

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

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN RESPONSE TO THE
COURT'S MINUTE ORDER OF JANUARY 3, 2020**

Accenture Federal Services, LLC ("AFS") has not produced, and continues to refuse to produce, any documents in response to Plaintiffs' subpoena served on August 26, 2015. AFS initially objected to production of responsive documents on a number of grounds, including that the subpoena seeks: (a) "proprietary business information and/or trade secrets;" (b) irrelevant information; (c) documents that can be obtained from the Government; and (d) information which may not be disclosed under the Federal Acquisition Regulation ("FAR"). AFS has also objected generally that the subpoena requests are overbroad and unduly burdensome. For ease of reference, Plaintiffs have attached as Exhibit 1 a table outlining their requests and AFS's objections to them. *See* Exhibit 1. The complete responses and objections can be found at ECF No. 101-7.

After the case was remanded in early 2019, Plaintiffs resumed their negotiations with AFS regarding the terms of its production. During their negotiations, AFS informed Plaintiffs that

without a protective order, it would neither produce documents nor consent to the Government's production of any AFS information. AFS further indicated that a protective order would not resolve all of its objections to Plaintiffs' subpoena, including in particular its objections under the FAR. Following extensive negotiations, the parties and AFS agreed to the terms of a Protective Order, which allows the parties and nonparties to designate information as confidential, including "trade secret or confidential research, development, or commercial information," or as highly confidential, including "cost or pricing data, or profit information." This Court entered the parties' agreed-upon protective order on December 23, 2019. ECF No. 114. While entry of the Protective Order will facilitate the Government's production of contractor data, it has not resolved most of AFS's objections.

Accordingly, neither Plaintiffs' Motion to Compel Production of Documents from Non-Party AFS (ECF No. 101), nor AFS's Motion to Stay Nonparty Discovery Against AFS (ECF No. 112) has been mooted by entry of the Protective Order. Specifically, those motions present the following questions which have not been resolved by the Protective Order:

1. Is the information sought regarding AFS's costs, revenues, profits, and work done under the PTIN Contract relevant to Plaintiffs' claims that the \$64.25 and \$63 PTIN fees (\$50 as of October 30, 2015) exceed the costs of issuing and maintaining PTINs in violation of the IOAA?
2. Is any burden in complying with the subpoena undue when considering the totality of the circumstances, including (1) that AFS has been responsible for issuing, renewing, and maintaining PTINs since 2010; (2) the Government has responded to several discovery requests seeking information regarding AFS's costs, revenues, and work done under the

PTIN contract by asserting that such information is not in its possession; (3) the case is a class action of over 1.5 million tax return preparers seeking a refund of potentially hundreds of millions of dollars in PTIN fees; and (4) AFS is a multibillion-dollar business with thousands of employees?

3. Does the FAR, which governs the negotiation and procurement of government contracts prohibit the production in this civil litigation of information regarding AFS's costs, revenues and profits in performing the no-cost PTIN contract for "administer[ing] the application and renewal process"?
4. Should AFS's production of responsive information, including information that the Government has represented is not in its possession, be delayed until after the Government has completed its production?

Should the Court wish, Plaintiffs will file any additional materials the Court may find helpful, or make themselves available for a conference.

Respectfully submitted,

/s/ William H. Narwold

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January 7, 2020

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

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2020, I caused to be electronically filed Plaintiffs' Supplemental Memorandum in Response to the Court's Minute Order of January 3, 2020 through this Court's CM/ECF system. I understand that notice of this filing will be sent to all parties and to AFS by operation of the Court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ William H. Narwold

William H. Narwold