

**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>)	
)	

**[PROPOSED] ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

Upon consideration of Plaintiffs’ Motion for Summary Judgment, Statement of Material Facts as to Which Plaintiffs Contend There Is No Genuine Issue, Declaration of Meghan S. B. Oliver and attached exhibits, and any opposition and reply briefs and associated declarations and exhibits, it is **HEREBY ORDERED** that Plaintiffs’ Motion for Summary Judgment is **GRANTED** and Defendant’s Motion for Partial Summary Judgment is **DENIED**.

1. *IRS portion of the PTIN fee*

It is **ORDERED** that, based on the 2010 cost model, the IRS portion of the PTIN fees from October 1, 2010 to October 30, 2015 was excessive because it included costs for activities beyond the following activities necessary to issue and maintain PTINs:

- A portion of pre-October 2010 implementation costs;
- A portion of communications and customer support, including certain IRS-provided customer support costs and the costs of contacting current PTIN holders to notify them of the new PTIN requirement;
- Packaging and shipping applications inadvertently sent to the IRS;
- Retiring the existing PTIN system;

- A one-time data extract from the existing PTIN system to reassign current PTIN-holders the same PTIN;
- A portion of IT costs necessary to verify the identity of PTIN applicants and ensure TPPS met certain IRS security requirements;
- The portion of vendor management dedicated to managing Accenture's work to issue and maintain PTINs; and
- The portion of the salary and benefits of the Contracting Officer Technical Representative that managed the PTIN-related aspects of Accenture's contract; and it is

FURTHER ORDERED, based on the 2015 cost model, that the IRS portion of the PTIN fees from November 1, 2015 to June 1, 2017 was excessive because it included costs in excess of the following costs necessary to issue and maintain PTINs:

- A portion of the Vendor Processes and Business Requirements Cost Center (M181005); and
- A portion of IT costs; and it is

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 the excessiveness of the PTIN fees from October 1, 2013 through November 1, 2015 may not be determined using the 2013 biennial-review cost model because the 2013 cost model was not used to calculate a published user fee and was not relied upon in a published user fee regulation; and it is

FURTHER ORDERED that the 2019 biennial-review cost model may not be used for any purpose including to determine the excessiveness of the IRS portion of the PTIN fees from October 1, 2010 through June 1, 2017 because: (a) user fees should be judged based on the work and assumptions used to set the fee, not a post hoc examination of the agency action; (b) the work performed by the Return Preparer Office changed over the years from 2010 to 2019; and (c) using the 2019 cost model violates the parties' stipulation of November 13, 2020; and it is

2. *Accenture portion of the PTIN fee*

FURTHER ORDERED that the Accenture portion of the PTIN user fees from October 1, 2010 to June 1, 2017 was unauthorized because it was not published in a regulation as required by the Independent Offices Appropriations Act, 31 U.S.C. § 9701(b), and must be refunded to the Class in full;

[Alternatively, should the Court find that the fee was authorized, Plaintiffs propose the following: It is FURTHER ORDERED that the Accenture portion of the PTIN user fees from October 1, 2010 to June 1, 2017 was excessive because it included PTIN System (TPPS) costs and Contact Center costs that were not necessary for the issuance and maintenance of PTINs; and it is

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

3. *Offset*

FURTHER ORDERED that no offset is appropriate because: (a) the IRS did not assert a counterclaim for offset as it was required to do; (b) an offset requires strict mutuality and a valid debt which are not present; (c) there is no action for consequential damages caused by an injunction; and (d) there is no equitable basis for awarding restitution in the form of an offset; and it is

4. *Information required by Form W-12*

FURTHER ORDERED that the current W-12 requires more information than is permitted by 26 U.S.C. § 6109(c) and the PTIN application shall hereafter be limited to identifying information, specifically name, address, date of birth, social security number, email address, and phone number.

IT IS SO ORDERED.

Dated: _____

The Honorable Royce C. Lamberth
Senior United States District Judge