilized fiscal year analysis for 2015. This resulted in PTINs issued or renewed in October 2015 to be included in the calculation for Fiscal Year 2016 when they should have been included as part of the 2015 restitution calculation, consistent with the Court’s Amended Order. The United States apologizes for this oversight. As explained below, however, remand is unnecessary because correcting this single error entails only a small mathematical adjustment, which results in a change of about 0.1 percent.

First, the Court’s Amended Order corrected an error in the original Order. As corrected, the IRS was to use its initial Accenture contract for the five years from 2011

through 2015, and use its second Accenture contract for two years, i.e., 2016 and 2017. ECF No. 236, p. 2. The Defendant's restitution calculations that it submitted to the Court already followed the breakdown of years in Amended Order (ECF No. 236); i.e., the Defendant's restitution calculations used the second Accenture contract (and its \$17 vendor fee) for both 2016 and 2017. Although the Defendant's submission did not make this clear, an examination of the filing shows that the Court's Amended Order was followed in this regard.

Second, the Amended Order clarified that the Court was excluding PTINs issued or renewed at no charge because of the Court's July 10, 2017 injunction. ECF No. 236, pp. 1 & 2. Once again, the Defendant's previously submitted restitution calculations for both the IRS portion and the Accenture portion of the PTIN fee already followed the Amended Order; i.e., the previously submitted restitution calculations excluded the approximately 17,446 PTINs issued or renewed at no charge because of the Court's injunction in 2017.<sup>1</sup> Once again, the Defendant apologizes if its submission was unclear on this point.

Third, and as a result of the Court's Show Cause Order, the Defendant reviewed its prior submission and now discovered that it did fail to meet the Court's Amended Order for the PTINs issued or renewed in October 2015. For the PTINs issued or renewed in October 2015, Defendant's restitution calculations erroneously applied the

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<sup>1</sup> The Defendant had much earlier estimated that approximately 17,500 PTINs had been issued or renewed at no charge after the Court's injunction. ECF No. 176-73 (Pls.' Ex. BU, p. 3, n.2).

calculated restitution owed for 2016, instead of the restitution owed for 2015. Only 5,229 PTINs were issued or renewed in October 2015.<sup>2</sup> Correcting the Defendant's error, for which it again apologizes to the Court, results in increasing the Defendant's total restitution owed by \$83,790, net, as explained below.

Recategorizing these 5,229 October 2015 PTINs from 2016 restitution treatment to 2015 restitution treatment (effectively "shifting" or "moving" the October 2015 PTINs from 2016 to 2015) has two offsetting effects:

- *IRS portion of fee*: Defendant calculated, as ordered by the Court, that under the 2010 Model it owes per-PTIN annual restitution of \$36.38<sup>3</sup> for each year from 2011 through 2015.<sup>4</sup> By contrast, following the 2015 Model, Defendant has calculated it owes annual per-PTIN restitution of \$19.39<sup>5</sup> for each of 2016 and 2017. Consequently, shifting a PTIN from 2016 to 2015 increases the per-PTIN restitution owed by the Defendant by

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<sup>2</sup> Attached as Exhibit 4 is a summary of FY2016 monthly PTIN registrants, including reporting 5,229 PTINs issued or renewed in October 2015. The summary is reflected on a native excel document produced to the Plaintiffs in discovery as USA-0012692 and also contained in Exhibit 4. The Exhibit's FY2016 PTIN totals tie to those previously provided by the United States to Plaintiffs during discovery. *See* ECF No. 176-73 (Pls.' Exh. BU).

<sup>33</sup> *See* ECF No. 270-2 (Supplemental Rogers Declaration, Exhibit 1, cell at Row 116, Column I); *see also* attached revised Exhibit 1, cell at Row 116, Column I.

<sup>4</sup> As previously stated, the Defendant continues to respectfully contend that the 2013 Model should be followed in calculating the Court ordered restitution for 2014-2015 but has complied with the Court's order in this respect.

<sup>5</sup> *See* ECF No. 270-3 (Supplemental Rogers Declaration, Exhibit 2, cell at Row 20, Column G); *see also* attached revised Exhibit 2, cell at Row 20, Column G.

\$16.99 ( $\$36.38 - \$19.39 = \$16.99$ ). Because there were 5,229 PTINs issued or renewed in October 2015, recategorizing these PTINs from 2016 to 2015 increases Defendant's restitution liability by a total of \$88,843 ( $5,229 \times \$16.99 = \$88,843$ ).<sup>6</sup>

- *Accenture portion of the fee*: Defendant calculated that the restitution owed for the Accenture portion of the fee is \$0.97 per-PTIN annually for 2011 through 2015, and \$1.94<sup>7</sup> per-PTIN annually for 2016 and 2017. Unlike the IRS portion of the fee, shifting a PTIN from 2016 to 2015 *reduces* the Defendant's per-PTIN liability by \$0.97 ( $\$1.94 - \$0.97 = \$0.97$ ). Again, because 5,229 PTINs were issued or renewed in October 2015, shifting these PTINs from 2016 to 2015 reduces the Defendant's restitution liability by a total of \$5,053 ( $5,229 \times \$0.97 = 5,053$ ).<sup>8</sup>

The net effect of correcting Defendant's error therefore increases its restitution liability by \$83,790 ( $\$88,843 - \$5,053 = \$83,790$ ).

This correction increases the Defendant's previous calculation of Court ordered additional restitution of \$57,444,054 to the revised \$57,527,844 (an increase of 0.15 percent). This correction increases the Defendant's prior calculation of total restitution

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<sup>6</sup> The product is equal to \$88,843 instead of \$88,840 because of rounding in the \$16.99 number.

<sup>7</sup> See ECF No. 257 (Rogers Declaration), at ¶¶ 47 and 59.

<sup>8</sup> The product is equal to \$5,053 instead of \$5,072 because of rounding in the \$0.97 number.

liability of \$167,766,071 to the revised \$167,849,861 (an increase of .05 percent). Given this relatively minor adjustment, the Defendant respectfully submits that another remand to the IRS is neither required nor efficient.

For the Court's convenience, attached are revised Exhibits 1, 2, and 3 (previously filed at ECF Nos. 270-2, 270-3, and 270-4) that have been corrected so that the 5,229 October 2015 PTINs are treated for restitution the same was as PTINs issued or renewed earlier in 2015. The changes are highlighted in those exhibits. Attached as Exhibit 4 is a reproduction of the Excel spreadsheet reporting monthly PTIN registrations and renewals for FY2016. Should the Court prefer and so order, the Defendant will submit a further declaration from the IRS regarding the above.

Dated: July 12, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of July, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to those parties registered to receive it.

/s/ Stephanie A. Sasarak

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