

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10 Plaintiff,
11 v.
12 Stephen M Kerr,
13 Defendant.
14

No. CV-19-05432-PHX-DJH
ORDER

15 On May 30, 2023, the United States (“Plaintiff”) appealed this matter to the
16 United States Court of Appeals for the Ninth Circuit. (Doc. 66). Plaintiff has since filed a
17 “Motion for Entry of Final Judgment After Remand or, in the Alternative, Motion for
18 Indicative Ruling Under Federal Rule of Civil Procedure 62.1” (Doc. 68) (“Motion for
19 Final Judgment”).¹ Plaintiff argues the Court should clarify its intended effect when
20 terminating the case and “reopen [this matter] because the IRS has now completed its work
21 on remand and, as a result, [Plaintiff’s] claim for judgment on the penalties that were
22 remanded can now be finally adjudicated.” (*Id.* at 4). Rule 62.1² permits a district court
23 to indicate its ruling on a motion for relief that is otherwise barred by a pending appeal.
24 Fed. R. Civ. P. 62.1(a). For the following reasons, the Court indicates it would grant the
25 Motion as to Plaintiff’s requests for clarification and to reopen the case, but defer
26 consideration of the Motion to the extent Plaintiff seeks entry of final judgment.

27 ¹ The matter is fully briefed. (Docs. 71 (Mr. Kerr’s Response); 73 Plaintiff’s Reply))

28 ² Unless where otherwise noted, all Rule references are to the Federal Rules of Civil Procedure.

1 **I. Procedural History³**

2 In 2019, Plaintiff filed a “Complaint to Reduce Civil Penalty Assessments to
3 Judgment” (Doc. 1) against Defendant Stephen Kerr (“Mr. Kerr”) regarding nine Foreign
4 Bank and Financial Accounts (“FBAR”) penalties that the Internal Revenue Service
5 (“IRS”) had issued against Mr. Kerr. Plaintiff brought the action under 31 U.S.C. §
6 3711(g), which provides that “[i]f a nontax debt or claim owed to the United States has
7 been delinquent for a period of 180 days[,] upon such transfer the Secretary of the Treasury
8 shall take appropriate action to collect or terminate collection actions on the debt or claim”
9 including “referral . . . to[] the Department of Justice for litigation.” *Id.* §§ 3711(g)(1)(B),
10 (g)(4)(C). Plaintiff sought to recover Mr. Kerr’s unpaid balance owed on the FBAR
11 penalties by “reduc[ing] those assessments to judgment.” (Doc. 1 at 1).

12 Below is an overview of the Court’s prior Orders to date:

13 **A. The March 2022 Order (Doc. 55)**

14 In the March 2022 Order (Doc. 55), the Court concluded that Mr. Kerr was liable
15 for the nine FBAR penalties at issue and that the penalties were not grossly disproportional
16 to his conduct. (*Id.* at 4–6, 15–17). The Court further found the IRS correctly assessed
17 some, but not all, of the FBAR penalties. (*Id.* at 6–14). Specifically, the Court ordered
18 partial judgment on three penalties totaling \$240,985⁴ (the “Three Valid Penalties”) and
19 remanded six penalties back to the IRS under the Administrative Procedures Act (“APA”),
20 5 U.S.C. § 702, for further investigation or explanation (the “Six Remaining Penalties”).⁵
21 (*Id.* at 17–18). The Court also terminated this action because there was nothing further for

22 _____
23 ³ The Court’s prior Orders contain extensive background sections. (Docs. 26 at 1–4;
24 55 at 1–2; 62 at 2–5). The Court will only discuss the facts relevant to its determinations
made in this Order.

25 ⁴ The Court entered partial judgment in favor of the United States and against Mr. Kerr for
26 the following penalties: \$100,000 for the -962 account for the 2008 reporting year;
\$100,000 for the -796 account for the 2008 reporting year; and \$40,985 for the -734 account
for the 2007 reporting year. (Doc. 55 at 17–18).

27 ⁵ The Court remanded to the IRS “for further investigation or explanation” the penalty
28 assessments for the -962 account for the 2007 reporting year; the -796 account for the 2007
reporting year; the -593 account for the 2007 and 2008 reporting years; and the -531
account for the 2007 and 2008 reporting years. (Doc. 55 at 17).

1 review. (*Id.* at 18).

2 **B. The March 2023 Order (Doc. 62)**

3 Plaintiff subsequently filed a “Motion to Vacate Judgment and Remand Entire
4 Penalty to the IRS”, which the Court construed as a motion for reconsideration of the
5 March 2022 Order under Rule 59 (Doc. 57) (Plaintiff’s “Motion for Reconsideration”).
6 Plaintiff argued the Court committed manifest errors of law in three ways: (1) it
7 erroneously partitioned the IRS’s original assessment of penalties entered partial judgment
8 with respect to “only a part of that agency action that was not severable[;]” (2) it
9 “erroneously terminated the case when the claim alleged in the Complaint has not been
10 fully adjudicated[;]” and (3) it “erroneously omitted from the entered judgment mandatory
11 statutory interest and failure to pay penalties under 31 U.S.C. § 3717(e)(1)[.]” (*Id.* at 3).

12 In the March 2023 Order (Doc. 62), the Court granted Plaintiff’s Motion for
13 Reconsideration in part and denied it in part. First, the Court concluded it did not err when
14 it entered partial judgment against Mr. Kerr on the Three Valid Penalties and remanded the
15 Six Remaining Penalties to the IRS because Mr. Kerr’s FBAR penalties were severable on
16 a per-account, per-year basis and therefore independent of each other. (*Id.* at 7–13).
17 Second, the Court concluded it did not err when terminating the case in light of the default
18 rule that vacatur is to accompany a court’s remand to an agency under the APA. (*Id.* at 13–
19 15). Last, the Court found it should have included interest and fees in the partial judgment.
20 (*Id.* at 15–16).⁶

21 **C. The April 2023 Order and Judgment (Docs. 64; 65)**

22 In accordance with the March 2023 Order, the parties stipulated to the interest,
23 penalties, collection and costs that Mr. Kerr should pay in connection with the Court’s
24 partial judgment entered on the Three Valid Penalties. (Doc. 63). In its April 2023 Order
25 (Doc. 64), the Court adopted the parties’ stipulations; ordered partial judgment on the Three
26 Valid Penalties; ordered remand of the Six Remaining Penalties to the IRS for further
27 investigation and explanation; and terminated this matter. That same day, the Clerk of
28

⁶ In so doing, the Court vacated the March 29, 2022 Judgment (Doc. 56). (Doc. 62 at 16).

1 Court entered judgment accordingly (Doc. 65) (the “April 2023 Judgment”).

2 **D. Plaintiff’s Appeal**

3 On May 20, 2023, Plaintiff appealed the April 2023 Judgment and April 2023 Order
4 to the Ninth Circuit. (Doc. 66).

5 On August 7, 2023, Plaintiff filed this Motion for Final Judgment (Doc. 68).
6 Therein, Plaintiff represents the IRS has completed its work on remand and “requests that
7 the Court reopen this case and enter a final judgment that includes the amount of the partial
8 judgment, plus the amount of the remanded FBAR penalties and accruals which total
9 \$2,660,749.07, calculated as of August 4, 2023, plus pre- and post- judgment accruals from
10 that date until paid in full.” (*Id.* at 2).

11 On October 18, 2023, the Ninth Circuit entered an Order staying all appellate
12 proceedings pending this Court’s resolution of Plaintiff’s Motion for Final Judgment.
13 (Doc. 74).

14 **II. Rule 62.1 Standards**

15 A notice of appeal generally divests the district court of jurisdiction over the matters
16 being appealed. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)
17 (“The filing of a notice of appeal is an event of jurisdictional significance” because “it
18 confers jurisdiction on the court of appeals and divests the district court of its control over
19 those aspects of the case involved in the appeal.”). However, when a timely motion is
20 made for relief that the district court lacks authority to grant because of a pending appeal,
21 Rule 62.1 permits the district court to (1) defer considering the motion; (2) deny the motion;
22 or (3) state either that it would grant the motion if the court of appeals remands for that
23 purpose or that the motion raises a substantial issue.” Fed. R. Civ. P. 62.1(a). “In
24 considering these options, the district court is free to consider new evidence at its
25 discretion.” *NewGen, Ltd. Liab. Co. v. Safe Cig, Ltd. Liab. Co.*, 840 F.3d 606, 612 n.1 (9th
26 Cir. 2016). If the district court states that it would grant the motion, then the movant “must
27 promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1.” Fed. R.
28 Civ. P. 62.1(b). The circuit court of appeals may, in its discretion, then remand the case

1 for further proceedings and either retain jurisdiction or dismiss the appeal. Fed. R. App.
2 P. 12.1(b).

3 Here, Plaintiff concedes that the Court presently lacks authority to grant the relief
4 Plaintiff seeks in its Motion for Final Judgment given its pending appeal of the
5 April 2023 Judgment and April 2023 Order to the Ninth Circuit (*see* Doc. 66).
6 (Doc. 68 at 4). Thus, Plaintiff requests that the Court issue an “indicative ruling” under
7 Rule 62.1 that it would grant the Motion if the Ninth Circuit remands for that purpose. (*Id.*)
8 The Court will proceed to consider Plaintiff’s Motion under the Rule 62.1 procedure and
9 the Ninth’s Circuits directive (Doc. 74).

10 **III. Discussion**

11 At issue in Plaintiff’s Motion is whether the Court should reopen this case to enter
12 final judgment on the Six Remaining Penalties that were remanded to the IRS. The Court
13 construes Plaintiff’s Motion to seek three means of relief. First, Plaintiff asks the Court to
14 clarify that its prior Orders terminating the case did not constitute vacatur of the Six
15 Remaining Penalties. (Doc. 68 at 3–4, 12–13). Second, Plaintiff requests the Court to
16 reopen the case in light of the IRS’s completed work on remand. (*Id.*) Third, Plaintiff
17 pursues post-remand summary judgment on the Six Remaining Penalties based on the
18 IRS’s recalculations. (*Id.* at 5–12). The Court will address each requested form of relief.

19 **A. The Court Would Grant Plaintiff’s Request for Clarification that the** 20 **Remanded FBAR Penalties were not Vacated Upon Case Termination**

21 Plaintiff first asks the Court to clarify its intent when terminating this case:⁷

22 So did the Court’s termination of the case reflect a substantive determination
23 of finality and a decision to preemptively prohibit the United States from
24 returning to this Court to obtain judgment for the recalculated willful FBAR
25 penalties after correction on remand? Or did the Court take no position on
26 those issues and order the Clerk to terminate the case merely as a matter of
docket management or for some other reason short of barring the courtroom

27 ⁷ The Court notes Mr. Kerr’s efforts to defend against Plaintiff’s request for clarification
28 as one arising under Rule 60(b). (*See* Doc. 71 at 8–12). But even when construing
Plaintiff’s request as one for relief under Rule 60(b), the Court reaches the same
conclusion.

1 door to any post-remand proceedings? Mr. Kerr believes the former and
2 [Plaintiff] the latter[.]

3 (*Id.* at 4). Mr. Kerr contends the Court’s prior Orders effectively vacated the Six
4 Remaining Penalties and remanded them to the IRS for further investigation or explanation.
5 (Doc. 71 at 3 (citing Doc. 55 at 7–14, 17)). In his view, “the Court [] did not simply remand
6 or dispose only parts of the Plaintiff’s claim with the expectation that the agency would
7 return with findings or conclusions necessary to justify and finally adjudicate the rest of
8 the claim.” (*Id.* at 4). Plaintiff’s position best summarizes the Court’s intent.

9 To start, nowhere in its Prior Orders did the Court vacate the Six Remaining
10 Penalties. The Court found that Mr. Kerr is liable for all nine FBAR penalties issued
11 against him by the IRS (Doc. 55 at 4–6, 15–17); entered partial judgment on three of the
12 nine penalties (Docs. 55 at 17–18; 64); remanded six of the nine penalties for the IRS’s
13 further investigation and explanation (Docs. 55 at 6–14; 62 at 7–13 (affirming on
14 reconsideration)); and terminated the case on the basis that there was “nothing further” to
15 review pending remand. (Docs. 55 at 18; 64 at 3). Mr. Kerr’s position is that the Court’s
16 termination of the case was equivalent to vacatur of the Six Remaining Penalties. Not so.
17 The Court’s termination of the case meant to function as an administrative closure to
18 relinquish jurisdiction to the IRS pending remand.

19 The parties express confusion over why the March 2023 Order discussed the APA’s
20 vacatur analysis when affirming termination of the case. (*See* Doc. 62 at 13–15). The
21 reason is clear. Mr. Kerr had argued that “[a] court’s decision to retain jurisdiction during
22 remand is *akin* to remand to an agency without vacatur and *involves the same analysis*.”
23 (Doc. 59 at 6 (citing *Wood v. Burwell*, 837 F.3d 969, 976 (9th Cir. 2016)) (emphasis
24 added).⁸ Indeed, remand without vacatur in this context equates to a court’s retention of
25 jurisdiction, while remand with vacatur equates to a court’s relinquishment of jurisdiction.
26

27 ⁸ Mr. Kerr argued so his in Response to Plaintiff’s Motion for Reconsideration
28 (*see* Doc. 59 at 6) and again in his Response to Plaintiff’s Motion for Final Judgment
(*see* Doc. 71 at 11).

1 *Cf. Wood*, 837 F.3d at 976 (explaining that the district court “retained jurisdiction during
2 the remand” of an agency decision when the district court remanded without vacatur).
3 Because case termination and remand with vacatur similarly result in surrender of
4 jurisdiction, the Court was persuaded by Mr. Kerr’s position that Plaintiff should be held
5 to the same requirements under the remand without vacatur standard to show the Court
6 committed clear error when terminating the case. In light of the APA’s standard remedy
7 that vacatur is to accompany remand to an agency—*i.e.*, relinquishment of jurisdiction—
8 the Court reasoned it did not “commit[] manifest errors of law when it terminated the case”
9 pending remand. (Doc. 62 at 14).

10 In hindsight, the Court acknowledges the March 2023 Order could have provided a
11 more transparent analysis. Although the March 2023 Order compared the jurisdictional
12 implications of vacatur upon remand to an agency with termination of a case pending
13 remand to an agency, it did not mean to conflate the adjudicatory consequences. To be
14 more clear, the Court terminated the case as a means of administrative closure pending
15 remand; it did not, under any circumstances, vacate the Six Remaining Penalties.⁹ The
16 Northern District of California has employed a similar approach that illustrates this Court’s
17 intent. In *United States v. Hughes*, the United States brought an action to enforce FBAR
18 penalties against the defendant due to his failure to timely pay. No. 18-CV-05931-JCS,
19 2022 WL 911721, at *1 (N.D. Cal. Mar. 29, 2022), ECF No. 171. Upon concluding that
20 the IRS abused its discretion when calculating certain FBAR penalties against the
21 defendant, the California district court remanded the FBAR penalties to the IRS for
22 recalculation and closed the case. *Id.* at *9. Notably, the California district court closed
23 the case without vacating the remanded penalties, *see id.*, and reopened the case upon the
24 IRS’s completed recalculations on remand. *See Hughes*, No. 18-CV-05931-JCS, (N.D.
25 Cal. Mar. 6, 2023), ECF No. 179.

26
27 ⁹ The Court would have included express ordering language if it meant to do so. In any
28 event, the March 2023 Order affirming termination of the case is consistent with the April
2023 Judgment entering partial judgment, *remanding the Six Remaining Penalties “for
further investigation or explanation”*, and closing the case. (*Compare* Doc. 62 with
Doc. 64) (emphasis added).

1 To summarize, the Court indicatively rules that it would grant the Plaintiff's Motion
2 for Final Judgment to the extent Plaintiff seeks clarification that the Court's prior Orders
3 did not vacate the Six Remaining Penalties upon remand.

4 **B. The Court Would Grant Plaintiff's Request to Reopen the Case**

5 Plaintiff next requests the Court to reopen the case in light of the IRS's completed
6 recalculations on remand. For support, Plaintiff invokes Ninth Circuit precedent
7 establishing that "remand orders are generally not final because they leave more for the
8 court to do after remand is complete." (Doc. 68 at 3 (citing *Shapiro v. Paradise Valley*
9 *Unified School Dist. No. 69*, 152 F.3d 1159, 1161 (9th Cir. 1998) and *Chugach Alaska*
10 *Corp. v. Lujan*, 915 F.3d 454, 457 (9th Cir. 1990)). Mr. Kerr argues the case should remain
11 closed because the IRS's recalculation on remand results in the issuance of entirely new
12 FBAR penalties that runs afoul of (1) the 6-year statutory period for the IRS to assess
13 FBAR penalties; and (2) the 2-year statutory period for the Plaintiff to seek enforcement
14 of assessed FBAR penalties. (Doc. 71 at 5 (citing 31 U.S.C. § 5321(b)).

15 The Court has already settled *supra* that it did not vacate the Six Remaining
16 Penalties upon remand, and so Mr. Kerr's contention that the remand calculations result in
17 newly assessed, statutorily time-barred penalties is meritless. Indeed, it is undisputed that
18 the IRS timely assessed the nine FBAR penalties for which Mr. Kerr is liable.
19 (*See generally* Doc. 55). The remand that the Court ordered was "not for the IRS to issue
20 new penalties, but for it to recalculate the penalties it has already assessed." *United States*
21 *v. Schwarzbaum*, 24 F.4th 1355, 1367 (11th Cir. 2022) (rejecting the defendant's argument
22 that the IRS could be time-barred from re-evaluating its original actions issuing FBAR
23 penalties); *see also Jones v. United States*, 2020 WL 2803353, *8 (C.D. Cal. May 11, 2020)
24 ("If the Court remands to the IRS this would not be a new assessment of penalties, but
25 rather a recalculation of the initial penalty based upon an upheld finding of willfulness.").

26 Furthermore, Plaintiff's point is well taken that orders remanding to agencies are
27 generally not final. *See Shapiro v. Paradise Valley Unified School Dist. No. 69*, 152 F.3d
28

1 1159, 1161 (9th Cir. 1998) (“Until the administrative proceedings [on remand] are
2 completed, the district court will not have before it all the issues that are necessary for it to
3 render a final judgment.”). Mr. Kerr indeed concedes as much. (Doc. 71 at 4). Because
4 there has been a final recalculation of penalties by the IRS on remand, the IRS’s decision
5 is now subject to further judicial review. The Court will thus reopen the case, as Plaintiff’s
6 action for judgment against Mr. Kerr under 31 U.S.C. § 3711(g) on the Six Remaining
7 Penalties is now ripe. (See Doc. 1 at ¶¶ 11–12, 23–26). *Hughes*, No. 18-CV-05931-JCS,
8 (N.D. Cal. Mar. 6, 2023), ECF Nos. 179, 186 (reopening the case after the IRS revised its
9 calculation of the defendant’s FBAR penalties on remand and setting a briefing scheduling
10 for Plaintiff’s motion for judgment on the recalculated penalties).

11 Therefore, the Court indicatively rules that it would grant Plaintiff’s Motion for
12 Final Judgment to the extent Plaintiff seeks to reopen the case and litigate its
13 Section 3711(g)¹⁰ claims on the Six Remaining Penalties.

14 **C. The Court Would Defer Consideration of Plaintiff’s Request for**
15 **Judgment on the Six Remaining Penalties**

16 Last, Plaintiff seeks final judgment on the Six Remaining Penalties, arguing the
17 IRS’s recalculations were done in accordance with its internal guidelines and are neither
18 arbitrary nor capricious. (Doc. 68 at 5–9). Mr. Kerr construes Plaintiff’s request as a
19 motion for summary judgment under Rule 56 (*see* Doc. 71 at 12–13), to which Plaintiff
20 agrees (*see* Doc. 73 at 7 (“[T]he Court should construe our motion as a post-remand motion
21 for summary judgment under Rule 56.”)). Mr. Kerr contends Plaintiff’s request is improper
22 because he “has a due process right to conduct discovery into and challenge the
23 reasonableness and methods underlying the IRS’s calculations.” (Doc. 71 at 6). He raises
24 evidentiary objections in that Plaintiff “has yet to make any disclosure related to the new
25 calculation or claims, except to identify its reliance on new ‘current’ policies and the
26 involvement of three new IRS personnel—all of which [] warrant discovery and
27

28 ¹⁰ Unless where otherwise noted, all Section references are to Title 31 of the United States Code.

1 investigation.” (*Id.*) Mr. Kerr essentially asserts he cannot present facts essential to justify
2 his opposition to Plaintiff’s Motion for Final Judgment. (*Id.* at 14).

3 At minimum, the Court finds that Plaintiff’s request for final judgment raises a
4 substantial issue under Rule 62.1. Fed. R. Civ. P. 62.1(a)(3). Moreover, Mr. Kerr’s
5 discovery concerns are well taken. Summary judgment is only appropriate “after adequate
6 time for discovery.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1103
7 (9th Cir. 2000); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Rule 56(d) provides
8 that if a nonmovant shows it cannot present facts essential to justify its opposition of a
9 motion for summary judgment, the court may: (1) defer considering the motion or deny it;
10 (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any
11 other appropriate order. Fed. R. Civ. P. 56(d). Mr. Kerr, as the nonmovant, must show
12 “(1) [he] has set forth in affidavit form the specific facts it hopes to elicit from further
13 discovery; (2) the facts sought exist; and (3) the sought-after facts are essential to oppose
14 summary judgment.” *Inteliclear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 661–
15 662 (9th Cir. 2020).

16 In light of Mr. Kerr’s representations that he has not had the same benefit of
17 discovery on the IRS’s recalculations that he had when opposing the IRS’s initial
18 calculations of Six Remaining Penalties (Docs. 71 at 14; 71-1; 71-2; 71-3; 71-4; 71-5), the
19 Court indicatively rules that it would defer consideration of Plaintiff’s request for judgment
20 on the Six Remaining Penalties. *See Russell Rd. Food & Bev., LLC v. Galam*, 2013 WL
21 2949615, at *4 (D. Nev. June 13, 2013) (declining to make any statement as to whether it
22 would grant the defendants’ motion or not under Rule 62.1 because the motion raised
23 evidence not previously before the court). Indeed, Plaintiff’s request for final judgment
24 calls for a further examination on a more fully developed record. *See e.g., Franklin Energy*
25 *Storage One, LLC v. Kjellander*, 2020 WL 2151854, at *3 (D. Idaho May 5, 2020) (“The
26 district court is not bound to grant [a] motion [under Rule 62.1] after stating that it raises a
27 substantial issue.” (citing Fed. R. Civ. P. 62.1 advisory committee’s note to 2009
28 amendment)); *see also e.g., In re Zoom Video Commc’ns, Inc. Priv. Litig.*, 2022 WL

1 16861661 (N.D. Cal. Nov. 11, 2022) (granting certain relief but deferring consideration on
2 other relief under Rule 62.1). The Court will defer any such ruling until it determines how
3 to best proceed under this unique procedural posture and better understands the extent of
4 discovery currently available to Mr. Kerr on the IRS’s recalculations on remand.

5 **IV. Conclusion**

6 Should the Ninth Circuit remand the pending appeal, the Court would make the
7 following indicative rulings: First, the Court would grant Plaintiff’s request for clarification
8 of the prior Orders. *See* Fed. R. Civ. P. 62.1(a)(3). The Court, after ordering partial
9 judgment on the Three Valid Penalties, terminated the case as means of administrative
10 closure pending remand of the Six Remaining Penalties. It did not, under any
11 circumstances, vacate the Six Remaining Penalties. Second, the Court would reopen the
12 case to consider Plaintiff’s Section 3711(g) claim for judgment against Mr. Kerr on the Six
13 Remaining Penalties. *See id.* Last, Plaintiff’s request for final judgment on the Six
14 Remaining Penalties raises a substantial issue, and the Court would defer consideration of
15 this request until it confirms that Mr. Kerr has had an opportunity to obtain adequate
16 discovery under Rule 56(d) on the IRS’s recalculations. *See id.* 62.1(a)(1), (3).

17 Accordingly,

18 **IT IS ORDERED** that the United States’ “Motion for Entry of Final Judgment
19 After Remand or, in the Alternative, Motion for Indicative Ruling Under Federal Rule of
20 Civil Procedure 62.1” (Doc. 68) is **GRANTED**.

21 **IT IS FURTHER ORDERED** issuing an indicative ruling under Federal Rule of
22 Civil Procedure 62.1(a)(3) that the Court would **grant** the United States’ Motion to the
23 extent it seeks clarification that the Court’s prior Orders terminated this case as a means of
24 administrative closure pending remand of the Six Remaining Penalties to the IRS, and did
25 not vacate the Six Remaining Penalties upon remand.

26 **IT IS FURTHER ORDERED** issuing an indicative ruling under Federal Rule of
27 Civil Procedure 62.1(a)(3) that the Court would **grant** the United States’ Motion to the
28 extent it seeks to reopen the case to consider Plaintiff’s 31 U.S.C. § 3711(g) claim for


1 judgment against Mr. Kerr on the Six Remaining Penalties.

2 **IT IS FURTHER ORDERED** issuing an indicative ruling under Federal Rule of
3 Civil Procedure 62.1(a)(1) that the Court would **defer consideration** of the United States'
4 Motion to the extent it seeks final judgment on the Six Remaining Penalties that were
5 remanded to the IRS.

6 **IT IS FURTHER ORDERED** issuing an indicative statement under Federal Rule
7 of Civil Procedure 62.1(a)(3) that the United States' Motion **raises a substantial issue**.

8 **IT IS FINALLY ORDERED** that pursuant to Federal Rule of Civil Procedure
9 62.1(b), the United States shall promptly notify the circuit clerk under Federal Rule of
10 Appellate Procedure 12.1 of the Court's decision.

11 Dated this 23rd day of February, 2024.

12
13 
14 _____
15 Honorable Diane J. Humetewa
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28